

## Ombudsman's Determination

Applicant	Ms N
Scheme	Aviva Self Invested Pension Plan Policy ( <b>the Policy</b> )
Respondents	Aviva Life and Pensions UK limited ( <b>Aviva</b> )

## Outcome

1. I do not uphold Ms N's complaint and no further action is required by Aviva.

## Complaint summary

2. Ms N has complained that when the Policy was transferred from Friends Life to Aviva, she was told that there would be no changes to the way the Policy was serviced.
3. Ms N has said that this has proved to be incorrect, as she no longer has online access to the Policy.
4. Ms N would like Aviva to pay for a financial advisor so that she can find a comparable policy with online access, and Aviva should also pay any costs she incurs in transferring the Policy to another provider.

## Background information, including submissions from the parties

5. 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.
6. Ms N took out a Self-Invested Pension Policy with AXA that was subsequently transferred to Friends Life.
7. In June 2017, Friends Life wrote to Ms N (**the 2017 Letter**) to say that it was now part of the Aviva group, and it was proposing a transfer of all its business to Aviva. The letter gave a summary of how the transfer would affect policyholders. In summary:-
  - Having read this letter and accompanying material members were not required to take any action unless they believed they may be adversely impacted. If they had any objections they could telephone, write or record their objection online.
  - The provider of the Policy would change as a result of the merger with Aviva.

- The Policy and any payments currently being made or received would not change
  - The way members contacted the provider would not change.
  - Documentation was available online or could be posted upon request.
8. Between 2017 and 2020, Ms N attempted to access the Policy online but was unable to do so.
9. On 8 October 2020, Aviva sent a letter to Ms N which explained:-
- There were a small proportion of customers where it was not currently practical to deliver online availability on their products.
  - Ms N had a product which did not have online availability.
  - This situation was unlikely to change.
  - It apologised for the inconvenience and stated that it did offer pension products where online access was possible, but the charges, fund range, features and benefits were different to Ms N's existing arrangement.
10. On 11 November 2020, Ms N telephoned Aviva to complain that she could not have online access for the Policy.
11. On 11 November 2020, Aviva responded:-
- It was the intention to deliver online availability on existing products for all customers, however it had not been able to achieve this with Ms N's product.
  - It should have communicated its decision that her particular product would not be available on its MyAviva online service at an earlier date. It apologised and offered to pay £100 for the distress and inconvenience caused by not communicating its decision.
  - Online access through MyAviva was an additional service and was not part of the terms and conditions of the Policy. Charges were not reduced because the Policy could not be viewed online.
  - The options available to Ms N were to continue under her existing product, to transfer to the "Aviva Pension" which was an online product or transfer to another provider.
  - The team that administered the Policy would send a policy information pack detailing Ms N's latest value, the funds she was currently invested in, charges and a list of funds which were available.
12. On 13 November 2020, Aviva sent Ms N the policy information pack by email.

13. On the same day Ms N responded by email and asked for a copy of the full terms and conditions for the Policy and for the original Friends Life policy that she held before the Aviva acquisition.
14. On 13 November 2020, Aviva responded by email and explained that as the product was closed to new business it did not have a terms and conditions booklet anymore. The original application form that Ms N signed when she first took out the Policy was still valid.
15. On 20 November 2020, Aviva wrote to Ms N and stated the online service was currently being upgraded. It was moving products to MyAviva on a daily basis, but it could not give any time frames for the completion of this project. Aviva was happy to provide Ms N with policy information at any time upon request.
16. On 25 February 2021, Ms N complained again to Aviva and stated that she was not happy with Aviva's handling of the Policy since merging with Friends Life. Her specific concerns were:
  - The 2017 Letter stated that there would be no change in how the Policy was serviced or in the way she communicated regarding the Policy.
  - As there were no terms and conditions to refer to, and the transfer letter stated that there would be no change in communication, she disputed that online access was an optional extra.
  - She had asked to be sent a full comparison of the Policy with the available Aviva plans that had online access rather than links to the Aviva website. She also requested that Aviva cover the cost of any financial advice. Aviva's own charges for this would be £7,500 for her pension value.
  - The information provided by Aviva on accessing ex-Friends Life policies was minimal. She believed that Aviva should have been working to get these policies online. If this was truly not possible Aviva should indicate, at every stage, relevant webpage and document, which policies are not accessible.
17. On 5 April 2021, Aviva responded that it had already previously replied to Ms N's complaint about the lack of online functionality on the Policy. It also said that it had paid £100 as a gesture to apologise. Aviva reiterated that it would not cover the cost of financial advice. Also, Aviva could not provide the comparison data Ms N was looking for as this would constitute financial advice. If Ms N wished to pursue a transfer to an alternative plan this would be at her own cost.

## Adjudicator's Opinion

18. Ms N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised below:-

- The 2017 Letter informed Ms N that the Policy was going to be transferred to Aviva and it set out that there would be no change to any payments made or received. It also set out that relevant Policy documentation was available online or could be posted.
- The 2017 Letter did indicate that documents were available online and, in the Adjudicator's opinion, Ms N had no reason to believe her Policy was not included in this statement. The Adjudicator's opinion was that Aviva should have been clearer from the outset that not all of the policies being transferred would be available online.
- Aviva said that even though it did not have the terms and conditions it had been assured that the Policy had been set up on its systems so that it mirrored the original policy. The Adjudicator did not expect that the Policy specifically contained a right to online access unless this had been an integral part of how it operated. Online access had been provided by Friend's Life as a method of accessing information. There is no evidence that online access was an integral part of the original pre-merger policy.
- Ms N was not able to refuse the transfer of the Policy from Friends Life to Aviva and so this meant she had to accept the way the Policy would be operated by the new provider. Ms N could however transfer to another provider more to her liking.
- Aviva did not have an obligation to provide online access, unless specifically stated as a feature of a particular policy and so, in the Adjudicator's opinion, Aviva do not need to pay for a financial adviser to help Ms N to choose an alternative online pension product. Ms N was still able to request information about the Policy from Aviva by phone, post or email.
- The Adjudicator agreed that Aviva's communication regarding this issue could have been clearer, but no significant distress and inconvenience was caused. As a result, the £100 offered by Aviva was a reasonable offer in the circumstances.

19. Ms N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms N provided some additional comments which are summarised below:-

- She was advised by Aviva that she should find a financial adviser. Aviva should pay for the advice as it is the cause of the lack of online access. It should also pay any costs she incurs in transferring the Policy to another provider.

- Each time she tried to access the Policy online she contacted Aviva and was told that the Policy was “not yet” available online which is why she waited before raising further concerns. On several occasions subsequently she was advised that the facility was being worked on by Aviva. It was only in its letter of 8 October 2020 that Aviva informed her that the facility would never be available.
- Aviva’s letter of 11 November 2020 claimed that MyAviva was an additional service and not part of the terms and conditions of the Policy. However, as Aviva cannot refer to or evidence a copy of the original terms and conditions for the Friends Life policy then it cannot show that internet access was not a condition of that policy.
- She had been misled by Aviva as she was told that the Policy would not change and as a result she was deprived of the opportunity to object to the transfer before it happened.
- She does not accept that it is her duty to provide the terms and conditions to show that internet access was offered when this was a benefit that she had used over many years with the Friends Life policy. She also does not accept Aviva’s contention that the Policy terms and conditions mirror the original policy.
- Aviva made misleading and false statements both in 2017 and in handling her complaint in 2020. It has a duty to rectify any adverse consequences of its actions for policyholders. She feels she has been treated poorly by Aviva and this has led to additional distress.
- Aviva made no attempt to improve communication and continues to send information every year with her annual statements that advises her that it is ‘Quicker. Easier. Online’ and to register on MyAviva. As a result, Aviva is responsible for ongoing misleading statements.

20. I have considered these points, but they do not change the outcome. I agree with the Adjudicator’s Opinion.

### **Ombudsman’s decision**

21. Ms N complained that she was informed that there would be no changes to the Policy when it transferred from Friends Life to Aviva. She has now found out that this is incorrect as she no longer has online access to the Policy.
22. The 2017 Letter was a generic letter which set out to Ms N that Friends Life was now part of the Aviva group, so it was proposing to transfer all of its business to Aviva. Following the transfer Ms N was unable to access the Policy online.
23. I acknowledge that it was not apparent for some time that online access would not become available for the Policy. Aviva attempted to move the Policy to online functionality, but it was unable to do so. Given that Aviva has a digital strategy which aims to provide online access to all its products I have no reason to think that Aviva

would not want the Policy to be accessed online if this was possible. I do not find that because had Aviva tried and failed to provide online access it constitutes maladministration on Aviva's part.

24. Ms N argued that the Policy included online access as part of its terms and conditions when it was operated by Friends Life as she used the online facility to access policy information. She also stated that as Aviva has been unable to provide the Policy's original terms and conditions, it cannot prove that online access was not previously a key aspect of the Policy.
25. I agree with the Adjudicator that online access is not usually guaranteed within policy terms and conditions and as such it is up to Ms N to provide evidence that the Policy differed and that there is such a guarantee. I also see no reason to believe that the current Policy terms and conditions do not mirror the original policy terms as the Policy operates in the same way as before the merger, the only difference being access to online functionality.
26. Ms N contends that if she had known from the outset that she would lose online access then she could have objected to the transfer of the Policy to Aviva. Although I agree that Ms N could have raised an objection on the basis that she would lose online access, I do not find that this objection would have had any impact on the transfer of business from Friends Life to Aviva. Raising an objection would not have resulted in different current circumstances for Ms N unless she had elected to transfer elsewhere in order to obtain online functionality.
27. If Ms N no longer wishes to retain the Policy, she has the option to change to another product with Aviva that does provide online access, or she can move to another provider. Aviva recommended that Ms N sought independent financial advice to establish the financial implications of moving the Policy. I find that this was an appropriate suggestion from Aviva and not one that obligates them to fund the advice. Otherwise, Ms N can keep her benefits in the Policy, despite the lack of online access, as she has done for the past five years.
28. Ms N submitted that subsequent communications from Aviva are misleading as they urge her to register with MyAviva so that the Policy can be administered online. I acknowledge that it would be preferable that Aviva did not send letters that ask Ms N to register for MyAviva. This information is provided with annual statements and is generic. It cannot be considered misleading given that Ms N is fully aware that the Policy is not one that can be accessed online. I do not find that receiving this information should cause further distress to Ms N.
29. I agree that Aviva's communication regarding this issue could have been clearer, but I do not find that the matter has caused significant distress and inconvenience. I find the £100 that Aviva has offered is adequate in the circumstances.

CAS-70420-L8L7

30. I do not uphold Ms N's complaint.

**Anthony Arter**

Pensions Ombudsman  
7 December 2022