

Ombudsman's Determination

Applicant	Mrs L
Scheme	Friends Provident Annuity
Respondent	Friends Life

Outcome

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

Complaint summary

3. Mrs L's complaint is that she disagrees with the decision of Friends Life that she is not entitled to a spouse's pension under her late husband's annuity.

Background information, including submissions from the parties

4. On 11 January 2010, as part of the lead up to his retirement, Friends Life provided Mr L with a letter that explained some of the retirement options available to him. It gave some basic details of the standard annuity illustration it would issue which would be based on a monthly payment and guaranteed for five years without an annual increase. There is no mention of a spousal pension.
5. On 10 June 2010, Friends Life issued a retirement pack to Mr L. In this was:
 - a Lifetime Annuity payment form (this included at the top that it was a non-protected rights policy);
 - a pension fund illustration (based on the standard illustration mentioned in the letter to Mr L in January 2010. This also referred to the policy as being a non-protected rights policy and no reference was made to a spousal pension);
 - an open market option form; and
 - an alternative illustration form.
6. The alternative illustration form said:

“Do you want us to provide a pension for your husband, wife or civil partner after your death?”

You have protected rights benefits.

If you are married or in a registered civil partnership, by law we must provide a pension for your husband, wife or civil partner after your death of half (50%) of your pension.

...

Do you want to provide a pension for your husband, wife or civil partner after your death?

Yes

No

If yes, what proportion of your own pension should it be?

Half (50%)

Two thirds (66.67%)

Full (100%)”

7. The standard illustration set out two options. Option one was for a pension only of £1,134.48 per annum (before tax) or option two provided a tax free lump sum of £4,611.26 and an annual pension of £848.40 (before tax). This was based on an estimate of the value of the fund as at 5 August 2010.
8. On 30 June 2010, Mr L submitted the relevant forms for the standard annuity with the lump sum and pension option selected and these were received by Friends Life on 5 July 2010. Following this, Friends Life say it sent Mr L paperwork on 6 August 2010 to confirm the benefits that will be paid.
9. Mr L passed away in 2014. As the annuity was guaranteed for five years, Friends Life informed Mrs L that they would continue to pay the monthly annuity (£70.70) until the end of the five years, being 5 August 2015.
10. Following this, Mrs L raised a complaint with Friends Life as to why she was not receiving a spousal pension. She argued that the information provided by Friends Life was misleading, in that it made reference to both protected and non-protected rights. Friends Life did not uphold her complaint and in response said:

“I have checked all his [Mr L’s] policy records. I am afraid I cannot find any trace of us receiving the form, or any other request for a 50% spouse’s pension to be included in his pension annuity. I also cannot find any evidence that we sent him a quote for such a pension. The only forms we received from Mr L were the annuity claim forms. He had ticked Option 1B as the annuity he wanted. This meant he wanted the annuity set up as payable monthly, in arrears, with a 5 year guarantee period, and without a provision for a spouse’s pension... His instructions were clear, and we had no reason to doubt them.

...

I appreciate your view about the wording on the form about the protected rights benefits. I agree it says "You have protected rights benefits". However, the annuity claim forms also said correctly that Mr L's policy ... was a non-protected rights policy. Therefore, the protected rights wording could never have applied to him. The retirement packs and forms are designed to cover both types of policies, and we believe it did do this effectively, and did not need updating before it was issued."

11. Mrs L remained unhappy with this response, so she sought advice from the Pensions Advisory Service before making a complaint to this service.

Adjudicator's opinion

12. Mrs L's complaint was considered by one of our Adjudicators who concluded that no further action was required by Friends Life. The Adjudicator's findings are summarised briefly below.

- The only form that Mr L was issued with that mentioned spousal benefits was the alternative illustration form. It was the Adjudicator's view that if it had been returned to Friends Life it would have been likely that Mr L would have been issued with a new illustration, regardless of whether the policy had protected or non-protected rights.
- There was no evidence submitted that showed Mr L was not receiving the type of annuity he had purchased or that he questioned the annuity payments he was receiving.
- Mr L had signed the payment form for a single life annuity with a five year guarantee despite the fact that the information relating to the payment of the annuity made no mention of a spousal pension.

13. Mrs L was unhappy with this and in response said:

"I still feel the information provided was misleading as it indicated legislation overrode the spouses [sic] pension rights. Friends Life failed to change their literature which gave misleading information in black and white."

14. Mrs L did not accept the Adjudicator's opinion and the complaint was passed to me to consider. Mrs L has provided her further comments which do not change the outcome. I agree with the Adjudicator's opinion, summarised above, and I will therefore only respond to the key points made by Mrs L for completeness.

Ombudsman's decision

15. Mrs L's argument is that legislation overrides a spouses pension rights and therefore the alternative illustration form is misleading. However, I do not agree that the form is misleading, only that Mrs L has misread it.

16. In relation to providing a spousal benefit of 50% on the death of the member, this only applies to policies that had protected rights benefits. The information Mr L was sent gave details of his benefits and his options, and clearly stated that he had a non-protected rights policy. Therefore this part of the alternative illustration form did not apply to him. However, the next question does ask **“Do you want to provide a pension for your husband, wife or civil partner after your death?”** and then asks the member how much they wish to provide as a spousal benefit. This implies that they do not have to provide a spousal pension of 50% and the member can nominate an amount. This is the section that would have related to Mr L, not the section in relation to protected rights.
17. No evidence has been presented to show that Mr L returned the alternative illustration form and this is supported by the fact that Friends Life paid a single life annuity with a five year guaranteed. There is also no evidence presented that shows Mr L questioned why he did not receive an alternative illustration or why the annuity he received had not been adjusted to take account of a spousal pension.
18. Regardless of this, the alternative illustration form does not provide any legal or general requirement on Friends Life to pay Mrs L a spousal pension. It is merely a form that Friends Life have issued to allow members to request an illustration of alternative pension benefits. According to Friends Life and the other retirement information Mr L was provided with, he did not have a protected rights policy and therefore there was no legal requirement to pay Mrs L a spousal pension of 50% following his death.
19. Friends Life have acted on Mr L’s instructions and, while I empathise with the position Mrs L is in, she is not entitled to a spousal pension from the Plan.
20. Therefore, I do not uphold Mrs L’s complaint.

Anthony Arter

Pensions Ombudsman
21 June 2017