

Ombudsman's Determination

Applicant	Mr E
Scheme	Sun Life Flexible T-Plan (the Plan)
Respondent	Aviva

Outcome

1. I do not uphold Mr E's complaint and no further action is required by Aviva.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E complains about Aviva and has raised the following points:-
 - it did not pay his pension benefits on time;
 - it made onerous requests for information before releasing his funds;
 - its complaint procedure failed;
 - due to the delay, his funds are now subject to additional tax; and
 - Sun Life, which is now Aviva, refused to transfer his benefits in 1996.

Background information, including submissions from the parties

4. Mr E transferred benefits from The Barr & Wray Ltd. Retirement Benefits Scheme (**the Scheme**) to the Plan on 28 June 1995. He had selected an "end date" of 31 December 2017.
5. The Plan was originally held with Sun Life. However, in the lead up to this complaint, it was transferred to Friends Life. Following this, Aviva took control on 1 October 2017, however it has responsibility over Friends Life's past actions, and as a result, it is the respondent to Mr E's complaint.
6. On 30 August 2017, Friends Life wrote to Mr E regarding the Plan, as his retirement was approaching. This letter stated, "Let us know what you want to do - once you've read all the information and considered any guidance or financial advice, give us a

call when you have made a decision.” It also explained that, “if you have registered with HM & Revenue & Customs (**HMRC**) for a form of protection against a lifetime allowance charge, then please supply a copy of your certificate and contact us for a ‘Lifetime Allowance Form’”.

7. On 7 November 2017, Aviva wrote to Mr E as it had not had a response to Friends Life’s letter. It explained that if it did not hear from Mr E by 31 December 2017, the Plan would defer to a later retirement date. However, it explained that the date would not be fixed and Mr E could contact Aviva to discuss the options available.
8. On 20 November 2017, Mr E wrote to Aviva, at its registered office address. This was because within the terms and conditions of the Plan when it was with Sun Life, it states, “The Administrative Headquarters of the Society is located at: [...] all correspondence and written requests should be addressed there.”
9. Mr E said that a previous letter in relation to the Plan, advised him he did not need to do anything if he wanted to receive his pension benefits. However, the latest letter suggested the opposite. Mr E was unhappy with this and wanted to know what part of the contract allowed Aviva to alter these terms. He requested that his full pension be paid on 1 January 2018. Mr E also mentioned that “previous providers” had “stolen” his funds from the Scheme and placed them into the Plan. Had this not happened, he would have retired five years ago with four times the amount.
10. On 11 January 2018, Mr E called Aviva. The representative said they would try to resolve Mr E’s concerns and asked him to resend a copy of the 20 November 2017 letter. The representative also logged a complaint. Mr E emailed Aviva that day. He stated that the contract required Aviva to pay his “guaranteed pension” from 1 January 2018, and that it had failed to do so, which constituted a contractual breach. Mr E included his bank details with an expectation that Aviva would pay his benefits.
11. On 29 January 2018, Aviva wrote to Mr E about his pension benefits and provided an annuity illustration. This included a form for Mr E to complete if he wished to proceed with taking his pension fund as an annuity with Aviva.
12. On 30 January 2018, as Mr E had not yet received Aviva’s letter, he wrote to Aviva’s CEO outlining what he was unhappy with. Namely, that Aviva had moved his retirement date, that it had ignored his letter of 20 November 2017, and that it was difficult to get through to Aviva by phone. Mr E’s email was acknowledged on 1 February 2018, and confirmed that the CEO would liaise with Aviva’s UK Life Servicing team who would respond to Mr E directly. The acknowledgement said the CEO would be kept informed of the progress and outcome of Mr E’s complaint.
13. On 2 February 2018, Mr E responded to Aviva’s letter dated 29 January 2018, by recorded delivery, and clarified that he had not made an enquiry, but rather a complaint about Aviva “stealing his pension fund” and its breach of contract. Mr E explained that he did not agree to the new contractual conditions, nor did he move his

retirement date. However, Mr E confirmed that he had filled the paperwork as he wished to take an annuity, and had included copies of the requested birth certificates and marriage certificate. The paperwork that Mr E had included was a completed risk questionnaire, as well as a returned retirement benefits illustration that Mr E had written on to indicate which annuity option he wished to take. Additionally, he stated how he was expecting interest for the delays. With this response, Mr E was under the impression that his pension would be paid immediately. Aviva received this letter on 5 February 2018.

14. On 7 February 2018, Aviva issued its complaint response. It apologised for the delay between Mr E's email of 11 January 2018, and its letter dated 29 January 2018. However, it believed it had followed its standard retirement process. It explained that the payment of Mr E's pension was not automatically set as he did not have to claim the benefits at that time. As Aviva is required to make Mr E aware of the options he could choose, it could not start paying his pension until he had selected an option, and had received the relevant forms from him. Aviva explained that Mr E's letter of 20 November 2017 was addressed to Aviva's registered address, rather than its correspondence address, and so was not received. As such, Mr E needed to re-send this to Aviva in January 2018.
15. Aviva went on to apologise that its letter of 29 January 2018, was not tailored to reflect what had happened so far. It also apologised that Mr E was unable to get through to Aviva via the phone. Nevertheless, it confirmed that Mr E's Guaranteed Minimum Pension (**GMP**) would be enhanced from his original selected retirement date, up to when Aviva received the completed retirement forms. Taking into account what had happened, Aviva offered Mr E £100 compensation.
16. On 9 February 2018, Mr E contacted the CEO's office in response to Aviva's letter of 7 February 2018. He believed that Aviva had not addressed how its first letter had told Mr E not to do anything, and why his 20 phone calls went unanswered. Additionally, he was not happy that Aviva claimed it had not received his paperwork, when this was received two days before the complaint response letter.
17. On 12 February 2018, Mr E complained to this Office. He detailed that despite providing the necessary information to Aviva, he was not in receipt of his pension benefits, and that these were now overdue. He wanted further investigation, and for his pension to be paid.
18. On 24 March 2018, Mr E contacted his local Member of Parliament (**MP**). He outlined how he had contacted and complained to Aviva but he was still not in receipt of his pension benefits. Mr E believed this was now a criminal matter and explained the background as to how his benefits ended up being in the Plan.
19. Mr E explained, when he left The Barr & Wray Ltd. he had contacted an agency to give advice on his pension. The advice was to transfer the pension benefits from the Scheme and to put them in a temporary plan with Sun Life. A year later, Mr E had set up a separate occupational scheme with his company, but was refused a transfer of

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his funds from Sun Life to this scheme. He was informed that it was not allowed. A complaint was raised with the agency that had given advice, but was rejected. Mr E explained that he now knows that the advice had been deliberately misleading, and he believes he has lost out on more profitable benefits.

20. On 5 April 2018, Mr E's local MP wrote to Aviva to ask if it could review Mr E's complaint, and reconsider the decision to extend the retirement date. Aviva responded to this on 6 April 2018, stating that the concerns would be reviewed by an appropriate Business Manager, and that it would issue a response to the MP.
21. On 9 April 2018, Mr E let Aviva know that he had instructed Edwin Coe LLP to take action against it. This was reconfirmed on 12 April 2018.
22. On 12 April 2018, Aviva sent a letter to Mr E, confirming that he had decided to purchase a lifetime annuity and tax free lump sum, and setting out its requirements. The letter had the following documents enclosed that needed to be completed and returned:
 - Annuity application form
 - Non- advised transaction form
 - Retirement risk warnings
23. It had also enclosed:
 - An annuity illustration
 - Explanatory notes for an annuity
 - A guide to shopping around
 - Pension Wise letter
 - Annuity comparison information
24. The documents outlined that in order to make the payment to Mr E, it would need the form returned along with a copy of his bank statement. The statement needed to be less than six months old, unredacted or amended, and should be legible. It was also necessary for it to show Mr E's name, sort code and account number, and an active transaction history covering a minimum of five days.
25. In addition to this, Aviva included a declaration which highlighted that it may use Mr E's personal data:

"We may use any of this personal data:

 - to process your pension and administer your plan
 - for Aviva's or someone else's legitimate business interests, for example, for research and statistical purposes, or for

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- marketing (depending on your marketing preferences)
- to help detect and prevent fraudulent activity and for crime prevention,
- to meet legal obligations, and
- where processing your data is in the public interest.

You don't have to provide us with any personal data, but if you don't provide the information we need, we may not be able to administer your pension."

26. The letter also contained explanatory notes regarding the Lifetime Allowance (**LTA**), "if you feel that you may exceed the LTA we strongly recommend that you seek financial advice. We can assist with this check but will need to issue an additional form for completion."
27. On 13 April 2018, following a phone call with Aviva, Mr E emailed Aviva with copies of:
 - Aviva's final response letter dated 7 February 2018;
 - Aviva's complaint acknowledgement email of 1 February 2018;
 - His application form for The Pensions Ombudsman;
 - Proof of delivery of his letter and documents dated 2 February 2018, as well as copies of the completed risk questionnaire and annotated retirement benefit illustration;
 - His email to Aviva on 11 January 2018; and
 - His letter dated 20 November 2017.
28. Mr E did not send back the required annuity application form, retirement risk warnings and bank statement. He explained that he had already sent copies of his birth certificate, his wife's certificate and their marriage certificate, which the proof of delivery confirmed.. However, if Aviva required anything further, Mr E asked to be informed.
29. On 16 April 2018, Aviva sent a further letter to Mr E, similar to that of 12 April 2018, that reiterated that it would need completed and signed copies of: the annuity application form, the non-advised transaction form, the retirement risk warnings, as well as original birth certificates and an original marriage certificate if there had been a name change. Further to this, it would also need a bank statement, as previously explained in Aviva's letter of 12 April 2018.
30. On 27 April 2018, Edwin Coe LLP contacted Aviva. Its letter observed that new requirements had been made of Mr E before his pension benefits could be paid, and confirmed that Mr E had concerns about this. These were as follows:-

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- New requirements had been made in 16 April 2018 letter, that had not been previously disclosed prior to Mr E's acceptance of the offer dated 29 January 2018.
 - The figures quoted had been altered, when Mr E had accepted those of 29 January 2018.
 - Mr E wanted the options he had chosen from the 29 January 2018 offer to be implemented from 1 January 2018, which was the pension payment date under the Plan.
31. On 18 May 2018, Aviva sent correspondence to Edwin Coe LLP. This reiterated that the enclosed forms, similar to those enclosed in the letters dated 12 and 16 April 2018, needed to be completed for the payment to take place, as these had not been received from Mr E, nor had the required bank statement or original certificates.
 32. On 21 May 2018, Mr E emailed Aviva to inform it that he had used 100% of his LTA. As such, Mr E believed he would only be able to take the annual pension Aviva had quoted, and not the tax-free lump sum. The forms and other information that Aviva had requested from him were not included.
 33. On 6 June 2018, Mr E wrote to Aviva to confirm that he had a protected LTA.
 34. On 11 June 2018, Aviva issued a further annuity illustration with the forms that Mr E had not yet completed, similar to those issued on 12 April, 16 April and 18 May 2018. However, Aviva had removed the previous requirement for a bank statement.
 35. On 17 June 2018, Mr E sent Aviva a copy of his Fixed Protection 2016 Notice from HMRC.
 36. On 20 June 2018, Aviva called Mr E to explain that it was unable to pay his funds to him because it had not yet received a completed annuity form nor a signed retirement risk warnings form from Mr E. In response Mr E provided copies of his letter dated 17 June 2018, and his tax certificate. Aviva acknowledged it on the same day and a point of contact was established, where Mr E could "feel free" to contact them at any time on that email. Mr E then responded to confirm that he had used 80% of his 25% tax free allowance. He did not return a completed annuity form.
 37. On 21 June 2018, Aviva sent Mr E further copies of the annuity application form and retirement risk warnings for him to complete and return via email. Aviva said once these had been received, it would be able to progress payment of Mr E's pension benefits as a priority. However, it would also need copies of previous LTA certificates from the encashment of Mr E's previous pension(s).
 38. On 22 June 2018, Mr E responded to say that he had filled in all the forms that had been included in Aviva's letter of 29 January 2018. As such, that concluded the contract. Mr E restated that he did not agree to the new and additional terms that had been added to the "closed contract". Further to this, he explained how he believed the

annuity application form and retirement risk warnings should have been included in the offer of 29 January 2018, as well as with Aviva's complaint response dated 7 February 2018.

39. On 26 June 2018, Aviva provided Mr E with an original illustration, confirming the options available to him, as it had not included this with the forms it sent on 21 June 2018. Mr E had the option of receiving a full pension each year followed by a spouses' pension upon death, or a tax free cash sum and a reduced pension, followed by a spouses' pension. At this point, Aviva had received Mr E's completed annuity application form and retirement risk warnings form dated 21 and 22 June 2018. As a result, it asked Mr E to confirm which option from this illustration he wished to take, and said it needed further information to calculate what remained of Mr E's protected LTA. Mr E replied to say that he wished to take the option of a tax free cash sum and reduced pension.
40. On 3 July 2018, in response to a further enquiry from Mr E, Aviva explained that delays were caused due to the differing information Mr E had provided. Whilst Mr E had said he did not believe the LTA declaration was relevant, he had advised that he had used 100% of his LTA in May. However, on 20 June 2018, Mr E had said he had used 80% of his tax-free allowance. As a result, Aviva had to calculate whether an LTA excess charge was applicable.
41. Mr E responded the same day. He believed the initial offer made in January was misleading as it gave the impression he could have taken a tax free lump sum. Mr E thought Aviva should have checked his LTA first. Nevertheless, Mr E believed that as he was not taking a lump sum, this would not affect his LTA and so Aviva ought to have paid his pension.
42. On 6 July 2018, Mr E contacted Aviva as he did not understand why it needed as much time as it had taken to calculate his LTA position. Aviva responded on 9 July, and apologised for the delays. However, it explained that it was reviewing the calculations that had been done by the administrator, Capita. Taking into account the length of time, Aviva confirmed that it had arranged for a £150 cheque to be issued to Mr E.
43. On 19 July 2018, Mr E emailed Aviva to get an update. Given the number of quotes Aviva had issued since January 2018, and the calculations necessary for these, he did not believe that the current calculations should be taking so long. He wanted a clear reason for the delays, and confirmation of the date that his pension will be paid.
44. On 20 July 2018, Aviva emailed Mr E to confirm that it had received an email from the MP saying that Mr E had been in touch again. Aviva confirmed that the ongoing delays were "totally unacceptable" but that the issue was in relation to Mr E's GMP and the LTA charge, as the latter applies to all of Mr E's benefits. Aviva found that there was no consistent approach with regards to the LTA charge and whether GMP benefits could be reduced to accommodate this.

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45. Given the GMP and LTA charge situation, Aviva provided Mr E with two options:
- For the LTA charge to be deducted from the non-GMP element of Mr E's fund, and for Mr E to make up the difference, with all of his GMP to be paid, or;
 - All the LTA charge will be deducted from the whole fund, meaning Mr E's GMP benefits would need to be reduced.
46. Mr E responded the same day to question the amounts Aviva had provided. He was under the impression that he had already paid tax on his pension, and so did not understand why he was being taxed again, or who was applying the charge. After contacting an Actuary for help, Mr E asked for a breakdown of the tax calculation Aviva had performed.
47. On 23 July 2018, Aviva provided a breakdown of the options to Mr E. Aviva confirmed that it had requested illustrations for these options, and would forward to him.
48. On 25 July 2018, Mr E sent a further LTA form, which differed from the first form that he had sent on 22 June 2018. He had rectified a misunderstanding and confirmed that he was not in receipt of any pensions that started before 6 April 2006. An exchange of emails followed, then, Aviva confirmed that Mr E had sufficient LTA, so a LTA excess charge would not be deducted.
49. On 1 August 2018, Aviva emailed Mr E with an updated retirement illustration. Once again, Aviva asked Mr E to confirm which option he wanted to take and informed him that he could use the Open Market Option (**OMO**) to transfer 100% of his benefits to another provider to secure an income. However, Aviva warned that if he did this, his GMP benefits would be lost. Mr E responded the same day to say that he would opt for the tax free lump sum with a reduced annual pension.
50. On 2 August 2018, Aviva acknowledged Mr E's response and asked him to fill in the annuity payment form alongside his wife's National Insurance number. Mr E provided this information shortly after.
51. On 9 August 2018, Mr E chased Aviva as he had not received any payments. However, Aviva responded the same day to say that his annuity had been set up and that Mr E should expect his tax-free cash the following day or at the beginning of the following week. The annuity payments would be credited a few days after that.
52. On 10 August 2018, Mr E emailed Aviva to confirm receipt of the tax-free lump sum.
53. On 20 August 2018, following an enquiry from Mr E, Aviva clarified that the further payments Mr E had received were:
- a tax-free lump sum, which included interest for late payment;
 - annuity payments backdated to 1 January 2018; and
 - late payment interest on the annuity payments.

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54. After reviewing this, Mr E informed Aviva that he would need a P60 for the 2017-2018 tax year. Aviva acknowledged this and confirmed that it was waiting to hear back from Capita in relation to this.
55. On 23 August 2018, Aviva issued a comprehensive response in relation to the concerns Mr E had brought to Aviva and its CEO. It confirmed that Mr E was now in receipt of his payments, but as these were paid in the 2018-2019 tax year, Aviva could only provide a P60 for that year. In relation to Mr E's comments regarding Aviva's letter of 30 August 2017, it stated that the Retirement Options Pack sent in August 2017, had explained what Mr E needed to do, but as Aviva received no response, it sent a reminder in November 2017.
56. With regard to amending the retirement date, Aviva said that this was not a breach of contract and that it had followed the Financial Conduct Authority's (**FCA**) guidelines in relation to this. However, Aviva acknowledged that it took nearly three weeks for it to send another retirement pack after Mr E had logged a complaint in January 2018. It agreed that this was an unacceptable delay and apologised.
57. Aviva continued by saying that whilst Mr E had provided copies of information Aviva needed in February, it actually needed original verification documentation, but a concession was made in this instance. Further delays were then caused as Aviva required confirmation of Mr E's LTA position. Calculations were made based on the original information Mr E provided, that he had used 100% of his LTA. Due to the type of pension contract Mr E had, Aviva needed to seek expert advice on how the tax charge would be paid, but again, Aviva apologised for this delay. Options were then provided to Mr E, but he then confirmed that he had not taken 100% of his LTA and that he had sufficient LTA remaining to take the full benefits from the Plan. As such, Aviva was now satisfied that the annuity could be set up with no LTA tax deduction.
58. In light of the delays, Aviva confirmed that it would offer a further £250, to recognise any distress and inconvenience caused. The £250 that had previously been offered to Mr E consisted of £100 on 7 February 2018, for the service he had received and £150 on 6 July 2018, for the delays caused by the LTA calculation.
59. On 27 August 2018, Mr E wrote to Aviva and explained that due to his financial situation, he required it to provide PAYE slips to confirm the payments and tax paid. He was unhappy that his previous communications were not noted, and challenged why he was previously required to provide certain documentation. However, Mr E accepted that there had been confusion over how much of his LTA had been used. Nevertheless, Mr E felt that Aviva had enough information which should have been used to avoid the confusion. Additionally, Mr E did not agree with the further award of £250, and felt that the advice he had received from an agency regarding transferring into the Plan, had not been independent.
60. On 3 September 2018, Aviva responded to Mr E's letter and apologised that it had not been able to alleviate his concerns. However, it was not able to comment on Mr E's allegation that Sun Life had refused to transfer his pension benefits to Mr E's

scheme. Aviva did explain that if the transfer had gone ahead, Mr E would have lost the valuable benefits the GMP provides. With regard to Mr E's 20 November 2017 letter, Aviva reconfirmed that this was never received and, in any case, the correct address had been provided in its retirement options correspondence. Further to this, Aviva did not find any information which stated that it would automatically pay Mr E without the relevant documentation.

61. On 6 September 2018, Mr E raised the following points in response:-

- He believed that it was known that the agency which advised him in the 1990s, had been working with Sun Life.
- Aviva's latest comments regarding the GMP, convinced Mr E that the adviser's actions were all the more serious as this confirmed the advice was inaccurate and done for commission.
- Mr E refused to provide tax information to Aviva as he believed his word was sufficient.
- His letter of 20 November 2017, was sent to the correct address as per the contract. Aviva's terms outside of the contract are irrelevant.
- Despite not having the letter from August 2017 to check, he was under the impression that no action was required from him.
- Mr E had hoped that Aviva could provide a report as to why there had been so many failings in his case. Edwin Coe LLP's letters had not been taken into account and illustrations were sent out regardless of the situation.
- Aviva did not have any right to his documents or his bank statements. There was enough information in the contract to see what ought to have happened. He believed that the additional information was not to identify him, but rather to target him for further products. Mr E also believed that his information should not be needed to prevent financial crime, but rather Aviva should provide proof that the money Aviva used to pay his pension had not come from illegal activity.

62. Whilst this Office has been considering Mr E's complaint, he has also raised the following points:-

- He believed that Aviva required the letter of 20 November 2017, to be sent to its headquarters.
- The confusion over the LTA was not necessary as he had confirmed he had used 100% of his LTA. As such, there was no need for them to delay payment any further for calculations.
- Given the explanation provided by Aviva, this Office should be able to investigate the refusal to transfer Mr E's benefits from the Plan to another pension in 1996.

63. Aviva has also submitted and explained the following:-

- It could not process any funds until it had confirmation of the LTA. Mr E had refused to fill this in on Aviva's forms, as he believed it was irrelevant. As such, Aviva could not confirm his liability when putting this pension into payment. Mr E had not made Aviva aware of his LTA prior to 21 May 2018, despite his original Retirement Options Pack and the annuity quotes making reference to Aviva needing this information.
- Aviva confirmed that it ended up verifying Mr E's bank account electronically. It also made a concession to accept photocopies of birth and marriage certificates. In addition to this, Aviva had issued a letter to Mr E about needing to meet money laundering regulations and how there was a requirement to identify all customers regardless. It explained to Mr E that this did not form part of their contract but is "supported" by the FCA.
- If Mr E can supply evidence that he would have paid less tax in the previous tax year, Aviva would make an additional ex gratia payment equivalent to the additional tax he has had to pay.
- The £500 it had offered had been paid to Mr E.

Adjudicator's Opinion

64. Mr E'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 briefly below:-

- Mr E's complaint point about being refused a transfer in 1996 fell outside of the Ombudsman's jurisdiction. This was because the event took place over three years ago, and a complaint was brought about this by Mr E and his business partner at the time, suggesting that Mr E was aware of the problem in 1996.
- The information provided to Mr E suggested that he needed to contact Aviva in order to claim his benefits. This is because pension providers require confirmation of how a member wishes to take their benefits due to the options available. Since the Plan was set up, the options available to members and how Mr E could take his benefits have changed due to legislative developments. As such, it was reasonable for Aviva to make him aware of these. Additionally, Aviva has a responsibility to ensure that it is paying benefits to the right person, so it was reasonable for Aviva to expect contact from the member, prior to payment.
- Whilst the Adjudicator understood that Mr E had followed Sun Life's terms and conditions of the Plan, these were not Aviva's terms and conditions. Based on the information available, Aviva did not receive Mr E's letter dated 20 November 2017, meaning it was unaware of Mr E's correspondence until 11 January 2018.

- Mr E was under the impression that by accepting the annuity illustration dated 29 January 2018, the matter was closed and nothing more was needed from him. However, this was an initial letter which outlined Mr E's options. It required him to confirm in what form he wished to take his benefits, before Aviva could proceed to the next steps. Aviva has a legal and regulatory duty to ensure it is paying benefits in accordance with HMRC rules and to the correct person. Further to this, it is required to satisfy various due diligence and money laundering checks. Therefore, further paperwork in this instance was expected, although the delay in providing it was acknowledged.
- The 'new contract terms' were standard requirements sent out to all members who had opted for an annuity with Aviva. Given that there are tax implications and legislation Aviva must follow, it is understandable for Aviva to ask for further information from Mr E, and not all of these form part of the contract with the member. With regard to the use of the information for verification, this was not unusual or onerous. With regard to the use of this data for other reasons, Mr E had rights in relation to this. If Mr E did not consider these requests to be reasonable, Aviva had provided Mr E with alternative options such as choosing another pension provider. Aviva also did not need to provide proof that Mr E's funds were not coming from criminal activity.
- Aviva used alternative means and/or made concessions to accommodate Mr E's concerns about the information being asked of him, although it was not necessary for them to do so. Aviva also backdated Mr E's annuity to 1 January 2018, which recognised Aviva's delays. This was generous as Aviva did not have all the information it needed from Mr E at that point.
- Aviva has offered to pay the additional tax Mr E may incur due to its delayed payments. However, Mr E would need to demonstrate this to Aviva.
- Mr E's complaint was unusual in that there was still correspondence between Mr E and Aviva after a final response letter had been issued. Aviva was trying to help and resolve the situation as part of its obligations of providing Mr E's annuity. However, Aviva had responded to Mr E's complaint within the compulsory eight weeks, and provided contact details of other organisations should the situation remain unsolved. Therefore, there was no error.
- Aviva made the following errors:
 - There was a delay in responding to Mr E's complaint of 11 January 2018.
 - Mr E's response to Aviva's letter of 29 January 2018, was received on 5 February 2018, but not actioned until April 2018.
 - There was a delay in calculating Mr E's LTA charge.

- Aviva did not alter its standard wording, which seemed to create further concerns for Mr E. However, the multiple documents sent were to remind Mr E of the requirements that Aviva needed from him.
 - Although there was a delay in calculating Mr E's LTA charge, this was not solely due to Aviva's (in)actions. Mr E had sent conflicting information regarding his LTA.
 - Overall, there had been errors which has affected Mr E, however the £500 that Aviva had offered was appropriate.
65. Mr E did not accept the Adjudicator's Opinion and provided further comments. These are summarised and outlined below.
- Mr E never said that the letter that indicated he did not have to do anything was dated 30 August 2017, nor did he have a copy of this. Furthermore, this letter was not sent by Aviva as they only became his pension provider on 1 October 2017. The first letter he received from Aviva was dated 7 November 2017. He responded to this on 20 November 2017, which activated the contract condition that payment was due on 1 January 2018. Aviva did not follow this and so is in breach of contract. Had Aviva not paid Mr E's pension from 1 January 2018, it would have ended up in Court.
 - The policy contract conditions fully control his pension conditions, so new legislation cannot change these, but they may create additional actions. Mr E does not believe there were any significant changes to his contract conditions due to legislation. As such, Aviva has no contractual right to add new conditions. If Mr E was not the person his pension providers were in contact with, there would be a Data Protection breach. In any case, Aviva has confirmation of his personal details on its systems. Mr E did not expect his pension to be paid automatically, but did expect it to be due according to the contract conditions.
 - Aviva does not have the legal right to change the contract address as the correspondence from Friends Life and Aviva confirm that there was no change to the contract term and conditions. As such, Mr E was right to contact Aviva using its registered address for his letter dated 20 November 2017. Further to this, as English Law confirms that such a letter is delivered within 48 hours, Aviva did receive this. Mr E provided a letter dated June 2017, from Friends Life and Aviva which confirmed that Friends Life was now part of Aviva, but that, "there will be no change to your policy terms and conditions [...] as a result."
 - An apology for Mr E's attempted and unanswered phone calls was not sufficient considering Aviva still had his money at that time. Additionally, Aviva's complaint procedure was not robust and did not resolve his complaint, so it was not fit for purpose.
 - Aviva's letter of 29 January 2018 should have outlined everything that Aviva required from Mr E, it should not redirect pensioners towards a financial advisor.

Taking into account that the Government was able to pay him in a straightforward manner, Aviva's process should be similar and not so difficult to understand.

- By Aviva removing the need to provide information, this proves that they were not actually required. Mr E also did not agree with Aviva's requirements of supplying him with other products, and felt that based on Aviva's past, it was reasonable for him to ask about where his funds were coming from and whether they were free from criminal activity. Mr E would like to know whether the Pensions Ombudsman approved Aviva's requirements and if other pension providers were also required to implement these.
- Aviva had decided that the best course of action was to await an adjudication from The Pensions Ombudsman in relation to Mr E's tax position. As Mr E had provided information confirming this complaint point, this should be found in his favour.
- Aviva misplaced Mr E's letter of 20 November 2017, and had also ignored him, Edwin Coe LLP and his MP. Aviva only got involved when the complaint was brought to this Office. Mr E also did not think it was acceptable for Aviva to send reminders of his "rights to a pension by constant offers". Mr E believed that he was "in contract with them [Aviva] that they did not honour, they supplied an incomplete set of forms in their [its] first offer". Mr E questioned why the Adjudicator thought this was correct, rather than processing the completed forms.
- Aviva should have clarified with Mr E as to what his LTA position was, rather than asking him to sign further paperwork. Mr E provided his certificate in relation to this when he was asked, but this should have happened in January 2018. The delays were not caused by him, and so should be attributed to Aviva.

66. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr E for completeness.

Ombudsman's decision

67. In relation to Mr E's complaint point about being refused a transfer in 1996, I consider this to be outside of my remit. Section 5 of The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 specifies that I, "shall not investigate a complaint or dispute if the act or omission which is the subject thereof occurred more than 3 years before the date on which the complaint or dispute was received by [me] in writing." Having reviewed the exceptions to this, these are not applicable as whilst Mr E claims he did not know the reason behind the refusal, it is the refusal itself that Mr E is unhappy about. As Mr E complained about this at the time, I shall not investigate the matter.

68. I can see Mr E has focused on the original contract, as well as the terms and conditions as agreed with Sun Life. I understand that Mr E believes that the original terms and conditions must be followed and that he has highlighted how he had been informed that the transfer from Friends Life to Aviva would not affect the policy terms

and conditions. However, as different providers took over the Plan, it is not unusual for different administrative procedures to be implemented. This is especially common considering legislation and regulatory rules have changed since Mr E joined the Plan in 1995, causing pension providers to change their processes. Friends Life's letter dated 30 August 2017, indicates this as it says, "you [Mr E] now have more options on what you can do with your pension savings."

69. If a member would like their benefits to be paid on a certain date, even though there is a nominated retirement date as was the case with Mr E, they will need to let the pension provider know that that is the case. Further to this, the member will need to confirm in detail, how they want to take their benefits, and whether they want to remain with their current pension provider. Without this information, the pension provider will not know what its next steps will be and so is unable to adhere to the nominated retirement date. In these instances, the retirement date would then defer, otherwise the pension provider's actions would not be compliant with a number of regulations.
70. I consider that Aviva adequately informed Mr E what was required in the letters dated 30 August 2017, and 7 November 2017. I note Mr E's observation that a deadline was not specified in these letters. Nevertheless, I find that by specifying what information was required to put his benefits into payment, it follows that this would need to be provided prior to Mr E's retirement date. I understand Mr E responded on 20 November 2017, using Aviva's registered address. While I understand Mr E's point that this method of communicating is deemed effective service, I can also understand why communicating in this way rather than through the correspondence address provided for the purpose may have made it harder for Aviva to track and process Mr E's request to take his retirement benefits and I accept their submission that they were not in fact aware of Mr E's contact until 11 January 2018.
71. I understand Mr E believes Aviva should have provided him with a list of everything it needed from him in its letter of 29 January 2018. However, at this point, Mr E had not confirmed his choice. This would prevent Aviva from sending him tailored requests, as different options would produce different requirements.
72. Mr E has also raised concerns about the information that Aviva required from him. He has specifically mentioned how he believes the requested information was to be used to sell him more products. While I appreciate Mr E's frustration about the retirement process, I do not consider that Aviva were adding new conditions to the policy contract, in the sense of trying to get between Mr E and his money. They were attempting to comply with their legal obligations to ascertain which options Mr E wished to exercise at retirement. They were also trying to make sure they paid the right person. Before releasing funds to a member, a pension provider will have a set of processes that it has decided upon, to meet requirements set by a regulator or by legislation. It is up to the provider to choose what these processes are, which is why there may be variations in what is asked from members between providers. I consider that Aviva's requirements were aimed at fulfilling legitimate purposes and were not

aiming to extract data purely for marketing purposes. I appreciate Aviva made concessions about what proofs they would accept in this instance, which showed some flexibility and pragmatism on their part, but I cannot infer from this that Aviva was wrong to ask for the information in the first place. I can see no evidence of maladministration arising from their conduct in seeking the information which they required of all retiring members. .

73. Further delays were caused by the need to establish Mr E's LTA position. I understand Mr E did not have the relevant certificate prior to June 2018. However, I believe it had been made clear to Mr E from August 2017, that he would need to confirm whether he had a protected LTA, and that additional forms would be needed if this was the case. It was not maladministration for Aviva to ask for this information.
74. Whilst I appreciate Mr E's concerns about the complexity behind claiming his benefits and how this should be simplified, there is a lot of applicable legislation and tax implications when it comes to claiming benefits. This is one of the reasons why pension providers will usually suggest speaking to an independent financial advisor, as they would be able to clarify the LTA position, for example. It was not maladministration for Aviva to propose this option.
75. I say this as there was confusion over whether Mr E had been in receipt of a pension before 6 April 2006, and whether he had sufficient LTA to claim his benefits from the Plan without an excess charge being applicable. I find no maladministration arising out of Aviva's actions in relation to this, as it did not receive accurate information until 25 July 2018. However, there were delays when processing the calculations, which Aviva has accepted. Having said this, had Mr E provided Aviva with information confirming the correct LTA position sooner, this could have been avoided. It follows that I do not consider Aviva fully responsible for these delays.
76. Aviva caused an unreasonable delay when Mr E had contacted it confirming what option he had chosen in February 2018. This was not processed until April 2018. I understand that Mr E disputes that this was processed, as he was not paid. However, as there was outstanding information needed from Mr E, payment was not possible. The processing resulted in further retirement illustrations being sent to Mr E, which reiterated that Aviva required information from him, although these had not been tailored to acknowledge Mr E's situation or complaint. As previously explained, I have found that these requests for information were necessary. However, the correspondence should have been tailored to reflect Mr E's situation. Failure to do that no doubt caused him distress and inconvenience.
77. With regard to Aviva's complaint procedure, it responded within eight weeks, as per the FCA's DISP 1.6 Rules. I understand Mr E's point in that his complaint was not resolved. Whilst this would be the ideal situation for both Aviva and Mr E, unfortunately this cannot always be the case. As a result, impartial organisations exist so that applicants and consumers can get a further assessment in the attempt to resolve the situation. Nevertheless, Aviva continued to engage with Mr E as his annuity provider and Aviva provided a further complaint response to Mr E in August

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2018. I appreciate that the failure to achieve a resolution through the complaint process contributed to Mr E's distress and inconvenience.

78. I understand Mr E believes that Aviva ignored him as well as the third parties he had contacted to get involved. However, notwithstanding the delays between February and April 2018, I can see that Aviva was contacting Mr E. I recognise that many of the initial communications were of a similar nature in that they were letters confirming Mr E had opted for an annuity and a tax free lump sum. However, from 20 June 2018, Mr E had a point of contact within Aviva who sent him information and responded to his update requests. As such, I do not consider this amounts to maladministration.
79. In conclusion, without Mr E's confirmation of his detailed retirement options, Aviva had no option but to defer Mr E's retirement date. Although they were responsible for some delays and could have tailored correspondence more closely to Mr E's situation, they were not responsible for maladministration in the sense of refusing to honour Mr E's contractual entitlements. In any event, Aviva has agreed to backdate his benefits to 1 January 2018, which was when Mr E was expecting payment, with interest. I am therefore satisfied that Aviva has rectified any financial loss which may have flowed from delay in payment.
80. Aviva has also offered to cover any additional tax that Mr E may incur as a result of the late payment of his pension benefits under the Plan, but he has refused to provide them with documentary evidence proving his loss. Aviva should first be given the opportunity to verify that such a loss has occurred. If he wants to accept Aviva's offer to reinstate any tax loss Mr E will need to provide information to Aviva, demonstrating that he has incurred one.
81. I turn now to the non-financial impact of Aviva's conduct.
82. I conclude that although they had good reason for taking Mr E through the retirement option process in the way that they did, Aviva's initial failure to tailor answers to Mr E's enquiries caused Mr E distress and inconvenience. Aviva has offered and paid £500 to recognise this, which I consider reflects the significant non-financial injustice that was caused. As a result, I do not find a further award is necessary. Therefore, I do not uphold Mr E's complaint.

Karen Johnston

Deputy Pensions Ombudsman
24 January 2019