CAS-44039-Y6Q2

Ombudsman's Determination

Applicant	Mr E
Scheme	[H] Computer Systems Ltd Pension Scheme (the **Scheme**)
Respondents	Aviva Life and Pensions UK Limited (**Aviva**)
	Mrs D

Outcome

1. I do not uphold Mr E's complaint and no further action is required by Aviva or Mrs D.

Complaint summary

2. Mr E has complained that Aviva and Mrs D caused avoidable delays to the transfer of his entitlement within the Scheme to another arrangement with AJ Bell. Mr E would like to be redressed for his loss which he estimates to be £103,384.00.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

4. The Scheme was established by a Definitive Trust Deed, dated 1 November 1992, between the Principal Employer, [H] Computer Systems Limited (**H Limited**), two Managing Trustees (Mr E and Mrs D), and a Special Trustee, SunTrust Limited (**SunTrust**). The Scheme is governed by SunTrust rules coded ST006 (**the Rules**) as amended on 28 November 2019.

5. SunTrust was part of Sun Life Assurance Society Limited (**Sun Life**). Sun Life was acquired by the AXA Group in 1997, subsequently becoming part of the Friends Life Group in 2011, which in turn was acquired by Aviva in 2015. SunTrust is a wholly owned subsidiary of Aviva. For ease of reference the respondent is referred to as Aviva.

6. Relevant extracts and summaries of the Rules are set out in the Appendix.

7. Between 1992 and February 2019, the Principal Employer for the Scheme was H Limited. In March 2019, the Principal Employer was renamed [E] Commercial Limited.

8. Mr E and Mrs D were spouses. In 1988 they had founded H Limited with one share each in a 50:50 distribution.

9. Mr E says he worked at H Limited from 1988 to 2004 as a full-time employee and director taking a small salary. Sometime later, Mrs D also started working for H Limited as a full-time employee and she also took a small salary.

10. Mr E says that because he had worked for H Limited for much longer than Mrs D, by September 2019, his pension was valued at approximately £95,000 compared to hers at approximately £29,000.

11. In July 2007, Mr E and Mrs D were divorced. As part of the divorce settlement a Pension Sharing Order (**PSO**) set out that approximately 16% of Mr E's pension fund was awarded to Mrs D. Aviva says it had already issued a letter, dated 27 June 2007, to Mrs D requesting her intentions with regard to the pension credit and her intentions with regards to her policy

12. Shortly after the divorce, Aviva (AXA Sun Life at the time) received the PSO. It wrote to Mrs D to ask that she start processing the transfer of her share to another arrangement. It now appears that Mrs D did not respond to this request.

13. On 3 April 2008, Aviva received a telephone call from Mrs D requesting information on how her pension was left and whether a transfer of benefits had been made. She was asked what her intentions were and she left details of her email address.

14. On 4 April 2008, Aviva sent an email to Mrs D in which it confirmed that if monies were to be applied to her policy under the Scheme, then an allocation rate of 101% would be received. Any commission would be payable to her financial advisor. It requested written confirmation of her intentions before anything could be actioned.

15. Mrs D says that she wrote to Aviva (Friends Life at the time) about the PSO on 1 March 2016 and 12 July 2016. On 10 June 2019 and 30 June 2019, she sent further letters to what was by then Aviva.

16. Aviva says that it wrote to Mrs D on 10 May 2016. In this letter it:

    - confirmed the percentage of Mr E's policy for the PSO;
    - requested confirmation of where Mrs D wanted the money to be paid; and
    - requested confirmation of Mrs D's intentions with regard to the benefits held in her policy under the Scheme.

17. On 16 May 2016, Mrs D emailed to confirm that the percentage of Mr E's policy was to be transferred into her policy.

18. On 10 June 2016, Aviva emailed Mrs D to request a letter of instruction signed by her and Mr E, as Managing Trustees of the Scheme.

19. Mrs D says that she emailed and telephoned Aviva at least six times between 9 July 2019 and 17 October 2019. Aviva eventually admitted that access to the PSO was not available to it electronically, and on 28 August 2019, it also admitted that it had failed to locate the paper files for the Scheme.

20. Mr E says that in July 2019, he started planning for his imminent retirement. He established a Self-Invested Personal Pension (**SIPP**) share account with AJ Bell ready to accept funds from his two pensions with Aviva and Scottish Widows.

21. On 6 September 2019, Aviva located the Scheme's paper files and, on 17 October 2019, it emailed Mrs D to explain the necessary process to enact the PSO.

22. In September 2019, Mr E began the process of attempting to transfer his entitlement under the Scheme to the SIPP. At the same time, he transferred his entitlement under the Scottish Widows arrangement to the SIPP. That transfer and the purchase of shares in Tesla Inc within the SIPP was completed on 8 October 2019.

23. On 12 September 2019, Aviva confirmed to Mrs D that as the recipient of the 'pension credit' she should confirm to the Managing Trustees that she wished to retain the 'pension credit' within the Scheme. The Managing Trustees should then confirm (or reject) and agree they had no objection to this. Aviva would require a copy of the documented decision. Ideally all parties involved should take professional advice.

24. Mrs D emailed back the same day to say that she thought Aviva's advice was complicating the matter by ignoring the fact that the PSO instructed that this transfer proceed; that the trustees had to abide by the ruling; and that the parties involved were the Managing Trustees. As such, Mr E was not in any position to refuse to carry out the PSO and should not be allowed to influence her decision, which she had already confirmed several times in correspondence, to invest the pension credit within her existing policy.

25. On 25 September 2019, Aviva responded to Mrs D. It acknowledged the pension sharing annex confirmed the preferred option of an internal transfer, however the annex did not relate to her and Mr E's separate roles as Scheme Administrator and Managing Trustees. The agreement of all Managing Trustees was required to operate the pension policies within the Scheme. For example, any request to take retirement benefits or to switch funds required her signature and Mr E's signature as Managing Trustees. They were both required to continue as Managing Trustees while they held benefits within the Scheme. The internal transfer option was acceptable, however this decision needed to be formally documented by the Managing Trustees in a resolution or something similar separate from the PSO.

26. Aviva also emailed Mr E to confirm the PSO had not yet been completed. It set out what had been said to Mrs D in its email of 25 September 2019.

27. The Rules did not allow for Pension Sharing so, on 7 October 2019, Aviva drew up a Deed of Amendment (**DoA**) to adopt the Rules to allow Pension Sharing.

28. On 10 October 2019, Mr E telephoned Aviva to chase the transfer from the Scheme. Aviva replied on 17 October 2019. It confirmed that the discharge forms allowing the transfer of Mr E's benefits could not be sent until the PSO had been actioned.

29. On 8 November 2019, Aviva emailed Mr E. It again explained that the PSO needed to be implemented before it could transfer his plan to another arrangement. It said the outstanding requirements for the PSO were as follows:-

    - A draft DoA was required to adopt the Rules to allow the pension share to proceed. This would follow by post.
    - Mr E would need to complete the DoA and sign it on behalf of [E] Commercial Limited.
    - He and Mrs D would then need to sign it, as Managing Trustees of the Scheme, and return it to Aviva.
    - A suitable letter of instruction would need to be signed by Mr E and Mrs D, as Managing Trustees, to confirm if Mrs D's share of Mr E's pension were to be paid to her existing policy under the Scheme or as an external transfer to a pension plan with another provider.

30. On 20 November 2019, Aviva emailed Mrs D to advise her that Mr E wished to surrender his policy. Aviva said that a DoA would need to be signed, including by [E] Commercial Limited. Mrs D says she assumed this was a mistake. The email said that Aviva would forward the DoA to Mrs D once Mr E. had returned it

31. The email also confirmed the information previously given to Mr E about the need for a letter of instruction signed by both her and Mr E.

32. Mrs D telephoned Aviva to dispute the fact that the Principal Employer was [E] Commercial Limited. She said this was a company that Mr E had set up and was nothing to do with the Scheme.

33. Also on 20 November 2019, Mr E complained to Aviva. It acknowledged the complaint the same day and again set out its requirements before it could progress the transfer of his plan to AJ Bell.

34. On 21 November 2019, Mrs D sent an email to Mr E acknowledging his answerphone message of the previous day about the DoA requiring her signature. She advised that she had created and signed the pension-sharing transfer letter and had made arrangements for his signature.

35. On 24 November 2019, Mr E sent an email to Aviva to which he attached the letter of instruction signed by both him and Mrs D.

36. On 26 November 2019, Mrs D telephoned Aviva to try to ascertain how the Scheme would be affected by Mr E surrendering his funds as opposed to taking retirement benefits. Aviva recommended that she should obtain financial advice before making a decision. During this conversation Aviva confirmed that the DoA was in the name of

[E] Commercial Limited because, since 4 February 2019, that was the name of the employing company at Companies House. Mrs D indicated that being the case she might not sign the DoA.

37. Later the same day, Mrs D asked Mr E for an explanation regarding the change of company name, and commenced investigations with Companies House, the Royal Bank of Scotland (**RBS**) and the accountant, Brookes O'Hara Limited.

38. On 27 November 2019, Mr E signed the DoA in the name of [E] Commercial Limited and on 28 November 2019, he hand-delivered it to Mrs D at her home address. The document recommended that financial advice should be sought before signing and so Mrs D did not sign immediately. Mr E says Mrs D gave him no explanation of why she was doing nothing about his pension release.

39. Aviva responded to Mr E's complaint on 5 December 2019. It said that it required the PSO be completed before Mr E's transfer request could be completed. It was still waiting for Mrs D to sign and return the DoA before the PSO could be completed. Therefore it did not uphold his complaint.

40. On 6 December 2019, Mr E emailed Mrs D to ask why Aviva had not received the signed DoA. On 7 December 2019, he threatened legal action if she did not sign the DoA.

41. Mrs D says that on 9 December 2019, she was finally in a position to make an online banking application to RBS but that, on 11 December 2019, Companies House recommended that she seek independent legal advice regarding the change of company name.

42. On 14 December 2019, Mr E told Mrs D he was commencing legal action.

43. Between 17 and 31 December 2019, Mr E supplied Mrs D with spreadsheets he had created to prove payments in and out of the company bank account. However, she says these were not downloads from RBS and did not show any balances of the account on any given date.

44. On 30 December 2019, Companies House issued its notification that the company name had been reverted to H Limited.

45. Mrs D says that on 4 January, 7January, and 12 January 2020, she received emails from Mr E requesting updates. She felt pressurised, so despite still not having access to the RBS account, she was at least satisfied that the company name had been reverted and hoped she would have access to the RBS account before she was required to sign anything further.

46. On 12 January 2020, Mrs D signed the DoA and Mr E confirmed receipt the following day.

47. On 20 January 2020, Mrs D gained access to RBS online banking and ascertained that Mr E had taken money from the account and made repayments. There were

several exchanges between her and Mr E while she downloaded the yearly transactions and raised queries. Mr E admitted that he still owed the account a repayment.

48. On 15 February 2020, Aviva confirmed that it had processed the PSO.

49. On 22 February 2020, Mr E hand-delivered the pension transfer discharge form to Mrs D. However, she says this did not include proof of the receiving scheme being a 'tax advantaged arrangement to which HMRC permit a transfer to be made.'

50. On 27 February 2020, Mrs D received satisfactory confirmation details from the receiving scheme and, on 28 February 2020, she signed the certificate of transfer and returned it to Mr E.

51. On 24 March 2020, the transfer from the Scheme was completed and Mr E purchased a further investment in Tesla Inc within the SIPP.

Summary of Mr E's position

52. Mr E says Mrs D has been an absent and silent director of the company since 2007. Since its incorporation in 1988, the company sold computer systems. However, since 2004 its Standard Industry Code and business model had changed to be a commercial property letting company. This was the reason behind the change of company name.

53. The various pension scheme operators contacted Mrs D several times over the previous 12 years, but despite these reminders, she continually failed to deal with the PSO and its required processes. She also failed to notify Mr E that there was a problem.

54. Mrs D knows his date of birth is 30 September 1961 so it is reasonable to expect that she would have anticipated his request to have access to his pension benefits sometime after 1 October 2016. However, she still did not make sure that the PSO was processed and failed to follow through with the pension providers.

55. Throughout all this time, he was oblivious to there being any problem that could stop him from accessing his pension benefits. Even though Mrs D has been able to deal with the release of his pension since 27 November 2019, by signing and posting the DoA, she has done nothing. Instead, using her role as a Director of H Limited, she put up blocks and caveats which are outside her powers as a Director and which in some instances relate to personal matters amounting to corruption and blackmail.

56. He asserts that Mrs D has been negligent in her duties as a Trustee. She has also acted fraudulently as a Director by holding up his pension and has acted fraudulently as a Trustee by using personal considerations as a reason for holding up his pension.

57. Throughout this entire process Sun Life, Phoenix Wealth and Aviva have been negligent because they did not find a way to force Mrs D to execute her duties as a

Trustee. They did not contact her enough and they did not contact Mr E to see if he could help.

58. The original Trustee agreement that Mrs D signed was a contract between herself and the pension provider and as such he would expect that the agreement contained a list of duties and expectations along with a path to bypass, or have removed, an uncooperative Trustee. The pension provider drafted this agreement so if it has not been able to bypass, or remove, Mrs D for not co-operating then he holds the pension company responsible for an inadequate agreement, having faulty processes and failing to address these issues as is its responsibility.

Summary of Mrs D's position

59. Mrs D says she had been pursuing the processing of the PSO since 2016 through Friends Life and then Aviva and had created the Trustees' transfer agreement on 20 November 2019 for both her and Mr E to sign. After this letter was created, she was then advised that a DoA would also need to be signed.

60. Throughout the period concerned, Mr E made no allowance for reading and understanding documents to be signed, or for time to get any financial advice. Any delays attributed to her thereafter were not 'gripes,' as Mr E mischaracterises, but investigation and due diligence in order to satisfy herself that no fraud had been committed.

61. This was instigated as a direct response to her being told by Aviva that the name of employer on the DoA was [E] Commercial Limited. She did not understand why this had changed and it was a complete shock.

62. The company name was H Limited so immediately the trust she had in Mr E to manage the day-to-day running of what was now a single building rental income company evaporated completely. If he would change the company name without consulting her, she wondered what else he might have done. The registered address for the company was given as Mr E's home address, which meant she had never seen bank statements, and she did not have online banking access. She did however receive annual accounts for a micro-entity prepared by the accountant and nothing had ever seemed untoward. However, the change in company name had occurred after the accounts were last submitted.

63. She had given Mr E permission to perform the day-day running of the company with regard to general maintenance. This did not extend to major repairs or other financial decisions. A change of company name and application for online banking require a resolution of directors at a meeting. They had always agreed that email agreements were sufficient, but no such email exchange had taken place.

64. Mr E was made aware that she would not sign the DoA until she had received answers to her questions and had seen the bank statements.

65. Once she had access to the bank account, the company name had been reinstated and she had fulfilled her duty as Trustee to ensure that funds were being transferred to a scheme authorised by HMRC, she had signed the final document required.

Summary of Aviva's position

66. The PSO needed to be implemented before it could transfer Mr E's plan to another arrangement. It had asked Mrs D in 2007 and again in 2008 what her intentions were with regard to the transfer of her share of Mr E's fund but had received no response.

67. In 2016, it had written again to Mrs D to ask for a letter of instruction to be signed by her and Mr E but it did not receive a response to that letter either.

68. It had explained to Mr E, in its email dated 8 November 2019, that his pension could not be transferred to AJ Bell until the PSO on his policy had been implemented. Once Mr E had confirmed his address it had sent the DoA to him which, once completed, would adopt the latest scheme rules.

69. It had said that it also required a suitable letter of instruction signed by both Mr E and Mrs D, as the Managing Trustees of the Scheme, to confirm if Mrs D's share of Mr E's pension was to be paid to her existing policy as an internal transfer or an external transfer to a pension plan with another provider.

70. Once those requirements from both Mr E and Mrs D had been met, the PSO could be implemented, but without them, it could not progress Mr E's requested transfer.

71. This information had also been provided to Mrs D.

Adjudicator's Opinion

72. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva or Mrs D. The Adjudicator's findings are summarised in Paragraphs 73 to 95 below.

73. This complaint relates to a two member Small Self-Administered Scheme (**SSAS**), the members being Mr E and Mrs D. They were, and still are, co-directors of the sponsoring employer. Both members are also 'Managing Trustees' along with what is now Aviva which is defined as the 'Special Trustee'. The Managing Trustees are the Scheme Administrator.

74. The Scheme was set up in 1992 for the benefit of the Managing Trustees and the Rules confirm that they are equally responsible for any decisions. Described as the Special Trustee, the role of Aviva is very narrow as defined by the Rules.

75. The origins of the complaint date back to 2007 when Mr E and Mrs D divorced. As part of the divorce settlement Mrs D was awarded approximately 16% of her ex-husband's pension. For reasons that are not at all clear the PSO was never followed through and the matter was allowed to drop.

76. In 2016, there was an exchange of correspondence between Aviva and Mrs D, the conclusion of which was that Mrs D wanted the 16% to be added to her policy within the Scheme. Aviva wrote to tell her that it needed an instruction to that effect signed by her and Mr E. Again, the matter seems to have been allowed to drop. There is no evidence that Mr E was aware of this exchange.

77. In July 2019, Mr E decided that he wanted to start planning for his retirement by transferring his funds from Aviva (and another plan with Scottish Widows) to a SIPP with AJ Bell. However, the transfer could not be completed until the PSO was enacted, which required a DoA to be signed by both Managing Trustees. The DoA was eventually completed and given to Mr E on 12 January 2020. There was also a DoA dated 28 November 2019 that was originally drafted with [E] Commercial Limited shown as the Principal Employer.

78. Aviva advised Mr E in writing on 20 December 2019, and via previous emails on 8 November and 20 November 2019, that his fund could not be transferred until the PSO had been implemented.

79. The name of the Principal Employer was changed back to its original name on 30 December 2019 and Mrs D provided Mr E with an executed DoA on 12 January 2020, the certificate of transfer was signed by Mrs D on 28 February 2020.

80. In an email to The Pensions Ombudsman (**TPO**) dated 18 April 2021, Mr E set out his complaint and under the date 14 December 2019 he commented:

> "I accuse Mrs D of abusing her position as Trustee and confusing her roles and I accuse Aviva of not acting against her and for not having appropriate signed Trustee agreements in place that would allow them to remove a rouge [sic] Trustee. After all, the Trustee agreement was between Aviva, and Mrs D and I am sure that she was not acting in accordance with that signed agreement."

81. Mr E appeared to mistakenly believe that the Trust Deed and Rules was solely between Aviva and Mrs D. Looking at the original Trust Deed, this is not the case, as it is signed by both Mr E and Mrs D.

82. The role of the Special Trustee is strictly limited, with Rule 12.1 confirming that Aviva was only required to provide information and technical support to the Managing Trustees. Rule 12.2 also confirms that the Managing Trustees both manage and administer the Scheme. The DoA, dated 28 November 2019, further confirms in Paragraph 3 the status of the Managing Trustees as the Scheme Administrator. As the role of Aviva is so limited, the Adjudicator did not consider that it has a greater responsibility than that of the Managing Trustees. He considered that technically it was arguable that Aviva has no responsibility other than to provide information and technical support as under the Rules it is not responsible for the administration of the Scheme.

83. As set out in Rule 12.2 the Managing Trustees must unanimously make all trustee decisions, something that Mr E may not have appreciated until it became a necessity

in order to transfer his pension. In accordance with the Rules, the responsibility to manage the Scheme rests equally with both the Managing Trustees. As part of his planning Mr E should have sought the implementation of the PSO prior to 2019 with the agreement of Mrs D.

84. The Adjudicator considered that it was inappropriate of Mr E, and in breach of the Scheme Rules, to change the name of the Scheme's Principal Employer without the agreement of Mrs D and amendment of the Scheme's documents. He noted that once this was recognised the name of the Principal Employer was changed back at Companies House on 30 December 2019.

85. He considered that Mr E's correspondence showed his lack of understanding of the Scheme Rules, the duties of the Managing Trustees and Aviva's role.

86. As commented in Paragraph 73 above, Mr E is the joint Managing Trustee and is equally responsible for any decisions that are made in respect of the Scheme. He does not appear to appreciate that the Scheme has a defined set of Rules and that these Rules set out how the Scheme operates. In his email to TPO dated 14 April 2021, Mr E appeared to consider that the Scheme Rules are a document solely between his ex-wife and Aviva. This is despite the fact that he signed the DoA dated 28 November 2019.

87. The Rules refer to a six-month period in relation to transfers and Mr E should have been aware of this potential timescale. In order to have mitigated his losses Mr E needed to ensure that the PSO was in place, and he would have been advised to obtain the agreement of the other Managing Trustee before he changed the name of the Scheme's Principal Employer and commenced his plans to transfer his pension, though once he commenced the transfer process, he communicated with Mrs D on a regular basis.

88. Mrs D was equally responsible for the management of the Scheme. Both she and Mr E were aware of the PSO and could, as the two trustees responsible for all decision making, have ensured that this was implemented prior to 2019.

89. Mrs D does appear to have taken this opportunity to look at the company finances in more detail and she appears to have confused her responsibilities as a company Director with those of the Managing Trustee of the Scheme. However, Mr E appeared quite willing to provide this information as a Director of the company, presumably on the basis that he considered it likely that it would help speed up the transfer. Mrs D's requests in respect of both the Scheme and in her role as Director also appeared reasonable based on the fact that Mr E had taken decisions, without her knowing, that impacted on her legal liability.

90. The Adjudicator concluded that there was insufficient evidence to show that Mrs D has been negligent or fraudulent in her actions, with her approach suggesting that she had taken care to ensure that the transfer was administered correctly.

91. The Adjudicator did consider that Mrs D had delayed the administration of Mr E's transfer request, though as both Managing Trustees are responsible for the administration of the Scheme, his view was that Mr E should have foreseen complications and could have communicated with Mrs D earlier so as to ensure a faster process.

92. Mrs D first became aware of Mr E's intention to transfer out his pension on 20 November 2019, and Mrs D admitted that she did not note the change in the name of the Principal Employer and only became aware of this on the 26 November 2019. The Adjudicator considered it reasonable that Mrs D sought clarification in respect of the company name change and requested that it was changed back to its original name. This was achieved on 30 December 2019. It then took a further 28 days for the DoA to be actioned and the certificate of transfer to be executed. In the context of a SSAS the Adjudicator did not view this is an excessive length of time, though he recognised that transfers from defined contribution schemes managed by pension professionals are now usually undertaken in a much shorter time scale.

Rule 12 General Provisions relating to Trustees

93. Rule 12.10 states that none of the Trustees are liable for any loss unless it can be shown that they knowingly and intentionally committed a breach of trust. In this instance Mr E's initial complaint was that Mrs D had not taken sufficient action to permit his transfer and was in breach of trust due to negligence and/or fraud.

94. On the basis that the transfer did go ahead Mr E's complaint now concerned whether Mrs D's or Aviva's actions delayed the transfer.

95. Prior to agreeing to the transfer, Mrs D undertook due diligence in respect of Mr E's transfer to the AJ Bell SIPP; agreed that the PSO was in place; and ensured that the documents were correct in respect of the Principal Employer, within the space of just over three months. As commented in Paragraph 91 above, while Mrs D could have acted more quickly, the Adjudicator did not consider that the timescale was unreasonable taking into consideration the manner in which the Scheme had been historically managed.

96. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

97. Mr E provided his further comments which do not change the outcome. He says that:-

- Mrs D and Aviva were instructed by a court order to separate her pension from his. For whatever reason, 14 years later they still had not done this and Aviva never communicated any problems to him as a trustee or beneficiary. After he began to get involved (because of his retirement) it took them both more than six months to resolve the position. In the meantime, he had purchased 1110 fewer shares in Tesla than he would have otherwise been able to purchase.

- Mrs D took every opportunity to introduce delays into this process and this point has not been given due weight. If Mrs D did not have the time or skills to perform her duties in a timely manner then she is obliged to resign her position.

- Aviva is also culpable, but it was Mrs D who made the situation worse through engineered neglect and targeted frustration. This has cost him more than two years delay in his retirement and hundreds of thousands of pounds in investment.

- However, as much as he is frustrated by Mrs D's lack of urgency during the 14 years and then the final six months leading up to the release of his pension, he has concluded that she would be unable to pay any meaningful level of compensation. Also, if he were to be awarded anything, he would not take what little pension she has remaining. Therefore, he has decided that there is little point maintaining his complaint against her. For these reasons only and not to prejudice any possible future action he may initiate privately, he wishes to withdraw his complaint against Mrs D.

- However, he wishes to continue his complaint against Aviva as it can compensate him in a meaningful way. He has already stated the failings in basic customer service, industry best practices and guidelines, and the law. He fails to see how it is not to blame. Aviva cannot treat its customers in this way with no reparation.

- The Adjudicator had said that Aviva had a clause in its agreement that basically relieves them of any consequences if they make a mistake. This is preventing TPO from holding Aviva accountable for "maladministration in connection with an act or omission of an administrator of the scheme". He believes that Aviva was in breach of certain inalienable responsibilities in law that any reasonable investigation would allow common sense to prevail.

Ombudsman's decision

98. Mr E has said that he wishes to withdraw his complaint against Mrs D but has suggested that he may seek to take some future unspecified action. At this late stage of the investigation I am not prepared to agree to this and will determine his complaint against Mrs D.

99. Rule 12.2 confirms that the Managing Trustees, which is Mr E and Mrs D, were equally responsible for the management of the Scheme. Both were aware of the PSO and could, as the two trustees responsible for all decision making, have ensured that this was implemented prior to 2019. However, it appears that for 12 years neither did so.

100. I acknowledge that the relationship between Mr E and Mrs D was clearly strained, but as Managing Trustees it was their responsibility to put that to one side and work together to administer the Scheme effectively.

101. Mrs D has said that Mr E's actions in changing the name of the employer came as a shock and I accept that this would only have served to increase her concerns. I find that Mrs D delayed the administration of Mr E's transfer request and possibly a lack of trust contributed to that. However, I do not find that her actions were unreasonable in the circumstances.

102. Furthermore, the Rules refer to a six month timescale for the transfer of a member's benefits to another fund but Rule 10.2 (iv) states that the Managing Trustees may delay carrying out the Member's wishes beyond that period.

103. Mrs D undertook her responsibilities cautiously and prudently, ensuring that she understood the consequences of her actions. I would not criticise her for that and it was certainly not maladministration on her part that she should do so.

104. Mr E maintains that Aviva was in breach of its responsibilities and that it should have forced Mrs D to take action; I disagree. As the Adjudicator pointed out, Rule 12.1 states that Aviva was only required to provide information and technical support to the Managing Trustees. Aviva's role was therefore purely a reactive one and its failure to take the initiative in resolving the situation does not constitute maladministration.

105. By his own admission, Mr E only became involved when he was thinking of retiring. But as a Managing Trustee he had a responsibility to ensure that the Scheme was properly run and administered at all times. It was not sufficient for him to only be interested in the Scheme when it suited him to do so. Consequently, he bears as much responsibility for the delays which have occurred as Mrs D, and more than Aviva.

106. I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
6 July 2022

Appendix

Relevant extracts and summaries of the Rules.

Rule 10.2 states:

> A Member "…may make a written application to the Managing Trustees requiring the Cash Equivalent, to which he has acquired a right, be transferred to any other fund...The Managing Trustees may, however, delay carrying out the Member's wishes at Rule 10.2 beyond the six month period."

Rule 10.2 (iv) states an extension to the period may be sought if:

> "in the opinion of the Managing Trustees, the Member has not taken all such steps as the Managing Trustees can reasonably expect him to take in order to satisfy them of any matter which falls to be established before they can properly carry out the Member's wishes;"

Rule 12 states:

> "The Managing Trustees shall be all the Trustees other than the Special Trustee and shall manage and administer the Scheme and shall be the Scheme Administrator."

Rule 12.1 confirms that:

> "The Special Trustee's role is to provide information and technical support to the Managing Trustees. It shall not incur any liability under the terms of [the Rules] to any third parties."

Rule 12.10 states:

> "No trustee shall as trustee of the scheme incur any personal responsibility or be liable for anything whatever except for a breach of trust knowingly and intentionally committed by him."

Rule 12.11 states:

> "No trustee shall be liable for the consequences of any mistake or forgetfulness whether of law or fact of the Trustees or… for any breach of duty or trust whatsoever… unless it is proved to have been made…in conscious bad faith of the Trustee sought to be made liable."