

Ombudsman's Determination

Applicant	Mr S
Scheme	Aviva Pension Plan (the Plan)
Respondent	Aviva plc (Aviva)

Complaint Summary

Mr S has complained that the information provided to him in relation to the Extra Fund Injection (**EFI**) element of the Plan led him to expect a higher EFI value on retirement. Mr S has complained that he has suffered a financial loss as a result. The measure of which is the difference between the EFI value calculated by Aviva and the projected value set out in the 'what is EFI worth' table (set out at Appendix 1).

Summary of the Ombudsman's Determination and reasons

The complaint shall be partly upheld against Aviva. There was a consistent lack of clear explanation by Aviva and its predecessors about how the EFI value would be calculated at retirement. Also, the effect that the purchase of Capital, rather than accumulation units would have on the final value of the EFI.

Aviva shall award Mr S £1,000 for the serious distress and inconvenience he has suffered.

Detailed Determination

Material facts

1. In April 1994, Mr S joined the Plan. The retirement date was 16 December 2018, when Mr S reached age 60.
2. The EFI operates as a bonus to reward long term regular investors by refunding annual management charges (**AMC**) deducted from accumulation units purchased with level, regular, contributions to the Plan at the selected retirement date. Up to 100% of the AMCs can be refunded, however, the final calculation depends on a number of criteria, which is used to formulate the EFI Factor. The EFI Factor is expressed as a decimal numeral.
3. The final value of the EFI is calculated by multiplying the total bid value of the units in the Plan by the EFI Factor. That sum is then added to the total transfer value.
4. Mr S increased his level of contributions to the Plan in 1997, 2004, 2008 and 2015. He received confirmation from Aviva that the 2008 and 2015 increases would not impact the EFI.
5. On 14 April 2008, Mr S wrote to Aviva to update his salary details and to increase his monthly contribution to the Plan from £500 to £625 gross with effect from 30 April 2008. He requested that from 30 April 2008 his contributions be invested into the UK Equity fund. He stated that the requested change was made on the assumption that it would not affect the value of the EFI or any of the terminal bonus associated with his investments.
6. On 6 June 2008, Aviva wrote to Mr S to confirm that the premium received in April 2008, had been invested in the UK Equity fund. It went on to confirm that “all future premiums will be invested in the UK Equity fund and that not making any further payments into the With Profits fund will not effect [sic] your current terminal bonus or EFI at this stage.”
7. On 5 July 2015, Mr S wrote to Aviva and said he would like to make an additional one-off contribution to the Plan. He asked how he could go about making the change, what investment options were available to him and how would the changes be treated in respect of the EFI associated with the Plan. He said it was particularly important to him that he did not do anything that would prejudice the current EFI arrangement.
8. In January 2018, Mr S made Aviva aware of his intention to retire in March 2018, earlier than his selected retirement date of 16 December 2018. He requested pension options and a transfer value quotation from Aviva.
9. On 9 January 2018, Aviva issued an illustration of projected benefits, a transfer quotation and the current fund value.

Total Bid Value	£247,422.16
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Cap Penalty	£500.10
Cap Terminal Bonus	£2,290.83
ACC Terminal Bonus	£37,966.00
Total Terminal Bonus	£40,256.83
EFI	£27,388.82
Total Transfer Value	£314,567.71

10. On 31 January 2018, Mr S had a telephone conversation with Aviva. During the conversation Mr S said that his 'expectation' for EFI % benefit was 14% based on the EFI table.
11. On 2 February 2018, Aviva wrote to Mr S providing an updated illustration of his projected benefits with a bid value quotation of £246,682.72. The transfer value was £313,991.14. It stated that the value of the EFI element of the Plan was £27,334.41. Mr S telephoned Aviva to discuss the information provided. He believed the value of the EFI element should have been higher based on the percentages set out in the EFI Table.
12. On 5 February 2018, Aviva emailed Mr S. It said the reason the value of the EFI element was lower than Mr S anticipated was because the estimates were based on steady premiums being paid in over a fixed term. The EFI factor is an averaging calculation of all the premiums paid into the policy that are entitled to an EFI refund. An increase in premiums causes the EFI Factor to decrease, whilst decreases cause the factor to increase as the 'average' is adjusted based on expected premiums. If contributions increase, a smaller adjustment to the EFI element would be made to reimburse the charges that had accrued. If the contributions decrease, then the factor to cover the charges needed to be increased. Larger premiums were paid towards the end of the life of the Plan so the EFI Factor had grown at a much slower rate than would have been expected if the regular contributions had remained unchanged since the outset of the Plan.
13. On 11 February 2018, Mr S wrote to Aviva and said that for him to know if the value of the EFI was correct, he needed to understand the calculation. He said he was unable to make his own calculation or estimates.
14. On 15 February 2018, Mr S' Adviser and Aviva had a further telephone conversation. During the telephone call the Adviser chased Aviva for information about the EFI and said his view was that the EFI value for a 25-year term would be 15% of the fund value. This was based on the EFI table. He requested an explanation of how the EFI was calculated. The Adviser referred to the EFI table as his source for understanding what the EFI value ought to be.

15. On 19 February 2018, Aviva responded to Mr S. It said his queries about the value of the EFI had been passed to a technical Adviser who would contact him in due course.
16. On 6 March 2018, Aviva wrote to Mr S and provided a detailed explanation about how the value of the EFI was calculated. It stated that the overall purpose of the EFI Factor is to reimburse the accumulated effects of the 1% AMC deducted from regular premium accumulation units during the lifetime of the Plan. The EFI Factor does not increase or decrease with fund performance in the manner of a bonus rate. Aviva set out the equation to calculate this in general terms, although stated that the specific calculation for Mr S could not be transcribed directly from its IT system.
17. In the same email, Aviva stated that the projected EFI value appeared to be reasonable for the following reasons:
 - 17.1. EFI only applies to regular premium accumulation units. Until improved 'Stakeholder equivalent' terms were introduced in 2000, the first two years of any premiums purchased capital units which incurred higher annual charges.
 - 17.2. So, although the policy started in April 1994, accumulation units were not purchased until April 1996, giving a term for the initial premium tranche of under 22 years.
 - 17.3. In June 1997 premiums increased from £200 to £400. Again, the increased premium element purchased capital units initially, and accumulation units were not accrued on this second tranche until June 1999, giving an EFI term of under 19 years.
18. Aviva confirmed that the subsequent increases in premiums in 2004, 2008 and 2015 purchased accumulation units only, with lower terms.
19. Aviva stated that the approximate uplift for a policy with a 20-year term is 11%. Based on the accumulated terms of each tranche as listed, a current EFI factor equating to 10.09%, although lower than might be desirable, was in line with the original projections.
20. On 8 March 2018, a conversation was had between Mr S' Adviser and Aviva. During the telephone call his Adviser referred to his expectation for the EFI % of being 14% and not 11%.
21. On 11 March 2018, Mr S replied to Aviva:
 - 21.1. The EFI Table has appeared in each EFI leaflet since 1994. Aviva has indicated that the initial premium tranche would have had a term of only 22 years based on the initial purchase of capital units, but the use of the word "term" in the table would reasonably be interpreted as meaning the term of the policy. The advisers guide describes it as a 'term of the contract'.

- 21.2. On that basis, the term to which the EFI was applied would never have aligned with the term of the policy and the leaflets and guidance are a misrepresentation of the true position.
 - 21.3. This should have been a consideration in 1997 when premiums were increased and capital units purchased as a result. The effect described by Aviva cannot be considered part of what makes the value of EFI “approximate”, as it was simply a fact that the EFI would operate in this manner.
 - 21.4. Aviva has a statutory duty to be transparent and to provide investors with the best possible information about their policies and projected benefits. The fact that the leaflets and guidance on the EFI could be misleading for investors must have been known to Aviva for a very long time given its explanation, but it has made no attempt to share this with him and has therefore failed in its duty.
 - 21.5. Aviva’s comparison between a 20-year term with the EFI factor, when the term of the Plan at the end of March 2018 is 23 years and 11 months gives rise to a significant shortfall of approximately £7,000 from his reasonable expectation of what the EFI would be worth.
22. On 16 March 2018, Mr S chased Aviva as he had not received a response.
 23. On 28 March 2018, Aviva wrote to Mr S:
 - 23.1. It agreed that the points Mr S made about the EFI information sheets provided during the term of the Plan were valid. If the EFI Table does not account for the periods during which capital units were purchased, this could be misleading to customers.
 - 23.2. Aviva confirmed that the percentages shown in the EFI Table were only relevant for the initial level of regular contribution. The information sheet issued to Mr S did refer to this but not to what happens to any subsequent regular premium increases. As Mr S had made several increases in premium, this should have been explained previously.
 - 23.3. Aviva stressed that Mr S’ policy had been sold via an Independent Financial Adviser. It would have been the Adviser’s responsibility to ensure that he was made aware of all the features of the policy and how they worked.
 - 23.4. Aviva was confident that the correct amount of EFI has been applied to Mr S’ policy.
 - 23.5. Aviva acknowledged it had a duty to provide the best information to customers.
 - 23.6. Aviva concluded that it did not act correctly or meet its service standards. It apologised that the information sheets provided to Mr S had not gone into enough detail and been specific to his policy.

- 23.7. Aviva offered Mr S £100 for the inconvenience he had suffered.
24. Mr S remained dissatisfied and brought his complaint to the Pensions Ombudsman (TPO).
25. TPO requested further information from Aviva in relation to the EFI.
26. Aviva responded on 21 June 2019, copying the following wording from its legal department:
- “[Mr S] has obviously put a huge amount of time and effort into trying to understand the calculations, though I think we agree the calculation made is correct. The question is over whether the documents are misleading. I think they try and explain an incredibly difficult calculation in a straightforward way and because of this some of the intricacies are missed. As EFI isn’t covered in the contractual documents, we are not in breach of the terms of our policy, but I can understand the confusion.”
27. Aviva explained it was satisfied that there was no breach of contract and that Mr S had been provided with the necessary information. The EFI was not guaranteed and Aviva believed it had been calculated properly. It offered to pay an additional £200 in recognition of the time taken to provide a response.
28. Mr S submitted that Aviva had a wider obligation than the content of the rules and policy documentation. The documentation he was given at the outset and during the lifetime of the Plan led him to a reasonable expectation of the value of the EFI based on the EFI Table, but that this was never achievable due to the method used to calculate the EFI Factor. He did not accept the offer of £200.
29. Mr S requested that the Plan be transferred to a new provider on 9 September 2019 and the transfer was completed on 11 September 2019.
30. Following further correspondence, Aviva offered to award Mr S a total of £500 for the significant distress and inconvenience he had suffered, which was rejected by Mr S.

Summary of Mr S’ position

31. Mr S was disappointed with the service he had received from Aviva throughout the process of his complaint.
32. Aviva has not shown any regard for the substantial financial loss he has suffered because of its errors.
33. He believed the EFI Factor calculation to be irrelevant to his complaint. His complaint is that at no point did Aviva let him know of the effect of increasing the premiums and how this would lead to him suffering financially.
34. He should have been able to rely on the EFI information available to him throughout the life of the Plan for his financial planning and now his funds are significantly lower than he had expected.

35. The same percentages set out in the EFI Table have been consistently presented to him throughout the life of the Policy, and it was only based on these figures that he was able to plan retirement.
36. Aviva failed to advise him of the impact on the EFI value of:
 - 36.1. purchasing Capital units for the first two years of the Plan in 1994;
 - 36.2. increasing premiums in 1997; and
 - 36.3. increasing premiums in 2008 and 2015, despite explicitly seeking confirmation from Aviva.
37. Mr S' position is that Aviva is in breach of contract. The material accompanying the Plan documentation forms part of the contract between him and Aviva and the value of the EFI, as described in the sales literature and the EFI Table, is a contractual obligation.
38. Aviva has acknowledged that it had acted in breach of its duty to provide the best possible information to customers. He believes the Plan was mis-sold.
39. Aviva's calculation methodology shows that the value of the EFI did not depend on the length of time the policy is in force.
40. Information was not disclosed until 6 March 2018, when Aviva explained that the EFI would not grow as Mr S had expected. Mr S had to raise this with Aviva many times before he received a response.
41. The position should have been apparent to Aviva when Mr S made a number of increased contributions throughout the life of the Plan.
42. By the time Mr S received the correct information from Aviva, he had handed in his notice to leave his employer.
43. Mr S has estimated that his financial loss is £10,873, which is the difference between the EFI value calculated by Aviva and the value equal to 14.13% (based on a contract term of 23 years and 11 months between 1994 and 2018) of the total bid value of the Plan, based on the EFI Table.

Summary of Aviva's position

44. An increase in contributions will generally reduce the EFI Factor. Although this appears counter-intuitive, it is because the EFI Factor applied is calculated according to the nature of individual premiums. If the premiums are increased, there is a smaller percentage of EFI overall to reimburse the relatively small charges levied on lower accumulation units beforehand. The same is true in reverse; if the premiums decrease then a bigger EFI factor needs to be added in order to fund the 1% charge 'promise' on higher premiums paid previously, so the EFI factor may rise.

45. Any change to the EFI factor should not affect the end result and the EFI factor is merely the mechanism by which eligible AMC's are reimbursed. A simplified hypothetical extreme example illustrates this:
- If, on the day before benefits are taken, there are £10,000 RP accumulation units in the fund and the EFI Factor is 1.1, this results in an EFI value of £1,000 ($=£10,000 * 10\%$).
 - If, on the day benefits are taken, an additional £10,000 RP accumulation units are purchased then the EFI Factor needs to halve to 1.05 to produce the same £1,000 EFI value ($=£20,000 * 5\%$).

This is correct because the additional units which were only just added should not receive additional EFI as no time has elapsed and no AMC incurred.

46. The EFI was designed to effectively reimburse the 1% AMC incurred on regular premiums. This is supplemented by an "Underpin" which was a supplementary guarantee designed to ensure that new or incremental business sold was broadly 'Stakeholder equivalent'. The Underpin is a manual check at retirement stage that the EFI 'boost' equates to no less than 4.3% of the value of in-scope funds. If necessary, a manual adjustment is applied to the funds payable. The Underpin only applies to new or incremental regular contributions made after 6 April 2001.
47. In addition, the post stakeholder increases in 2008 and 2015 should have been subject to the EFI with the claim values for those tranches manually checked and boosted if appropriate to ensure EFI was worth at least 4.3% of the fund generated by each increase. The final Transfer Value was calculated by an actuary so would have included this.
48. For the first two years after the increases in 1994 and 1997, premiums under these tranches purchased capital units which incurred an AMC of 4.3% before buying accumulation units thereafter at 1% AMC which would be included in the EFI Factor.
49. Aviva said that it explained to Mr S that the methodology behind the EFI Factor is to ensure the intended outcome that the EFI value reimburses the 1% AMC, and in the case of the post-2001 business, Stakeholder-equivalent terms.
50. Aviva agreed that it would have been helpful to have a caveat on the historical information issued about the EFI.

The Pensions Ombudsman's position on the provision of incorrect information

51. The basic principle for negligent misstatement (in the absence of any additional legal claim) is that a scheme is not bound to follow incorrect information, for example retirement quotes, transfer values or early retirement. A member is only entitled to receive the benefits provided for under the scheme rules, for example those based on correct information accurately reflecting the scheme rules.

52. Broadly, I will provide redress if it can be shown that financial loss or non-financial injustice has flowed from incorrect information given. For example, the member may have taken a decision in the expectation of receiving the higher benefits which they would not otherwise have done, such as retiring early. I will also consider whether it is more likely than not that a member relied on the incorrect information to their detriment and that it was reasonable for them to do so. An example of this is where the member had already decided to take early retirement before receiving the incorrect information. In this case it is unlikely that any claim for financial loss would be upheld on that basis alone.
53. The above paragraphs 51 and 52 sets out very generally the application of negligent misstatement. It is for guidance only; each case will turn on its own facts.

Comments following the Preliminary Decision

Mr S' further comments

54. Mr S did not agree that his complaint had changed as the Preliminary Decision conclusions had suggested.
55. Mr S submitted that the Opinion and Preliminary Decision had answered the wrong question, which ought to have been: "given the serious consequences of Aviva's admitted breaches of duty arising from the omissions in the information provided, [was] their offer of a payment for "inconvenience"... an adequate recompense[?]"
56. It was false that Mr S had acknowledged that the EFI had been calculated correctly. He said it was impossible for him to check or attempt to replicate Aviva's internal calculations. He went on to say it is impossible for TPO to confirm whether Aviva's calculations were correct or not.
57. The way the EFI Factor was calculated is not relevant.
58. Mr S explained his complaint was based on additional information that the EFI was never achievable because in the 1990s the first two years of premiums were used to purchase capital units.
59. He said that, assuming the calculations being carried out by Aviva were the same as originally carried out by Sun Life, both Aviva and Sun Life would have known the EFI was never achievable.
60. Aviva and Sun Life have failed him over 24 years to advise on the impact of the increased premiums, even when prompted.
61. Investors should be able to rely on information provided by companies about their products.
62. The guidance issued on the EFI remains incorrect and unclear.

63. He said Aviva made him an offer of £100 as compensation for inconvenience. He rejected this on the basis that it was inadequate because of the failings and breach of duty.
64. Mr S said his complaint was not one of loss of expectation, but the provision of misleading information at the outset of the Plan onwards, and the lack of information that was provided when he increased his premiums, on which he relied to his financial detriment.
65. Mr S said the Preliminary Decision failed to consider what are two separate issues, the purchase of capital units; and changing premiums. It ignored the fact that the purchase of capital units in early years meant that the figures in the EFI table were never achievable. For the EFI table to draw his attention to the issue of capital unit purchase in early years, it would have to needed to explain the actual EFI percentage benefit, and that it would be less than the figures in the EFI table. That the impact of increased premiums has never been described to policyholders but would have to be a combination of the effects of: (i) the premium increase; and (ii) if the premium increase were being used to purchase Capital Units.
66. Mr S highlighted the following statements in the EFI correspondence: “Extra Fund Injection is a feature of a selection of AXA Sun Life’s contracts” and “The value of the EFI depends upon the length of time the policy is in force i.e., the term of the contract”. Mr S believed these statements in the documentation meant that the EFI was a contractual term.
67. Mr S said that since the Preliminary Decision was issued, information has come to light following his Subject Access Request to Aviva. He said this information showed yet more occasions of Aviva providing incorrect information in relation to his complaint.
68. Mr S believes that the sale of the Plan to customers amounts to mis-selling within FCA Guidance.

Aviva’s further comments

69. Aviva did not make any further comments and it accepted the Preliminary Decision.

Conclusions

70. Aviva has stated that it is satisfied that it has calculated the value of the EFI correctly. Mr S has not disputed the calculation, but given the complexity of calculating the EFI Factor, he has said that he has no way of independently confirming that the EFI value has been calculated correctly. I agree with Mr S that it would not be possible for him to reproduce the figure reached by Aviva based on its explanation about how EFI works. Aviva also acknowledges the complexity of the underlying calculation.
71. In cases such as this, it is not my policy to challenge figures calculated by a provider unless there is evidence that, on the balance of probabilities, those figures are not correct. While there have been deficiencies in Aviva’s processes, including the basis

on which the calculation methodology has been historically communicated to Mr S, which I deal with below, there is no evidence that the EFI calculation itself is incorrect.

72. Mr S' original complaint submitted to TPO summarised his claim for financial loss as follows:

"The difference between my expectation of the EFI value and the figure quoted by Aviva as a component of a transfer value is approximately 4% of the bid value of units under the policy. The bid value advised to me by Aviva at 29th June 2018 was £252,459.45, so the financial loss is approximately £10000.

I believe Aviva should honour the expectation of an EFI Value as described in its published 'what is EFI worth' Table, and calculate it accordingly based on the full term of the contract/plan."

73. Mr S phrased his estimate of loss as being based on his expectation of the figures set out in the EFI Table and requested that Aviva should honour that expectation. I acknowledge that Mr S also submitted additional documents and information as part of his original complaint.
74. Following the Adjudicator's Opinion, Mr S has clarified that his complaint is not about a loss of expectation, but that the terms of how the EFI operated were not sufficiently explained in the documentation provided to him. He believes that, from the inception of the Plan, the value of the EFI would never achieve what was set out in the EFI Table because the calculation does not consider capital units, which were purchased in 1994 and in 1997 when he increased his premium payments.
75. Mr S has also emphasised that his complaint is that: "given the serious consequences of Aviva's admitted breaches of duty arising from the omissions in the information provided, [was] their offer of a payment for "inconvenience"... an adequate recompense[?]"
76. I can address Mr S' question here at the outset, the answer to which was also reflected in my directions in the Preliminary Decision. I consider that the offer of £100, increasing to £500, by Aviva was not adequate recompense. I find that Mr S has suffered serious distress and inconvenience for the reasons I have set out in paragraph 97 below.
77. However, Mr S has claimed financial loss, the measure of which is the difference between the EFI value applied to the Plan by Aviva and the projected value set out in the EFI Table. He estimates this to be £10,873.
78. There are two ways in which the projected EFI value set out in the EFI Table could potentially be binding upon Aviva. Firstly, if the EFI table could be viewed as a contractual term, and secondly, if the EFI table amounted to a non-contractual negligent misstatement. Mr S has argued that the EFI Table is a contractual term, so I will consider this first.

79. Aviva has acknowledged that the calculation to work out Mr S' EFI Factor is highly complicated. The EFI table did not draw Mr S' attention to the fact that capital units, rather than accumulation units, were purchased for the first two years of the Plan between 1994 and 1996, and from 1997 to 1999, would result in a lower EFI Factor and a lower value of the EFI, when expressed as a percentage of the overall fund. However, Aviva has stated that the EFI table is an illustration and was not a contractual term of the policy. The calculation of the EFI is correct, albeit based on factors that were not consistently made clear to Mr S. This resulted in the value of the EFI deviating from the illustration set out in the EFI table.

80. In the Friends Life leaflet, the relevant extracts of which are reproduced at Appendix 3, the EFI Table was provided with the following caveat:

"The table below shows the approximate increase in fund value at the Selected Retirement Date provided by EFI when level regular contributions are paid throughout the term up to the Selected Retirement Date."

81. Firstly, it is stated to be an "approximate" percentage value. Secondly, it states that the approximate increase is based upon "level regular contributions."

82. Mr S was provided with a technical guide supporting the Policy Document by Sun Life when the Plan was established, the relevant extracts of which are set out in Appendix 2. The EFI section states:

"Sun Life's unique Extra Fund Injection refunds, at your Selected Retirement Age, the accumulated Fund Management charge that had been deducted from regular contribution accumulation units then held."

The later section on Allocation Rates includes the statement:

"Capital units are normally allocated for the first two years of regular contributions, including any increases. Accumulation units are allocated to subsequent regular contributions, single contributions, all contributions made after your Selected Retirement Age and transfer values."

83. This explanation accords with section 2.5 of the Schedule to the Policy document:

"Capital Units of the Fund (or Funds) selected shall be allocated in respect of regular Premiums as indicated in the Schedule, otherwise Accumulation Units of the Fund (or Funds) selected shall be allocated in respect of all other regular Premiums and single Premiums."

84. Mr S clearly placed reliance on the projected figures set out in the EFI Table. However, I do not agree that the EFI Table is a standalone contractual term, or that it is reasonable for it to be interpreted in isolation. In the documents in which the EFI Table was presented to Mr S, the projected values in the EFI Table are stated to be approximate and based on regular, level contributions. Further, the Sun Life technical guide does refer to the allocation of capital units for the first two years of regular contributions, including any increases, and states that the EFI is only applied to

regular contribution accumulation units. So, I do not agree the EFI Table can form a standalone contractual term separate from the context in which it appears, on which Mr S can rely.

85. At a broader level, as set out in the Sun Life Policy Technical Guide, the stated purpose of the EFI was to:

“refund[s], at your Selected Retirement Age, the accumulated Fund Management charge that had been deducted from regular contributions accumulation units then held.”

86. I consider that it is clear from this statement that the EFI value is based upon both longevity of the contract but, crucially, also the amount of time each accumulation unit has been held and the level of AMC that has accrued over time. The longer a unit is held, the “higher” AMC needs to be refunded in respect of that unit. So, in a scenario where premiums increase, this will lower the EFI value (as a percentage of the total bid value), because there are (proportionally) more units in the Plan which have not been held for as long, and consequently have a “lower” AMC refund due. This accords with the purpose of the EFI, which was to refund the AMC in respect of level contributions, not to provide a terminal bonus based solely on the longevity and final bid value of the Plan.
87. So, I consider that the EFI Table is not a contractual term entitling Mr S to a fixed percentage value of the total bid value of the plan based solely on the length of time the Plan had been in force.
88. Turning to negligent misstatement, for a successful claim of negligent misstatement, Mr S would need to show that Aviva made an incorrect, unqualified statement, upon which he reasonably relied and which resulted in loss.
89. Looking firstly at whether the information in the EFI Table was incorrect, it is not possible to determine with any certainty whether the figures given in the EFI Table were, as Mr S puts it, never achievable. This is because Mr S increased his contributions in 1997, which resulted in the purchase of additional capital units between 1997 and 1999.
90. I acknowledge that the purchase of capital units at the outset in 1994 was not a decision made by Mr S, and would not have been avoidable. But it is not possible to establish with certainty whether, if the only Capital units that were purchased were those between 1994 and 1996, the figures in the EFI Table (as a percentage of a lower total bid value) would have been achievable.
91. Even if it could be established that the EFI Table figures were never achievable, and that the EFI Table did contain incorrect information, I consider that the EFI Table does not make an unqualified statement about the value of the EFI. It is consistently stated to be approximate or presented as an illustration of what EFI could be worth.

92. So, for the reasons set out in paragraphs 88-91 above, I do not consider that Mr S can successfully claim that the EFI Table amounts to a negligent misstatement.
93. For completeness, I have also considered Aviva's statements in 2008 and 2015 that increased premiums would not affect the EFI. I consider that these are unambiguous statements on which Mr S relied. However, Aviva have explained that Mr S' increased contributions in 2008 and 2015 did not result in any loss. The increased contributions did reduce the EFI Factor. But this did not affect the final monetary value of the EFI because a smaller percentage uplift was required to reimburse the earlier 1% AMCs levied on lower contributions. In addition, the post-Stakeholder increases in contributions in 2008 and 2015, are subject to the underpin guarantee, whereby those tranches were manually checked and boosted if appropriate to ensure EFI was worth at least 4.3% of the fund generated by each increase.
94. Although the EFI Table was not a contractual term or non-contractual negligent misstatement, it was reasonable for Mr S to proceed on the basis that the EFI table and explanatory literature provided an approximate guide. An undated Friends Life leaflet, reproduced in Appendix 3 below, set out the EFI Table and states:
- “EFI works by refunding (at the customers retirement/surrender date) up to 100% of the accumulated Fund Management Charges taken from Accumulation units that have been purchased by regular contributions”.
95. This does not specifically bring to the reader's attention the fact that capital units would not be included in that calculation or warn specifically that the purchase of capital units would significantly affect the EFI Factor.
96. An internal Aviva email, dated 6 March 2018, acknowledges that the purchase of more capital units effectively shortens the term by which the EFI Factor is calculated:
- “...although the policy started in April 1994, accumulation units were not purchased until April 1996 giving a term for the initial premium tranche of under 22 years.
- In June 1997 premiums increased from £200 to £400. Again, the increased premium element purchased capital units initially, and accumulation units were not accrued on this second tranche until June 1999, giving an EFI terms of under 19 years”.
- There was no explicit warning in the explanatory literature provided to Mr S throughout the term of the Plan about the effect of the capital units purchased in 1994 and in 1996 on the indicative percentage values set out in the EFI Table.
97. Although Mr S has not suffered a financial loss, he has suffered distress and inconvenience. Aviva failed to:
- 97.1. Explain clearly in the Plan literature that the value of the EFI would only relate to the AMC on Accumulation units and not on the Capital units purchased at the outset of the Plan between 1994 and 1996.

- 97.2. Draw to his attention that raising his premiums in 1997 would result in the further purchase of Capital units between 1997 and 1999.
- 97.3. To explain clearly that a rise in premiums might reduce the EFI Factor and the value of the EFI, when expressed as a percentage of the total bid value of the Plan.
- 97.4. Provide Mr S with the information he needed in a timely fashion.
98. Aviva initially offered £100, rising to £500, for in recognition of some of these failures, but this is insufficient. The failures set out above have caused Mr S serious distress and inconvenience and this warrants an award of £1,000.
99. Mr S requested that Aviva provide to TPO recordings of telephone calls which were disclosed to him as part of his Subject Access Request, but which had not been shared with TPO during the investigation.
100. I acknowledge that Mr S considers it dishonest for Aviva not to have disclosed this further evidence. For my investigation and findings, the additional evidence in those recordings does not have a material bearing on my decision, but it is of course deeply regrettable that Aviva did not disclose those recordings to Mr S. However, it is not in my jurisdiction to make a finding, or award compensation, in respect of any breach by Aviva of its duties under the Data Protection Act 2018 when complying with a Subject Access Request. Any such complaint would need to be made by Mr S to the Information Commissioner's Office.
101. In his response to the Preliminary Decision, Mr S has submitted that he believes the Plan to have been mis-sold by Aviva and its predecessors. Under Regulation 4(1) of The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996, it is not within my jurisdiction to investigate or determine this element of his complaint, and he would need to make a complaint to the Financial Ombudsman Service.
102. I appreciate that Mr S feels that it is necessary for an industry investigation to take place into Aviva's wider failings regarding the alleged mis-selling of the Policy to other customers. Under Part X of the Pension Schemes Act 1993, it is not in my jurisdiction to conduct a general investigation into Aviva's regulated activities under the Financial Services and Markets Act 2000. Mr S would need to raise any concerns he has with the Financial Ombudsman Service or the Financial Conduct Authority.

PO-24015

Directions

103. Within 28 days of the date of the Determination Aviva shall pay Mr S £1,000 for the serious distress and inconvenience he has suffered.

Anthony Arter CBE

Deputy Pensions Ombudsman

12 April 2023

Appendix 1

The EFI Table

Term	EFI
10	4%
15	7%
20	11%
25	15%

Appendix 2

Sun Life Policy Technical Guide – EFI section

EXTRA FUND INJECTION

The Sun Life Extra Fund Injection (EFI) is our latest innovation to reward the loyalty of our long-term regular investors. EFI works like this:-

In common with other Life Assurance companies, Sun Life's Unit-linked Funds have a Fund Management Charge. This is deducted on a daily basis and is reflected in the published unit prices.

Sun Life's unique Extra Fund Injection refunds, at your Selected Retirement Age, the accumulated Fund Management charge that had been deducted from regular contribution accumulation units then held. Furthermore full allowance will be given for the investment growth on these charges. At present the entitlement to EFI builds up as each contribution is paid and, provided contributions continue to be paid, once earned cannot be taken away.

For the With Profits Fund, Sun Life does not make a specific deduction equivalent to the Unit-linked Fund Management Charge. Nevertheless, for investment in the With Profits Fund, EFI will still apply in a similar way.

In simple terms, EFI will enhance the performance of your investment through a cash injection at your Selected Retirement Age. In addition, should you die before your Selected Retirement Age, EFI will still refund the accumulated Fund Management Charge on the regular contribution accumulation

units then held so long as all contributions have been paid up to the date of death.

ALLOCATION RATES

Your contributions are allocated to secure units at the offer price in your chosen Pension Fund or Funds according to the table below :-

Regular Contributions

ALLOCATION RATES FOR MONTHLY CONTRIBUTIONS

	Years to Selected Retirement Date	
	5 or more	
£25 – £49.99	98%	
£50 – £249.99	100%	
£250 – £499.99	101%	
£500 & over	102%	

ALLOCATION RATES FOR ANNUAL CONTRIBUTIONS

	Years to Selected Retirement Date	
	5 or more	
£250 – £499.99	100%	
£500 – £2499.99	102%	
£2500 – £4999.99	103%	
£5000 & over	104%	

Single Contributions

ALLOCATION RATES FOR INITIAL SINGLE CONTRIBUTIONS

	Years to Selected Retirement Date	
	5 – 9	10 or more
	£1000 – £1499	96%
£1500 – £2499	97%	99%
£2500 – £4999	98%	100%
£5000 & over	99%	101%

**ALLOCATION RATES
ADDITIONAL SINGLE
CONTRIBUTIONS**

	<i>Years to Selected Retirement Date</i>	
	<i>5 – 9</i>	<i>10 or more</i>
<i>£500 – £1499</i>	<i>96%</i>	<i>98%</i>
<i>£1500 – £2499</i>	<i>97%</i>	<i>99%</i>
<i>£2500 – £4999</i>	<i>98%</i>	<i>100%</i>
<i>£5000 & over</i>	<i>99%</i>	<i>101%</i>

For regular contributions, units will be allocated at the offer price on the Fund valuation date immediately preceding each contribution due date. For single contributions the valuation date immediately preceding the date the contribution is received at our Bristol Headquarters will be used. The right is also reserved to use this later valuation date for any regular contributions received after the contribution due date.

Capital units are normally allocated for the first two years of regular contributions, including any increases. Accumulation units are allocated to subsequent regular contributions, single contributions, all contributions made after your Selected Retirement Age and transfer values.

Appendix 3

Friends Life EFI Explanatory literature

Extra Fund Injection (EFI)

What is EFI?

EFI is a special loyalty bonus paid as a reward to our long-term customers for continuing to pay regular contributions into their policy.

How does EFI work?

In common with other Life Assurance companies, Friends Life imposes a Fund Management Charge on some of its older unit-linked contracts. This is currently 1% for Accumulation units and is reflected within the published daily unit prices.

EFI works by refunding (at the customers retirement/surrender date) up to 100% of the accumulated Fund Management Charges taken from Accumulation units that have been purchased by regular contributions. If contributions continue to be paid until 5 years (60 months) prior to the Selected Retirement Date, the charge is refunded in full.

Is EFI guaranteed?

The entitlement to EFI builds up as each contribution is paid, and once earned cannot be taken away as long as contributions continue to be paid to within 60 months of the Selected Retirement Date - although Friends Life does reserve the right to amend or vary future entitlements.

Does EFI apply to investment in the With Profits Fund?

For the With Profits Fund, Friends Life does not make a specific deduction equivalent to the Unit-linked Fund Management Charge. Nevertheless, for investment in the With Profit Fund, EFI will still apply in a similar way to our unit-linked contracts.

What happens if contributions are not continued up to the Selected Retirement Date?

Provided contributions are maintained to within 100 months of the Selected Retirement Date the EFI will apply and will be a proportion of the accumulated Fund Management Charge.

On transfer/early retirement within 100 months of the Selected Retirement Date, EFI will be credited at the rate of 2.5% per month (maximum 100%) as long as contributions have been continued up until the early retirement/surrender date; this means:-

- EFI benefits will be added if retirement is within 100 months of the Selected Retirement.
- Maximum EFI benefit will be added if retirement is within 5 years (60 months) of the Selected Retirement Date.

Maximum EFI benefit will be added on death before retirement so long as contributions have been paid up to the date of death.

What is it worth?

The table below shows the approximate increase in fund value at the Selected Retirement Date provided by EFI when level regular contributions are paid throughout the term up to the Selected Retirement Date.

Term	EFI
10	4%
15	7%
20	11%
25	15%