

## Ombudsman's Determination

Applicant	Mrs E
Scheme	Friends Life Retirement and Death Benefits Scheme ( <b>the Scheme</b> )
Respondents	Friends Life

## Outcome

1. I partially uphold Mrs E's complaint and direct Friends Life to pay her £500 in respect of the significant distress and inconvenience she has suffered.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs E is unhappy because for a number of years Friends Life provided her late husband (**Mr E**) with incorrect figures of her spouse's pension. In particular, he was repeatedly told the spouse's pension would be higher than it is. Mrs E states Mr E relied on this information during his estate planning, and that had he known the correct figures, he would have made additional provision for her.

## Background information, including submissions from the parties

4. In 2003, Friends Life sent Mr E a statement regarding his pension benefits. This stated that, upon his death, Mrs E would receive a spouse's pension equivalent to 82% of his income under the Scheme.
5. In 2006 and 2010, Friends Life sent further benefit statements. These statements did not say what percentage of Mr E's pension income Mrs E would receive upon his death; however, they provided figures for the widow's pension which matched a rate of approximately 82%. The 2006 letter also stated that the spouse's income would increase by 5% annually, and it confirmed that the income would not form part of Mr E's estate.

6. On 23 June 2015, shortly after Mr E passed away, Friends Life confirmed that the figures provided for the spouse's income had been incorrect. In particular, instead of receiving £69,768.10 a year, Friends Life said Mrs E is only entitled to £39,806.48. Initially, Friends Life did not state what percentage of Mr E's income under the Scheme this was. However, it indicated that the spouse's income had been calculated based on Mrs E being only 10 years younger than Mr E, whereas in fact she was almost 20 years younger.
7. Friends Life has confirmed that Mr E provided the correct date of birth for Mrs E, and that it was therefore Friends Life who made the error. However, it corrected the error before the spouse's pension commenced, and it argues that Mrs E can only be paid what she is entitled to under the Scheme.
8. Mrs E has argued that she has suffered a loss as a result of Friends Life's error. In particular, she has provided evidence that Mr E used the information provided by Friends Life during his estate planning. For example, she has sent a copy of their pre-nuptial agreement, where the spouse's income is referred to and the figure from the 2003 benefits statement is specifically included.
9. Mrs E has also provided a copy of Mr E's Will. However, this does not refer to the overall income Mr E would like Mrs E to receive upon his death, or what he would like to happen in the event that the figures provided for the spouse's pension were incorrect.
10. Mrs E has provided a copy of a letter from Mr E to his daughters dated 24 November 2014, as further evidence of his intentions for her. In this letter, Mr E asked his daughters to provide an interest-free loan to Mrs E, to help her acquire a suitable home following his death if the funds in his estate did not meet a certain value. However, he confirmed that this letter was not meant to impose a legal obligation on his daughters. Nonetheless, Mrs E believes this is one piece of evidence that shows Mr E wanted her to maintain a certain lifestyle and wanted to make provision for her to do so.
11. Mrs E has also highlighted that Friends Life has never confirmed how the spouse's income has been re-calculated, despite her requests for it to do this.
12. When the complaint was escalated to our Office, Friends Life highlighted rule 6 (1)(b) of the Scheme, which states the rate used to calculate a spouse's pension may be set by its own Life Office. It confirmed that all spouse's pensions are calculated using an initial figure of approximately 82% of the member's income. However, where there is an age gap of more than ten years between the member and the spouse, this is further reduced on a sliding scale.

13. Friends Life has said the correct reductions that should have been applied to Mr E's pension were 82% then a further 57.1%. The secondary percentage was obtained by dividing the annuity rate at the time for Mrs E's notional age (the age she would have been, if she had been only ten years younger than Mr E) by the annuity rate based upon her actual age at the date of Mr E's death.
14. Friends Life confirmed that Mr E's pension income at the date of his death was £85,995.87. It was therefore initially reduced to £69,768.10 (or approximately 82%), then reduced by a further 57.1%, leaving £39,806.48.
15. Finally, Friends Life has stated that the historic benefit statements Mr E received were incorrect, as they did not take into account the further reduction for age gaps over ten years. Instead, they applied a flat rate of 82%, which is why the figures were incorrect. This is despite the fact that the 2003 statement referred to Mrs E being approximately 20 years younger than Mr E.
16. Mrs E has stated that other pension schemes provide the same level of pension regardless of whether there is a 10 or 20 year age gap between the scheme member and their spouse.
17. She has also argued that there is clear evidence Friends Life has done something wrong, and that her husband had the means to make different provision for her had he known it was necessary. She therefore feels there is sufficient evidence to uphold her complaint.

### **Adjudicator's Opinion**

18. Mrs E'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:-
  - Friends Life has evidenced that it has the discretion to reduce a spouse's pension by a certain rate and that it can choose what this rate is.
  - Friends Life has made an error though, and provided Mr E with several incorrect benefit statements. In particular, the way it calculated Mrs E's spouse's pension was inconsistent with its normal rates.
  - However, Mrs E has not been able to provide sufficient evidence to show whether Mr E would have made alternative provision, and exactly what he would have done differently. Friends Life also corrected the error before Mrs E began to receive her spouse's pension. Therefore, the Adjudicator could not say that Mrs E had suffered a loss as a result of Friends Life's error.

19. Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs E 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 E for completeness.
20. Since the complaint has been referred to me, Friends Life have offered Mrs E £500 compensation. This is in acknowledgement of the fact that, whilst she cannot show what Mr E would have done anything differently had it not committed maladministration, her inability to find out or evidence this will have caused her considerable distress.

### **Ombudsman's decision**

21. I sympathise with Mrs E, as Friends Life has clearly made an error and consistently provided her late husband with inaccurate information. I also acknowledge that Mrs E's husband would have used the information provided by Friends Life to carry out his estate planning, and the evidence appears to support this.
22. However, I do not believe it would be fair to uphold Mrs E's complaint, without some proof that her husband would have acted differently. There is no evidence of his specific intentions for her. In particular, there is nothing to show what level of income he wanted her to have, or what action he would have taken to ensure she received this.
23. Whilst there has clearly been maladministration, there is insufficient evidence of whether and how Mr E would have arranged his finances differently, had he known the spouse's income would be lower.
24. I do understand that it is not possible for Mrs E to evidence what Mr E's intentions would have been, had he known of the maladministration. However, as he never expressed his intent as to what should happen if Mrs E's spouse's pension was to be less, there is insufficient evidence for me to instruct Friends Life to pay Mrs E the higher income.
25. However, notwithstanding the above, I consider that it may have been possible that Mr E would have acted differently, had he known of the error before he passed away. It is extremely unfortunate that, by the time Friends Life corrected its error, it was too late for anything to be done and Mrs E has undoubtedly suffered significant stress from being unable to prove whether Mr E would have made different arrangements.
26. Therefore, I uphold Mrs E's complaint in part. Friends Life has offered £500 in respect of the distress caused through its maladministration, and I believe this to be a reasonable sum in the circumstances.

**PO-10904**

**Directions**

27. I direct Friends Life to pay Mrs E £500 in respect of the significant distress and inconvenience she has suffered, within 28 days of the date of this Determination.

**Anthony Arter**

Pensions Ombudsman  
16 May 2017