

Ombudsman's Determination

Applicant	Mr Y
Scheme	The Stream International (NI) Ltd Employee Benefits Plan (the Scheme)
Respondents	Aviva; and The Trustees of the Scheme (the Trustees)

Complaint summary

1. Mr Y's complaint concerns a request to transfer his pension from Lifesight to the Scheme, which has not been completed.
2. Mr Y complains that:
 - 2.1. There has been maladministration on the part of Aviva as follows:
 - 2.1.1. Aviva has not provided the necessary documentation regarding the status of the Scheme as a registered pension scheme and therefore the transfer could not proceed.
 - 2.1.2. Aviva also failed to provide up to date Scheme documentation, including the identity of current trustees of the Scheme, or any assurance to Mr Y that his benefits were safe, for a protracted period.
 - 2.1.3. As a result of the failure to transfer, he has suffered substantial financial loss, as the value of the benefits that he wished to transfer would now be worth more if they had been transferred in a timely fashion.
 - 2.1.4. There have been failings in the service provided to him by Aviva and in its communications with him, including delays and an allegation that he was called a misogynist.
 - 2.2. There has been maladministration on the part of the Trustees:
 - 2.2.1. The Trustees have not provided the necessary documentation with details about the status of the Scheme as a registered pension scheme and therefore the transfer could not proceed.

3. Mr Y's complaint is against Aviva and the Trustees. Mr Y has not made any complaint against Lifesight or its administrators, Willis Towers Watson (**WTW**).

Summary of the Ombudsman's Determination and reasons

4. The complaint should be partly upheld against Aviva and upheld against the Trustees.
5. The complaint is partly upheld against Aviva because: -
 - 5.1. Its delay and the failings in its communications with Mr Y between June and September 2020 amounted to maladministration.
 - 5.2. This situation has caused Mr Y serious distress and inconvenience for which he shall receive an award.
6. The complaint is upheld against the Trustees because: -
 - 6.1. Having agreed to accept the transfer into the Scheme, they negligently failed to provide the information required by the ceding scheme to complete the transfer, which has caused a financial loss to Mr Y.
 - 6.2. Mr Y has since transferred his benefits into another scheme, the Babcock Scheme, on 15 March 2024.
 - 6.3. The Trustees shall comply with my directions so that Mr Y is put in the position that he would have been in on 15 March 2024 (plus applicable interest), if the transfer into the Scheme had been made promptly in August 2020.
 - 6.4. The Trustees shall also facilitate a transfer from the Babcock Scheme into the Scheme, if Mr Y wishes to proceed in this way, and if the Babcock Scheme is able and willing to make such a transfer.
 - 6.5. This situation has caused Mr Y severe distress and inconvenience for which he shall receive an award.

Detailed Determination

Material facts

7. The Scheme is a trust-based occupational pension scheme, which was set up in 1998 for employees of Stream International (NI) Ltd (**Stream International**). Aviva was appointed as the pension provider.
8. Mr Y is a former employee of Stream International and during that employment he was an active member of the Scheme. On leaving, he became a deferred member of the Scheme.

9. Mr Y has since built up a pension in another scheme, Lifesight. This was connected to his employment with Fujitsu. The Administrators for Lifesight are WTW.
10. On 9 June 2020, Mr Y made a request to WTW to transfer his Lifesight pension to the Scheme. That transfer has never been completed.
11. The sequence of events thereafter is largely not in dispute, so I will only set out the key points. I acknowledge there were many other exchanges of information between all the parties.
12. On 11 June 2020, Aviva received the completed transfer paperwork from Mr Y. It discovered that WTW had not completed the discharge forms and so asked Mr Y to contact WTW to request this.
13. On 12 June 2020, Aviva received all the transfer paperwork from Mr Y and WTW. It completed the relevant sections and sent this to Mr Y to complete and send back to WTW.
14. On 19 June 2020, Mr Y called Aviva and explained that WTW had returned the transfer paperwork because the HMRC certificate was missing. This was required for the transfer to proceed. Aviva agreed that this would be provided to Mr Y for him to pass on to WTW.
15. On 22 June 2020, Aviva noted on its system that there was no record of the Pension Scheme Tax Reference (**PSTR**) number for the Scheme. Aviva emailed the Trustees and requested confirmation of the PSTR number as WTW would not authorise the transfer from Lifesight until it was in receipt of the HMRC certificate.
16. On the same day, Mr Y emailed Aviva stating that Stream International, his former employer, had been wound up 7 years earlier and may have been taken over by another company. Mr Y had concerns about the potential impact on the Scheme.
17. Aviva could not initially identify the current trustees of the Scheme as it did not have up to date contact details and Scheme documents were also not up to date. There were protracted investigations and lengthy correspondence between the parties. A Deed of Amendment dated 16 October 2018, which confirmed the current trustees of the Scheme, was not produced by the Trustee until September 2021. It also took considerable time to establish ownership of the sponsoring employer, any possible impact on the Scheme and Mr Y's pension. Although these issues have been resolved, these caused considerable concern to Mr Y.
18. The main thrust of the complaint on which I have been asked to make a determination is in relation to the actions of Aviva and the Trustees in respect of the proposed transfer into the Scheme. In referring to the Trustees in the paragraphs setting out the background to the matter, it is not intended to imply that the documents relating to the Scheme were satisfactorily resolved at an earlier date.
19. On 26 June 2020, Mr Y called Aviva requesting an update on the transfer.

20. On the same day, Aviva telephoned HMRC, but HMRC was unable to confirm anything over the telephone. HMRC requested that Aviva send an email, which Aviva did on the same day. Aviva also sent an email to the Trustee, asking again for a response to Aviva's previous request.
21. On 30 June 2020, Mr Y called Aviva and asked for an update. Aviva said that it had been trying to contact the Trustees and provided the contact details to Mr Y.
22. On 2 July 2020, Mr Y contacted Aviva to inform them of additional contact details for the Trustees, which he had obtained himself. Aviva used this revised email address, provided by Mr Y, to ask the Trustees for a response to its previous request. It then contacted Mr Y and confirmed the actions it had taken.
23. On 10 July 2020, Aviva received a response from the Trustees with basic reference information for Mr Y's record but no information about the Scheme. Aviva repeated its initial request.
24. On the same day, Mr Y contacted Aviva and requested an update. Aviva said that it had not received the required information from the Trustees. Mr Y was concerned that Aviva did not have confirmed contact details for the Trustees of the Scheme.
25. On 17 July 2020, Mr Y telephoned Aviva again to request an update. Aviva explained that the Trustees had provided only basic reference information for him and not what they had asked for and that Aviva had repeated its request.
26. On 29 July 2020, Mr Y contacted Aviva for an update and requested a call back from a manager. Aviva subsequently called back Mr Y and confirmed it would get support in obtaining the PSTR number to trace the HMRC certificate.
27. On 31 July 2020, Aviva's technical team confirmed that as the Scheme was approved in 1998, it may not have had a PTSR number. If it had been registered for one at a later date it would need to obtain this and a HMRC certificate from the Trustees.
28. On the same day, Aviva called Mr Y to update him. Mr Y agreed that Aviva could contact WTW to pass on the approval number and ask if WTW was willing to accept this in place of a HMRC certificate. The approval number was a reference number that would have been held prior to 2006 for approved pension schemes.
29. Aviva then called WTW and gave the approval number, asking if it would suffice instead of the certificate. WTW said it would pass this request on to its administration team.
30. On 3 August 2020, Aviva spoke to Mr Y who wanted to raise a complaint as his call had not been returned on Friday and in relation to other matters. Aviva said it would raise his complaint.
31. Aviva also confirmed it was waiting for the Trustees to send a pre-approval certificate and chasing the Trustees for the certificate that WTW had requested. Mr Y also

wanted to know what would happen to his money if the company he previously worked for ceased trading. Aviva confirmed this would be the Trustees' responsibility.

32. On the same day, Aviva called WTW and sought an update on whether it would accept the approval number. It also informed WTW that Mr Y would like to be contacted before making the transfer. WTW immediately escalated the issue and confirmed it would be looked at as a matter of urgency and Aviva would be contacted the following day.
33. Aviva also emailed asking for different contact details for the Trustees, as it had not received a response from the email addresses it held on file.
34. On 4 August 2020, WTW emailed Aviva and confirmed the contact details it held were correct.
35. On same day, Aviva received confirmation from the Trustees of the PSTR number. Aviva contacted WTW and asked for an update on the approval number and gave it the PSTR number. WTW later emailed to confirm that it could not process the transfer as it still required the HMRC certificate.
36. On 6 August 2020, WTW emailed Aviva and confirmed it required a copy of the "Current Scheme Details" screen print from the HMRC website.
37. On 7 August 2020, Aviva contacted Mr Y and explained WTW had confirmed it needed additional information and provided the Trustees' email address in case Mr Y wished to make a complaint.
38. On 14 August 2020, Aviva emailed Mr Y and said there had been no further update.
39. On 16 August 2020, Aviva chased the Trustees for a response.
40. On 17 August 2020, the Trustees responded to Aviva and said it was following up on the matter with urgency.
41. On the same day, the Trustees emailed Aviva as they were checking the request with their legal counsel. They also asked Aviva to confirm who registered pension schemes with HMRC.
42. On 19 August 2020, the Trustees emailed Aviva and asked for confirmation on whether it had processed previous transfers into Lifesight and whether Aviva had verified all the information required to determine if the request met all the guidelines for eligibility. It also asked who usually filed the HMRC certificate.
43. On 21 August 2020, WTW emailed Aviva and said it still required a copy of the "Current Scheme Details" screen print from the HMRC website and attached the required format. It confirmed it would only be able to proceed with the transfer once it had received this information.
44. On 28 August 2020, Aviva emailed WTW and confirmed it was chasing the Trustees for the HMRC certificate and asked it to keep the transfer request open.

45. On the same day, Aviva also emailed the Trustees and confirmed it would pass the queries it raised to its Governance Team. Aviva mentioned to the Governance Team that the absence of the HMRC certificate was preventing the completion of the transfer.
46. On 2 September 2020, Aviva received an email from the Trustees which asked questions on how it could obtain the HMRC certificate.
47. On 11 September 2020, Aviva called Mr Y to obtain a list of his grievances for his complaint. Aviva's record of this call states that Mr Y agreed that the complaint was fundamentally about the PSTR number and the lack of a HMRC certificate, but Mr Y understood this was not Aviva's error. It also discussed his concerns about: the company name change; the proper roles of the employer, the Trustees and Aviva; and what would happen if the company became insolvent. He also discussed Aviva's failure to call him back on a number of occasions. During one of those calls, Mr Y felt he had been accused of being sexist.
48. On 15 September 2020, WTW contacted Aviva and confirmed it would be able to proceed with the transfer request once it had received the HMRC certificate.
49. On 17 September 2020, Aviva provided its final response to Mr Y in relation to his complaint. It apologised for the lack of updates but confirmed that it had responded to the Trustees with answers to their questions and were unable to do anything further to assist them. Aviva offered Mr Y £300 for the overall distress and inconvenience caused.
50. On the same day, the Trustees received an email from Aviva's Governance Team regarding the queries raised. This said:
 - Aviva was not the administrator for Lifesight and it did not provide document services. Only the Trustees would have access to obtain the HMRC certificate.
 - A BANCS report would need to be requested through "BTS" to identify any transfer in details for this scheme number, if the information was not available from previous trustee reports and accounts.
 - The investment funds available for Lifesight are set and available for the Trustees to check if they meet the eligibility.
51. On 18 September 2020, the Trustees emailed Mr Y and confirmed they wished to proceed with the transfer and had filed a request for the HMRC certificate but did not have access to this.
52. On 30 September 2020, Aviva emailed WTW and confirmed it had requested a copy of the HMRC certificate to facilitate the transfer and would provide this as soon as it was available.
53. On 6 October 2020, and 13 October 2020, Mr Y chased Aviva for further information regarding his complaint and his transfer.

54. On 14 October 2020, Mr Y submitted an application to The Pensions Ombudsman (TPO).
55. On 15 October 2020, Aviva sent an email to the Trustees which asked for an update regarding the HMRC certificate.
56. On 16 October 2020, the Trustees sent an email to Aviva which confirmed the PSTR number.
57. On 21 October 2020, Mr Y requested a call from a manager at Aviva. Aviva contacted Mr Y. Mr Y said the Trustees had sent the outstanding information to Aviva on Friday 16 October. Mr Y said he was unhappy with the speed of responses, lack of updates and the £300 offer. The manager undertook to find out what had been received by Aviva and to proceed if it was everything that was needed. Mr Y requested a further update by the beginning of the following week.
58. In fact, the Trustees had only sent the PSTR number and had not sent the required screen print from the HMRC online system. So, on the same day, Aviva sent an email to the Trustees and confirmed it already held the PSTR number, but WTW would not accept this in place of an actual HMRC certificate or screenshot of the Scheme details from the HMRC online system.
59. On 23 October 2020, Aviva chased the Trustees for a response.
60. On 24 October 2020, Aviva received a response from the Trustees. They said that they had provided the PSTR number from the pension scheme filing and asked how they could obtain the actual HMRC certificate. The Trustees also queried why they could not simply provide authorisation for the transfer themselves, given that the Scheme was their pension plan.
61. On 26 October 2020, Mr Y sent an email to the Trustees, which was copied to Aviva. He complained of the service given by Aviva and said he believed that Aviva had done nothing to assist in the request to obtain the HMRC certificate and that if anything it had delayed the process. He noted that the Trustees had provided the PSR and PSTR and that he would have expected that Aviva would have been able to “run with this information” and call HMRC then be able to come up with “something” going forward.
62. On 27 October 2020, Aviva sent an email to Mr Y and the Trustees. This provided a timeline of correspondence. It also attached the example screenshot that WTW had provided as guidance as to what was required. Aviva stated that it had tried to contact HMRC by email and telephone, but that HMRC would not give access for Aviva to obtain the outstanding information as these were the Schemes details rather than Aviva’s.
63. On the same day, the Trustees replied by email and said they had tried registering with HMRC but had not received the necessary access codes. They also queried the example screenshot as it did not relate to the Scheme.

64. On 28 October 2020, Aviva confirmed that the example screenshot was provided only to show the format that was required by WTW.
65. On 30 October 2020, Aviva emailed the Trustees and Mr Y regarding the advice it had received from HMRC. As Aviva was not the Trustees or the scheme administrator (as defined under section 270 of the Finance Act 2004), HMRC could not confirm the PSTR to it directly. The email included links to guidance on how to register the Scheme for HMRC's online system.
66. On 2 November 2020, the Trustees confirmed that they had tried registering the Scheme with HMRC, and that they had been informed that a registration number would be sent by post, but this had not been received.
67. On 11 November 2020, WTW sent a letter to Aviva and reiterated the information it required to proceed with the transfer.
68. On 18 November 2020, Aviva emailed Mr Y. It said the HMRC certificate was still outstanding, and, without this, it would be unable to complete the transfer. The challenge was that Aviva could not obtain this information from HMRC and could not proceed with the transfer without it.
69. On 1 December 2020, the Trustees emailed Aviva and said HMRC had notified them that it did not have a certificate in relation to the Scheme, as the Scheme originated before 2006. The relevant approval letters had also been destroyed after seven years so no copy remained.
70. On 11 December 2020, Aviva contacted Mr Y and concluded its previous response was appropriate. It said it could not do anything further until it had received all the necessary information and documentation from the Trustees.
71. On 21 December 2020, the Trustees contacted Aviva and asked for a copy of Lifesight's policy document.
72. On 30 June 2021, WTW contacted Aviva, and informed it that, as it had not received the HMRC certificate or a screenshot of the current Scheme details, it was not in a position to proceed with the transfer. WTW asked Aviva what the Scheme had provided to others in the past to allow for other transfers to occur.
73. On 1 July 2021, the Trustees contacted Mr Y with an update, informing him that no HMRC certificate existed in respect of the Scheme.
74. On 7 July 2021, Mr Y submitted a complaint to the Trustees under Stage One of the Scheme's Internal Dispute Resolution Procedures (**IDRP**).
75. On 29 July 2021, the Trustees confirmed with Aviva that a certificate did not exist and informed Aviva that HMRC had advised them that the certificate reference number and PSTR number would be sufficient for the transfer of Mr Y's funds to proceed.
76. On the same day, Aviva confirmed it had only received one previous transfer into the Scheme for other members, however as this had been an internal transfer it had

proceeded on the basis of the PSO approval number, which showed that the Scheme had been approved by HMRC prior to 6 April 2006.

77. On 10 September 2021, the Trustees provided Mr Y with their Stage One IDRPs response. The Trustees said:
 - 77.1. They had provided a copy of the Trust Deed and updated Deed of Amendment with appointment of Trustees.
 - 77.2. The HMRC certificate would simply show the PSTR number, which had been provided to Aviva on more than one occasion.
 - 77.3. They requested details of the current plan design and investment line up, value of pension to be transferred and details of the payment being requested in lieu of interest and how this had been calculated.
78. On 1 March 2022, Aviva confirmed it had been unable to provide the HMRC certificate to finalise the transfer as the Trustees had been unable to provide this due to issues it was having with the HMRC website.
79. Mr Y continued to accrue benefits in the Lifesight scheme, including contributions from his then employer, until February 2022.
80. On 20 February 2023, Mr Y commenced employment with Babcock. The occupational pension scheme available to him in this employment is the Babcock International Group Pension Scheme – Babcock Retirement Savings Scheme (Defined Contribution Section) (the **Babcock Scheme**).
81. Mr Y requested a transfer of his Lifesight benefits to the Babcock Scheme and this transfer was made on 15 March 2024.
82. Following the complaint being referred to TPO, Mr Y, Aviva, and the Trustees made further submissions that have been summarised below.
83. Mr Y made the following additional submissions:-
84. Mr Y was a former employee of Stream International (NI) Ltd and had deferred benefits in the Scheme. He wanted to transfer the pension that he had in Lifesight to the Scheme.
85. His complaint fundamentally related to the failure to provide the information requested by WTW so that the transfer from Lifesight could be completed.
86. He was concerned Aviva may not have undertaken the proper due diligence on the Scheme as the company name had changed. He was also concerned about what would happen if any of the other companies became insolvent.
87. He was unsure whether the proper roles for the employer, the Trustees and Aviva had been explained during numerous telephone calls.

88. He was unhappy with the poor service he had received from Aviva and that it had failed to call him back as requested on several occasions.
89. The Trustees had still not provided the required information.
90. Aviva made the following additional submissions:-
91. Mr Y's concerns related to the lack of details provided by Aviva in relation to the Scheme, as well as the poor service received.
92. Approved pension schemes which already existed on 5 April 2006 were deemed to be registered pension schemes from the following day and the scheme administrators would have been automatically issued with a PSTR number by HMRC in order to print out a HMRC certificate.
93. It took time to get the PSTR number and it was still liaising with the Trustees to get the information required by WTW.
94. The Scheme had been set up by Stream International in 1998 and was initially held by Friends Provident. Friends Provident was later taken over by Aviva and the Friends Provident plans, such as the Scheme, were classified as 'heritage schemes'. Aviva often found that details for heritage schemes were not up to date. It undertook due diligence periodically to find out if there had been changes in trustees or scheme contacts but would not be aware of any company name changes unless informed of that under an addressee contact. If the Scheme name was still the same and the Scheme only held benefits for employees who had worked at the company when it was called Stream International, the company name would not need to be amended with Aviva.
95. The Scheme was relatively small, with only up to 150 members, most of whom were no longer active. So, the Trustees may not have received many, or any, transfer requests of this nature, which may help to explain why the Trustees had been unprepared.
96. The lack of understanding shown by the Trustees regarding their legal obligations to know HMRC requirements may be explained by the Trustees having been replaced during company transitions over the years. Aviva asked for HMRC guidance on registering pension schemes, so that it could assist the Trustees. It could not do anything further to assist the Trustees but would continue to chase HMRC.
97. Aviva concedes that its lack of updates and failed call backs to Mr Y were unacceptable. While calls up until 29 July 2020 were handled well, Aviva could have explained the process more clearly. The call held on 18 August 2020 was unacceptable and Aviva was aware of the distress this caused Mr Y. It also apologised for the call handler's failure to call Mr Y back and stated that this had been fed back to that call handler.

98. It had not been possible to transfer the funds to Aviva in the absence of the Scheme being registered with HMRC. The Trustees are responsible for the day-to-day management of the Scheme.
99. Stream International Ltd had changed its company name to Concentrix Group and moved to America, although there was no change to the main contact for the Trustees at Concentrix.
100. Even so, HMRC had been able to give the Trustees the necessary information for the Trustees to obtain the HMRC certificate.
101. Mr Y's concerns regarding the details held for the Scheme have now been resolved, with an up-to-date deed being executed and the Trustees' details being updated on Aviva's records. However, no further progress had been made with the HMRC certificate and it had not heard from the Trustees regarding this. It had asked the Transfers Team to pick this up.
102. Aviva initially intended to send a cheque or make an electronic payment for £300 for distress and inconvenience caused. It later increased its offer to £500 as an apology for poor service offered throughout June to August 2020.
103. Any financial loss that may have occurred as a result of the transfer not being completed would need to be assessed once it has been completed. This was because fund values continued to fluctuate, and Aviva could not know the correct calculation to use until the date of the final price.
104. Aviva could only be held liable for the delays between July 2020 and September 2020. The subsequent delays have been solely due to the outstanding HMRC certificate.
105. The Trustees made the following additional submissions:-
106. The Trustees had chosen to exercise their discretion to receive a transfer of Mr Y's pension from Lifesight and provided the PSTR number to Lifesight for this purpose. However, as the administrator of Lifesight, WTW had insisted on evidence of the Scheme's PSTR number. Providing that evidence has proven complicated for the Trustees.
107. Initially, WTW had insisted on obtaining the Scheme's HMRC certificate. After investigation and correspondence with HMRC, Aviva and the Trustees established that no such certificate existed for the Scheme.
108. WTW revised its request and asked to be provided with a screen-print of the "Current Scheme Details" from Pension Schemes Online (which is the HMRC's online system).
109. The Trustees sought advice and then took steps to register the administrator of the Scheme with Pension Schemes Online and to register the Scheme under the

administrator. The Trustees experienced delays in receiving the necessary information and activation codes from HMRC.

110. As of 18 February 2022, the Trustees were in correspondence with HMRC to finalise the Scheme administrator details and hoped to be able to provide the screen-print to WTW within “two to three weeks”.
111. In relation to the offer of redress, Mr Y did not quantify the total financial loss he suffered as a result of the delay or provide any evidence of his loss. The Trustees did not have an insight into the value of transferring benefits or the assets in which Lifesight’s funds were invested.
112. Given that there was insufficient information to allow the transfer to proceed, the Trustees would have expected Lifesight’s funds not to have been disinvested.
113. The Trustees apologised for the time it had taken to resolve the matter. Whilst some of the delays stemmed from other parties (HMRC and Aviva) they acknowledged that they had not dealt with the matter as promptly as possible and offered Mr Y £1,000 for non-financial injustice.

The Adjudicator’s Opinion

114. Mr Y’s complaint was considered by one of our adjudicators who concluded that there had been maladministration by both Aviva and the Trustees and directed a payment in respect of the serious distress and inconvenience to be made by each.
115. The Adjudicator’s findings are summarised below.
116. Section 95 (2) of the Pension Schemes Act 1993 (**the Act**) sets out that one of the ways a member of an occupational pension scheme may use a Cash Equivalent Transfer Value is to acquire transfer credits in another occupational pension scheme, provided the following criteria are met:
 - The trustees are able and willing to accept the payment; and
 - The scheme meets all the prescribed requirements.
117. Regulation 12 (1) (d) of the Occupational Pension Schemes (Transfer Values) Regulations (the Regulations) sets out the prescribed requirements. It provides that when a ceding scheme is registered under Section 153 Finance Act 2004, the receiving scheme must also be registered under that section. The exception to this is if the receiving scheme was approved for tax purposes immediately before 6 April 2006, or is an approved recognised overseas pensions scheme.
118. As the transfer was requested prior to 30 November 2021, the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 do not apply.

119. As registration, or deemed registration, is a prescribed requirement for a statutory transfer, in my opinion it was reasonable for WTW to ask for evidence of the Scheme's registration as part of its due diligence for the outward transfer.
120. At first, WTW requested that Aviva provide the Scheme's HMRC certificate.
121. When a pension scheme is registered under current legislation, it is issued with a PSTR which shows the scheme's registration status. The Adjudicator understood that the reference in correspondence to the 'certificate' was to the notification of registration sent by HMRC.
122. However, the Scheme was established in 1998, prior to the current system for registration coming into force under the Finance Act 2004.
123. Under the previous legislation, pension schemes were approved by HMRC for tax purposes. The Scheme would have received an approval letter from HMRC at the time it was established – but this has not been retained by the Trustees or, given the length of time that has passed, by HMRC.
124. When the current legislation came into force, existing pension schemes which had been approved for tax purposes prior to 6 April 2006 (such as the Scheme) were deemed registered and their existing HMRC reference was replaced with a PSTR.
125. Therefore, it would not have been possible for the Trustees or Aviva to provide the requested certificate as it did not exist.
126. Aviva accepted that it contributed to delays in the period July to September 2020. It had also apologised and made an offer of redress to Mr Y in respect of the service it provided to Mr Y and communication failings in this period. The Adjudicator found that these delays, poor service and communication failings amounted to maladministration on the part of Aviva.
127. Aviva liaised with the Trustees and provided the PSTR to WTW by 4 August 2020.
128. However, this was not sufficient for WTW, and, in the absence of a certificate, it requested a screen-print of the Current Scheme Details from the HMRC's online platform, Pension Schemes Online.
129. The Trustees accept that the screen-print of the Current Scheme Details could not be provided until they took steps to register the Scheme with HMRC's online system, Pension Schemes Online. The Trustees have not yet completed this registration and the transfer still has not been concluded.
130. The Adjudicator therefore agreed with Aviva that it could not be held responsible for any further delays as only the Trustees could take steps to register with Pension Schemes Online.
131. The Adjudicator noted that WTW could have asked HMRC directly for confirmation of the current registration status of the Scheme. However, its request for the screen-print should not normally have been particularly onerous.

132. The Adjudicator concluded that the failure by the Trustees to take steps to register the Scheme on Pension Schemes Online and to provide the requested screen-print, over such a long period, amounts to maladministration.
133. The Adjudicator further concluded that this was a case of pure maladministration and that he could only direct an award in respect of non-financial injustice caused to Mr Y. In order to also make an award in respect of financial loss, he had to be satisfied that the maladministration had infringed Mr Y's legal rights.
134. It was the Adjudicator's view that the Trustees' legal duties to Mr Y were in respect of the pension benefits that he already held in the Scheme and that the Trustees did not owe a duty of care under the law of trust or negligence to Mr Y in respect of the benefits he is seeking to transfer into the Scheme from Lifesight.
135. The Adjudicator found that it was a case of pure maladministration and that he could only direct that the Trustees and Aviva each make a payment to Mr Y in respect of the non-financial injustice that he has suffered.
136. Aviva acknowledged that it had provided poor service between June and August 2020 and offered £500 as an apology. It was the Adjudicator's opinion that this was in line with TPO's guidelines in respect of awards for significant non-financial injustice.
137. The Trustees also acknowledged that they had not dealt with the matter as promptly as possible and offered £1,000 to Mr Y for the non-financial injustice he had suffered. The Adjudicator considered that this was in line with TPO's guideline in respect of awards for serious non-financial injustice.
138. The Adjudicator directed that Aviva and the Trustees pay those respective amounts within 14 days of the finalisation of the complaint.

Mr Y's further comments

139. Mr Y did not accept the Adjudicator's opinion.
140. The main points of Mr Y's comments are summarised below:

Redress

141. Mr Y wishes the Ombudsman to make directions so that the Trustees must complete the online registration and provide the necessary screenshot from the HMRC system to WTW, so the transfer can be completed.
142. In relation to the award for non-financial injustice, Mr Y believes that his case meets the description of the 'severe' category in the TPO's guidance and that the award should therefore be increased.
143. Mr Y wishes to be compensated for the financial loss that he has suffered due to being unable to transfer his fund from Lifesight into the Scheme, which he says is the difference between: the growth in his pension benefits under Lifesight; and the

growth that he would have accrued in the Scheme if the transfer had taken place in a timely fashion.

144. Mr Y provided documents showing that his Scheme pension benefits increased in value between July 2020 and February 2021 by over £7,000. He contrasts this with his Lifesight pension fund, which has sustained a loss in the last few years.
145. Mr Y questions why there is no legal requirement for the Trustees to accept the inward transfer of his Lifesight benefits.
146. Mr Y does not accept that neither the Trustees nor Aviva has any legal duty towards him. He should have the same legal rights as all others who have transferred into the Scheme. Having agreed that they would accept the transfer, the Trustees should be responsible for his financial loss.
147. Further, both Aviva and the Trustees had said, in their respective correspondence with him, that they would consider financial loss when the transfer was completed.
148. Mr Y does not accept that this is a case of pure maladministration.

Regarding the background

149. Mr Y disagreed with the following factual points as set out in the Opinion, and relevant changes have been made to the Material Facts as set out in the Detailed Determination section in this Preliminary Determination.
150. Mr Y said that it is incorrect to say that the identity of the trustees was resolved in June 2020. Aviva had not confirmed the trust documents and the trustees until September 2021. Aviva had not made contact with the company and could not find any “clean data” or the correct contact information.
151. This protracted period of uncertainty, without reassurance that his pension savings were safe or in relation to his concerns about the possible effect of Stream International going into administration on his pension, caused undue stress and alarm.
152. There were references in the Opinion Background to correspondence between Aviva and the Trustees before the date on which the identity of the Trustees was confirmed to Mr Y.
153. Mr Y disputes that he agreed it was not Aviva’s error. Mr Y had raised his concerns with Aviva about the security of his pension and its response had not been satisfactory. Aviva did not return his calls even when call backs were promised. Communication was “disgraceful” and Aviva failed to follow up on information, including contact details, which Mr Y had provided to them.
154. Aviva’s maladministration continued until September 2021, by which time the Scheme documentation had been provided confirming the legal position on the identity of the Trustees and also providing reassurance with regard to the security of his existing pension benefits in the Scheme.

155. In October 2020, there was a breakdown in communication between Aviva and the Trustees as to how to progress the transfer.
156. Mr Y notes that in December 2020 the Trustees told Aviva that HMRC had notified it that HMRC did not have a certificate as the Scheme originated before 2006 and those hard copies of the approval letters had been destroyed. He notes that hard copy documentation was not required, and the Trustees had been made aware that a screen shot would be sufficient.
157. Similarly, Mr Y queries why the Trustees informed him in July 2021 that no actual HMRC certificate existed, when it knew that the screen shot would suffice.
158. Mr Y believes that Aviva ought to have been in better communication with the Trustees and ought to have provided greater assistance in resolving the issue with registering the Scheme for the HMRC online system.
159. Mr Y queries why the Trustees asked for a copy of Lifesight's policy document and why he was not notified of this under data protection legislation, given that it concerned his personal data.

Regarding Aviva's Position

160. With regard to Aviva's position, Mr Y disputes that it took a long time to get the PSTR number as this was provided by the Trustees on 4 August 2020.
161. Mr Y does not accept that the Scheme being a heritage fund that was originally held with Friends Provident excused Aviva from having the up-to-date Scheme documents, data and contact details for the current Trustees.
162. Mr Y does not accept that the lack of understanding on behalf of individual Trustees regarding HMRC requirements may be explained by the Trustees having been replaced during company transitions, as some of the Trustees were the same as when he was employed by Stream International.
163. Aviva has not demonstrated any further efforts to complete the transfer.
164. Aviva admits that any financial loss that may have occurred as a result of the failure to complete the transfer will have to be assessed once the transfer has been completed. Aviva says that it can only be held liable in respect of the period from July 2020 to August 2020. However, Aviva did not have the updated Scheme documents and Trustee details until September 2021, so Mr Y queries how Aviva's liability can be restricted as it has suggested.

Regarding the Trustees' Position

165. Mr Y does not accept that it has been complicated for the Trustees to provide the evidence of the Scheme's PSTR number to WTW as the PSTR number was provided by 4 August 2020.

166. Mr Y questions why, in October 2020, the Trustees continued to put forward the PSTR number to Aviva when it was clear that it was the certificate that was required by WTW.
167. Mr Y believes that the current Trustees were not correctly registered as trustees with HMRC, because until September 2021 the Deed of Amendment, dated 16 October 2018, had not been produced, and that this has caused the delay in obtaining the necessary screenshot. This poor administration from both Aviva and the Trustees has had a significant financial and mental impact on Mr Y.
168. Mr Y does not accept that the Trustees experienced delays in receiving the necessary information and activation codes from HMRC. Codes can be generated online automatically with email verification. The Trustees stated, on 18 February 2022, that they hoped to provide screenshots in two or three weeks, but no screenshots have been provided and the transfer has still not been completed.
169. Mr Y and his then employer, Fujitsu, continued to make contributions into his Lifesight fund from August 2020 until February 2022, when he changed employment. These contributions totalled £4,750.
170. Mr Y changed employment in February 2023 to the Babcock International Group.
171. He transferred his Lifesight fund into the Babcock Scheme on 15 March 2024.
172. Mr Y had hoped that, because the Babcock Scheme is also administered by Aviva, it would be possible to transfer from the Babcock Scheme into the Scheme without the same difficulty arising in relation to the screen-print.
173. Mr Y believes his loss is the difference in value of his benefits now, compared to what the pension would have been worth if he had made the transfer in August 2020 and a further transfer in of £2,500, in August 2021.
174. Mr Y does not accept that the Trustees' delay is a result of delays by other parties.

Further Submissions from Aviva

175. Following the Adjudicator's opinion, TPO sought further submissions and evidence from Aviva as to whom it considered to be the Scheme Administrator for the purposes of section 270 of the Finance Act 2004.
176. Aviva responded, stating that the current Scheme Administrator was one of the Trustees.
177. Aviva said that, for this particular type of scheme, Aviva does not offer to take on the Scheme Administrator role.
178. Aviva provided contractual documentation and referred to the Trust Deed and Rules.
179. The Trust Deed provides, at clause 3 of the Operative Provisions, that the Trustees may appoint a Scheme Administrator for the purposes of the Taxes Act (which

corresponds under current legislation to an administrator for the purposes of s. 270 of the Finance Act 2004). It also provides that until any appointment is made, the Trustees shall act as administrator.

Further Submissions from the Trustees

180. Following the Adjudicator's opinion TPO sought further information from the Trustees also concerning who was the Scheme Administrator for the purposes of s. 270 of the Finance Act 2004.
181. TPO also sought further detail in relation to the steps taken by the Trustees to register with the HMRC Pensions Online system in order to provide the screenshot requested by WTW, from the date when it became clear that this was what Lifesight required.
182. The Trustees stated that the Scheme Administrator for the purposes of s. 270 of the Finance Act 2004 was Aviva.
183. The Trustees said that there had been many communications with internal and external resources and with Mr Y.
184. In relation to communication with HMRC, the Trustees noted the following:
 - 184.1. On 20 August 2020, the Trustees confirmed with Mr Y that one of the Trustees, Jennifer Bichsel had pre-registered for an ID on the HMRC Pensions Online system and was to receive it via post.
 - 184.2. On 16 October 2020, the Trustees provided the Pension Scheme Reference and the PSTR to Aviva from a past Scheme filing.
 - 184.3. On 11 February 2021, UK Payroll (within the Convergys Group) confirmed that they had access to HRMC but not access to the Scheme.
 - 184.4. On 15 March 2021, another of the Trustees was asked to register with the HMRC Pensions Online system to get the additional information.
 - 184.5. On 8 April 2021, the Trustees communicated with internal legal counsel and with WTW, a different part of which was acting as a consultant to the Trustees seeking assistance. WTW had a call with HMRC and there appeared to be some confusion with the Scheme name.
 - 184.6. On 17 September 2021, UK Payroll tried registering again but it transpired that it did not have access in respect of this Scheme.
 - 184.7. On the same date Jennifer Bichsel sent a follow up to the HMRC for assistance.
 - 184.8. On 25 January 2022, Lyndsey Mulley confirmed that she had resubmitted additional information to HMRC, which HMRC had requested for the registration.

- 184.9. On 27 January 2022, Lyndsey Mulley provided further information to iglobal, a standalone law firm, who was liaising with HMRC.
185. Following a request for information from TPO as to the steps taken after January 2022 and whether any of the Trustees had been successfully registered with HMRC as Scheme Administrator, the Trustees set out that:
- 185.1. Referring to the above actions that were undertaken to register the Trustees as Scheme Administrators with HMRC's online pension system, they noted that, at each attempt, there were challenges encountered, including the Organisation Government Gateway Access for this Scheme not being recognised.
- 185.2. Attempts to register the Trustees as Scheme Administrator had thus far been unsuccessful.
- 185.3. One Trustee, Jennifer Bichsel, had left the business and another, Lynne McConnachie, had replaced her as a trustee of the Scheme.
- 185.4. The Trustees were updating the Trustee Deed of Appointment to reflect these changes. Once this has been finalised, they would seek to register all of the Trustees as Scheme Administrator with HMRC.
186. I issued a Preliminary Decision (**PD**) in April 2025.

Conclusions - Preliminary Decision

187. I agreed with the Adjudicator that there had been maladministration by both Aviva and the Trustees.
188. In my view, it would have been reasonable for the transfer to have been completed within two weeks of WTW indicating to Aviva that it required a screen-print from the HMRC Pension Online system, on 6 August 2020 – that is by 20 August 2020.
189. However, I do not agree with the Adjudicator's conclusion that neither Respondent owed any legal duties to Mr Y in relation to the transfer.
190. In my view, although the Respondents, as administrator and trustee of the receiving scheme in the proposed transfer, had no statutory or legal duty initially to Mr Y, I agree with Mr Y that, once the Trustees agreed to accept the transfer and agreed to provide the information required by Lifesight, they assumed or came under a duty to him to carry out the necessary administrative steps to implement the agreed inward transfer with due skill and care and without delay.

Negligence – the Trustees

191. For a claim of negligence and compensation for financial loss (or 'pure economic loss') against either Aviva or the Trustees to be successful certain elements need to be established:

- that they owed a duty of care to Mr Y in respect of the particular matter;
- that the purpose or scope of the duty was to protect him from the type of risk or loss he suffered;
- that the duty of care was breached; and
- that the breach caused a foreseeable loss to Mr Y of the type that the law required them to protect him from.

Duty of Care

192. In establishing whether a duty of care exists, it was confirmed in *Robinson v Chief Constable of West Yorkshire Police (Rev 1)* [2018] UKSC 4 that the correct approach is to consider whether there is already an established precedent for a duty of care to apply in a particular situation. If there is, that precedent should be followed. If there is not, the correct approach is to consider the closest analogies in the existing law and to weigh up the reasons for and against imposing liability, in order to decide whether the existence of a duty of care would be just and reasonable.

Did the Trustees assume a duty of care?

193. It was held in *Hedley Byrne & Co. Ltd v Heller & Partners Ltd*. [1964] AC 465 (**Hedley Byrne**) that where a party possessing a special skill undertakes to apply that skill for the assistance of another person who relies upon such skill, a duty of care will arise.

194. The Trustees agreed to accept the transfer into the Scheme and agreed to provide the necessary information to WTW and Lifesight for the transfer to be completed, including the screen-print from the HMRC Pensions Online System. It was open to the Trustees to refuse to accept the transfer. But, having agreed to proceed and in their subsequent correspondence with Mr Y and with WTW, they were indicating that they would take the steps required of a reasonable trustee of a receiving scheme to facilitate the inward transfer. The circumstances are such that Mr Y necessarily relied on the Trustees to take the necessary steps to affect the transfer. Alternatively, having exercised their discretion to accept the transfer, the Trustees were under a duty to carry out all necessary administrative steps required to be carried out by them in respect of an inward transfer and owed Mr Y a duty to do so with skill and care.

195. Lifesight and WTW's request for a screen-print from the HMRC Pension Online system in addition to the PTSR was not unreasonable; they wished to be assured that the Scheme was currently a registered pension scheme. As set out in paragraph 112 and 113, a transfer may only lawfully be made to a registered pension scheme.

196. So, applying Hedley Byrne, I consider that the Trustees, in agreeing to accept the transfer, undertook to apply their special skills and knowledge as trustees to assist Mr Y and that he relied upon them doing so.

197. In *Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145 (**Henderson v Merrett**) the House of Lords considered (inter alia) whether Lloyd's underwriting members' agents and the managing agents of syndicates had a liability in tort towards those

underwriting members who had suffered losses. Any action under contract was time barred.

198. The House of Lords held that the agents and the managing agents owed a duty of care to the underwriting members, to prevent them from suffering relational economic loss as a result of negligent management. Further, a duty of care to prevent relational economic loss arises where a person (A), who renders professional or quasi-professional services, voluntarily assumes responsibility for another person's economic interests, knowing the other relies upon (A) to provide those professional or quasi-professional services with reasonable care.

199. For such a duty to exist, there must be both a voluntary assumption of responsibility and a concomitant reliance by the person who suffers the loss.

200. Lord Goff states (at 181) that:

“...for if a person assumes responsibility to another in respect of certain services, there is no reason why he should not be liable in damages for that other in respect of economic loss which flows from the negligent performance of those services. It follows that, once the case is identified as falling within the Hedley Byrne principle, there should be no need to embark upon any further enquiry whether it is "fair, just and reasonable" to impose liability for economic loss - a point which is, I consider, of some importance in the present case.”

...

“I wish to add in parenthesis that, as Oliver J. recognised in *Midland Bank Trust Co. Ltd. v. Hett, Stubbs & Kemp* [1979] Ch. 384, 416F-G (a case concerned with concurrent liability of solicitors in tort and contract, to which I will have to refer in a moment), an assumption of responsibility by, for example, a professional man may give rise to liability in respect of negligent omissions as much as negligent acts of commission, as for example when a solicitor assumes responsibility for business on behalf of his client and omits to take a certain step, such as the service of a document, which falls within the responsibility so assumed by him.”

201. The Trustees were not under a duty to accept the transfer. However, I consider that in deciding to accept the transfer into the Scheme and in accordance also with their subsequent assurances that they would provide the information to the ceding scheme, the Trustees voluntarily assumed a duty of care to Mr Y, to act with reasonable care and skill in facilitating the transfer.

202. I further find that Mr Y relied upon the Trustees to proceed with reasonable care and skill.

203. Therefore, in accordance with *Hedley Byrne and Henderson v Merrett*, I find that the Trustees did owe a duty of care to Mr Y to carry out the steps necessary to facilitate the transfer with reasonable care and skill.

204. Alternatively, having resolved to accept the transfer, the Trustees owed Mr Y a duty of care to carry out the necessary administrative tasks to implement the transfer with due skill and care.

If considered a novel relationship, did a duty of care arise?

205. However, if and to any extent that the relationship between the Trustees and Mr Y could be regarded as a novel one not previously considered by the courts, following Robinson, I will consider each of the foundations upon which a duty of care is based, which were set out in Caparo Industries v Dickman [1990] 1 All ER 568:

- Damage which is foreseeable;
- A sufficiently proximate relationship between the parties; and
- For it to be fair, just and reasonable in all the circumstances to impose a duty of care.

Foreseeability

206. In the law of negligence, the defendant is liable only for damage of a kind which a reasonable person should have foreseen. If the type of damage was foreseeable, the defendant is liable for its full extent, even if the degree of damage was not foreseeable (*The Wagon Mound (No 2)* [1966] 2 All ER 709 – (**Wagon Mound**)).

207. The loss in this case arises because the amount invested in Lifesight which Mr Y wished to transfer grew more slowly than it would have done if it had been transferred to the Scheme within a reasonable time.

208. The Trustees were aware that the transfer could not proceed unless they provided the screen-print to the ceding scheme. I consider that a person with the knowledge of the Trustees in August 2020 could reasonably have foreseen that if Mr Y was unable to complete the proposed transfer into the Scheme, he may suffer a loss by way of a lower rate of growth of the pension benefits he wished to transfer.

209. Therefore, in my view the loss suffered by Mr Y was a foreseeable consequence of the Trustees' failure to provide the screen-print without which the transfer could not go forward and Mr Y could suffer loss as a result.

Proximity

210. Lord Oliver observed in Caparo Industries v Dickman that it was difficult to resist a conclusion that the three separate elements of: foreseeability; proximity; and the requirement for the attachment of liability to be just and reasonable are, in most cases, facets of the same thing.

211. But he also concluded that foreseeability on its own was not sufficient:

"As I have already mentioned, it is almost always foreseeable that someone, somewhere and in some circumstances, may choose to alter his position upon the faith of the accuracy of a statement or report which comes to his attention and it is always foreseeable that a report - even a confidential report - may come to be

communicated to persons other than the original or intended recipient. To apply as a test of liability only the foreseeability of possible damage without some further control would be to create a liability wholly indefinite in area, duration and amount and would open up a limitless vista of uninsurable risk for the professional man.”

212. Discussing the concept of proximity, he said:

“As I have already suggested, "proximity" in cases such as this is an expression used not necessarily as indicating literally "closeness" in a physical or metaphorical sense but merely as a convenient label to describe circumstances from which the law will attribute a duty of care. It has to be borne in mind that the duty of care is inseparable from the damage which the plaintiff claims to have suffered from its breach. It is not a duty to take care in the abstract but a duty to avoid causing to the particular plaintiff damage of the particular kind which he has in fact sustained.”

213. In this case the Trustees undertook to facilitate the inward transfer for Mr Y. Their duty was not to care in the abstract but a duty to take care in relation to facilitating Mr Y's transfer.

214. I therefore consider that there was a sufficiently proximate relationship between Mr Y and the Trustees to satisfy the second limb of the test.

Just and reasonable to impose a duty of care

215. The requirement that the imposition of liability should be 'fair, just and reasonable' (*Caparo Industries v Dickman*) is usually satisfied in the majority of negligence cases. In some cases, there may be policy reasons or particular facts which suggest that it would not be fair and reasonable in the circumstances, because it would be a disproportionate response to the defendant's fault (*Marc Rich & Co AG and others v Bishop Rock Marine Co Ltd and others; The Nicholas H* [1995] 3 All ER 307).

216. I do not think that imposing a duty of care on the Trustees would be disproportionate in this case. Indeed, I consider that it would be fair, just and reasonable to impose a duty of care on the Trustees. The Trustees were responsible for the administration of the Scheme generally and responsible for any administrative steps required by a receiving trustee on any inward transfer. Mr Y could not otherwise affect the transfer and relied necessarily on the Trustees to carry out such steps.

Scope of the duty

217. In its decision in *Manchester Building Society v Grant Thornton* [2021] UKSC 20, the Supreme Court, reviewing earlier decisions, emphasised that whether loss is recoverable depends on whether the loss that was suffered was within the scope of the duty which in turn is governed by the purpose of the duty, to be judged on an objective basis.

218. I find that the purpose of the duty to exercise skill and care in carrying out administrative steps in respect of an inward transfer, including providing information

required by the transferring scheme, is to protect the member from any foreseeable financial loss they may suffer from a failure or delay in completing that transfer and that such potential financial loss includes the difference in the relative financial performance of the two schemes. Put another way, such financial loss is the type of harm that the law requires the Trustees to protect the member from in imposing on them a duty to exercise skill and care in carrying out the administrative tasks necessarily allocated to them on an inward transfer.

Was the Duty of Care Breached?

219. The Trustees agreed to the inward transfer and undertook to provide the PSTR to WTW and Lifesight and, when it became clear that it was a screenprint that was required, they also rightly undertook to provide that in order to facilitate the transfer.
220. I am satisfied that, in accordance with the Trust Deed and as appears now to be accepted by the current Trustees, the Trustees were the Scheme Administrator for the purposes of section 270 of the FA 2004. The Trustees, in that capacity as Scheme Administrator, had to register the Scheme with the HMRC Pension Online system. No one else had the power so to do. Registering with the Pension Online system was the only way to provide the requested screen-print.
221. Even if the Trustees had been unaware of their failure to enrol on this system prior to WTW indicating that Lifesight required the screen-print from the online system to complete the transfer, the Trustees certainly knew about that failure from this time onwards. In my view the failure to register, and whether or not there was any wider duty so to do, before this point is not directly relevant to whether the duty of care to Mr Y was breached. The practical effect of not doing so may have impacted upon events. But it is the actions of the Trustees, after assuming the duty of care or becoming subject to a duty of care in respect of Mr Y's transfer, that are at issue in this case.
222. It is not a particularly onerous task to complete this online registration with HMRC. This is the default manner in which registered pension schemes submit returns to HMRC. Even by the time of the transfer to Babcock in March 2024, the matter had not been resolved. The particular difficulties have not been fully explained by the Trustees. It appears that the name of the Scheme Employer changed over time and that there were changes in the Trustees. It was the Trustees' responsibility to ensure that the Trust Deed and Rules, and all other documentation, were kept up to date following these changes. Aviva did not provide services in respect of this to the Trustees.
223. In my view, once the Trustees agreed to accept the transfer into the Scheme and agreed to provide the screen-print, they should have taken all reasonable steps to do so, including ensuring that the Trust Deed and Rules were up to date and taking steps to register the Scheme with the HMRC Pensions Online system. However, they failed to do so and, in consequence of that failure, they could not provide the evidence required by WTW and Lifesight to complete the transfer.

224. In failing to obtain the necessary screen print to enable the transfer to happen, I find that the Trustees breached their duty of care to Mr Y.

Causation & Loss - the Trustees

225. I have set out my calculation of the loss suffered by Mr Y at paragraphs 241 to 245 below.

226. In short, the loss is the difference between the growth in the value of the benefits that would have been transferred on 20 August 2020 (not including any later contributions) for the period from 20 August 2020 to 15 March 2024 (when Mr Y transferred his benefits to the Babcock Scheme) in the Lifesight scheme compared to the position if they had been transferred to the Scheme. As set out below, I find that this loss was caused by the Trustees' failure. I also find that it is the type of harm which the Trustees were required to protect Mr Y from under their duty of care in relation to the transfer.

227. The Trustees accept that the screen-print of the Current Scheme Details could not be provided until they took steps to register the Scheme with HMRC's Pensions Online system. By the time Mr Y took matters into his own hands and transferred to the Babcock Scheme, over three and a half years later, the Trustees had still not completed that registration.

228. But for the failure of the Trustees to provide the screen-print, the transfer could have been completed. I therefore find that this failure to provide the screen-print prevented the transfer from being completed and therefore the breach of the duty of care by the Trustees has caused any loss that has arisen.

Negligence - Aviva

229. I do not need to come to a view on whether Aviva also assumed a duty of care to Mr Y or if they breached such a duty.

230. Even if I were to find that there were such a duty and that Aviva had breached it, I find that this would not have caused a loss to Mr Y. The cause of the loss was the Trustees' failure to provide the screen-print that would have allowed the transfer to be completed.

231. If Aviva had done everything promptly, the transfer still could not have taken place. Aviva is not the Scheme Administrator for the purposes of s. 270 of the Finance Act 2004. It did not have the duty, or indeed the power, to register the Scheme on the HMRC Pension Online system. It therefore could not have provided the requested screen-print from the system. Only the Trustees could have done this. As the Trustees still had not registered with HMRC more than three and a half years after Mr Y's request to transfer his Lifesight benefits into the Scheme, I conclude that the actions of Aviva are not a cause of any financial loss that Mr Y may have sustained. I therefore cannot make a finding of negligence against Aviva.

Maladministration and Non-Financial Injustice - Aviva

232. However, Aviva concedes that there were shortcomings in the service it provided to Mr Y in the period June to August 2020. It has acknowledged that the telephone call of 18 August 2020 was unacceptable and that it caused distress to Mr Y. Aviva has also acknowledged that there were other failings in its communication with Mr Y, including occasions where it failed to provide updates.
233. Aviva informed Mr Y that it had addressed the call of 18 August 2020 with the employee concerned. It also offered redress; first of £300 and later of £500 to recognise the distress caused.
234. I have considered TPO's published guidelines for awards of non-financial injustice. In my view, the distress and inconvenience suffered by Mr Y as a result of Aviva's maladministration was significant, and therefore the appropriate award is £500. I have taken into consideration that there were failings on more than one occasion, but that Aviva took steps to put the matter right, having apologised and offered a sum in compensation to Mr Y.

Loss

235. Mr Y's recoverable loss is any foreseeable financial detriment that he has suffered because the transfer did not happen in a timely fashion.
236. I have found that it would have been reasonable to expect the transfer to have been completed within two weeks of WTW's clarification that it required a screenshot from the online HMRC Pensions Online system, that is by 20 August 2020.
237. An award for financial loss should put Mr Y in the position that he would have been in if the transfer had been completed by 20 August 2020. I am therefore not taking into account any further contributions made by Mr Y or his employer into the Lifesight fund after this date.
238. No arguments have been raised by the Trustees or Aviva regarding mitigation of loss.
239. I note that in the judgment of the Supreme Court in *Armstead v Royal & Sun Alliance Insurance Company Ltd* [2024] UKSC 6 the court stated (at paragraph 59):
- “In our view, the correct analysis is that once the claimant has proved that a tort has been committed and that the loss claimed was in fact caused by the defendant's breach of duty, it is for the defendant to assert and prove that one, or more, of the principles mentioned at para 23 above applies to limit the damages recoverable by the claimant.”
240. The principles at paragraph 23 include “failure to mitigate” loss and at paragraph 64, the Supreme Court held that the burden of proof in relation to asserting the principles to limit damages lay with the defendant, following the rules of pleading.

241. However, to the extent that Mr Y was under a duty to mitigate his loss, I find that he did so by making every effort to encourage the Trustees and Aviva to facilitate the transfer and by taking the opportunity to transfer his benefits in January 2024 to his new employer's scheme, the Babcock Scheme.
242. In my view, the Trustees cannot be held responsible for any detriment that Mr Y may have suffered following the transfer to the Babcock Scheme. I therefore limit my consideration to the period between 20 August 2020 and 15 March 2024.
243. The value of Mr Y's benefits in Lifesight on 20 August 2020 was £11,208.
244. WTW has stated that the value of those benefits (not including any contributions made after 20 August 2020 either by Mr Y or his employer) when they were transferred on 15 March 2024 was £14,763.56.
245. Aviva has stated that if the Lifesight benefits had been transferred to the Scheme on 20 August 2020, they would have been worth £16,491.77 by 15 March 2024.
246. The loss suffered by Mr Y, to 15 March 2024, is therefore £16,491.77 less £14,763.56, that is £1,728.21.
247. I issued a Preliminary Decision (**PD**) in April 2025. Mr Y, the Trustees and Aviva responded to that Decision as detailed in paragraphs 248 to 253 below.

Mr Y's representations

248. The preliminary decision should be reviewed and overturned to elevate the non-financial injustice redress from the severe category to the exceptional category.

Aviva's representations

249. Aviva agreed with the findings and had no further comments. It contacted Mr Y separately and made payment, as stated in the PD, of £500 within 28 days of the PD being issued.

The Trustees representations

250. The Trustees confirmed that it agreed with the findings and had no further comments.

Conclusions

251. As no party has raised questions or concerns about my preliminary decision, all parties have agreed with the outcome.
252. The only additional submission provided by Mr Y was that an increase should be applied to the distress and inconvenience award to reflect the exceptional non-financial injustice he says he experienced. In line with my guidance on non-financial injustice, I disagree that an increase should be applied and find that the severe category is reasonable and justified in the circumstances.

253. I uphold Mr Y's complaint in part.

Directions

254. Within 14 days of the Determination of this complaint, Mr Y shall confirm in writing to the Trustees whether he wishes to transfer his benefits, which are now in the Babcock Scheme, to the Scheme.

255. If Mr Y does wish to proceed, the Trustees shall:

- 255.1. within 7 days of Mr Y's confirmation, take all steps necessary to ensure that at least one of the current Trustees is registered as Scheme Administrator on the HMRC Pension Online system;
- 255.2. if a screen-print is requested by the Babcock Scheme, provide this to the Babcock Scheme within 7 days of such request;
- 255.3. provide any other information reasonably required by the Babcock Scheme to facilitate the transfer promptly;
- 255.4. when the transfer is completed, within 7 days pay a sum into the Scheme to increase the benefits held by Mr Y. The sum shall be equivalent to £1,728.21, plus simple interest at the prevailing rate of interest awarded by the Bank of England calculated from 15 March 2024 to the date of payment.

256. If Mr Y informs the Trustees that he does not wish to transfer his benefits from the Babcock Scheme and that the Babcock Scheme is able and willing to accept such a payment in respect of Mr Y, the Trustees shall within 7 days pay a sum to the Babcock Scheme to increase the benefits held there by Mr Y. The sum shall be equivalent to £1,728.21, plus simple interest at the prevailing rate of interest awarded by the Bank of England calculated from 15 March 2024 to the date of payment.

257. Within 28 days of this Determination:

- 257.1. If not already paid, Aviva shall pay Mr Y £500 for the serious distress and inconvenience its maladministration has caused to Mr Y.
- 257.2. The Trustees shall pay Mr Y £2,000 in respect of the severe distress and inconvenience that their maladministration and negligence has caused to Mr Y.

Camilla Barry
Deputy Pensions Ombudsman
12 June 2025