

Ombudsman's Determination

Applicant	Mr N
Scheme	Friends Life SIPP (the SIPP)
Respondent	Friends Life

Outcome

1. Mr N's complaint is upheld and to put matters right Friends Life should pay to his drawdown fund a sum representing the difference between the investment return that would have accrued had it completed the transfer in a timely manner and the investment return that has actually been achieved. Friends Life should also provide Mr N with a refund of the portion of the final annual administration fee that has not already been reimbursed.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N's complaint is that Friends Life delayed unreasonably in providing an accurate valuation of his fund, which prolonged the transfer of his pension benefits and meant that he entered into flexi-access drawdown later than would otherwise have been the case.

Background information, including submissions from the parties

4. Mr N took out the SIPP, which was administered by Friends Life, on 6 October 2005.
5. Mr N sold the last remaining SIPP asset, which was a property holding, on 1 July 2014. Friends Life's appointed Solicitor provided it with a completion statement, disclosing that a VAT payment of £41,300 was due to HM Revenue & Customs (**HMRC**) with respect to the property sale. At this point, the SIPP became a cash only account.
6. Mr N emailed Friends Life on 2 July 2014 to ask for a benefits statement to enable him to convert his pension savings into an income. The email said:

‘following the sale of [the property] are you in a position yet to value my fund in order to convert to a pension income. If so, could you please provide me with a valuation and information as to what pension options you could offer’.

7. He emailed Friends Life again on 15 and 17 July 2014 to complain that he had not received the quotation, reiterating that he was waiting to access his pension fund.
8. On 18 July 2014, Friends Life responded to the 15 July email, with what it described as an unreconciled valuation for the plan. This showed a transfer value of £207,892.50 as at 16 July 2014. It said it reflected the asset details held on the system; may not be fully representative of all assets held; may not, for example, reflect recent or otherwise unprocessed transactions, current cash balances, or currently outstanding dividend or tax information; is not intended to be used for the calculation of, for example, commission, claims or income drawdown payments, for which specific valuations are required; and is not intended to be used as a basis for investment or other decisions.
9. On 25 July 2017 Friends Life responded to Mr N’s email of 17 July 2014 telling him that his reconciled plan valuation was completed on 22 July 2014, 15 working days after he had made his request. It said a copy was enclosed for his information. The enclosed copy statements showed a total fund value of £152,166.76 as at 1 July 2014. Friends Life went on to accept that the only asset held within the SIPP was cash and as such, it should have been able to provide him with the information sooner. The letter continued:

‘I have spoken to the property department today who has confirmed that the balance held within the property account, WTR0017 as at 25 July is £141,940.25’ [sic]. Friends Life also apologised for the delay in issuing the valuation.

10. On 18 August 2014 Friends Life acknowledged Leodis as Mr N’s newly appointed financial adviser and responded to their request for information about the plan. It provided answers to a list of questions, in the course of which it said ‘for a current fund value, please refer to the enclosed portfolio valuation as at 1st July 2014’. It gave information about how it would calculate a transfer value. It says it also enclosed an illustration showing projected benefits at age 75 with no future contributions.
11. It also provided a transfers guide which stated:-

“Timescales.

How you decide to transfer and the assets you hold will affect the time taken. Common timescales to receive all necessary documents and finally transfer are:

Cash transfer = 2 to 4 weeks

Equities transfer = 2 to 4 weeks

PO-12372

Unit Trusts transfer = 2 to 4 weeks

Trustee Investment Plans = 6 to 8 weeks

Property transfers *can* take longer due to insurance and VAT”.

12. On 22 August 2014 Leodis emailed Mr N to tell him that Friends Life had said that the transfer could not be completed until it had paid the VAT due on the property sale to HMRC.
13. Mr N emailed Leodis on 3 September, 30 October and 20 November 2014 to enquire about whether Friends Life had finalised the VAT payment and provided a transfer value.
14. Friends Life paid the VAT which was due on the sale of the property to HMRC on 27 October 2014.
15. On 20 November 2014, Leodis emailed Mr N telling him they were still waiting for the final balance from Friends Life so that they could prepare their advice report.
16. On 27 November 2014 Leodis acknowledged receipt of a statement from Friends Life showing £167,369. They wrote to Mr N; ‘it appears they have concluded the VAT as we received a statement this morning.’
17. On 3 December 2014 Mr N emailed Friends Life again;

‘Can you please let me have a final and definitive valuation of the total fund I have available in my pension so that I can search for the best Annuity rate’.
18. On 5 December 2014 Friends Life replied, telling Mr N they had raised a reconciled valuation request and attaching another unreconciled valuation as at 4 December 2014. This showed a Total fund value of £167,369.47.
19. On 17 December 2014 Friends Life emailed Leodis acknowledging Mr N’s intention to transfer and asking for completion of enclosed discharge forms. Leodis returned the forms the same day and Friends Life finalised the transfer process on 26 January 2015. Mr N entered into income drawdown in February 2015.
20. On 28 January 2015 Mr N wrote to Friends Life to complain that it took it several months to pay the VAT that was due to HMRC following the property sale, which delayed the transfer. He suggested that, if Friends Life had paid the VAT and finalised the transfer in August 2014, he could have reinvested the money earlier and received more investment growth.
21. Mr N also complained that Friends Life took the annual SIPP administration fee of £790 from his SIPP account on 6 October 2014, even though the property sale was finalised in July 2014. He submitted that, had Friends Life paid the VAT sooner, the transfer could have been done before 6 October 2014 and as such, the annual administration fee would not have become payable.

22. On 25 February 2015 Friends Life responded explaining that the amount transferred to his new provider was £167,470.90 as opposed to the first valuation of £207,892.50 sent on 15 July 2014, which included the VAT payment of £41,300. It said VAT payments are processed on a quarterly basis and noting that the property holding was sold on 1 July 2014, which meant the sale fell into the third quarter of the year. All VAT payments for July, August and September 2014 were paid to HMRC at the end of October 2014. Since the SIPP anniversary date was 6 October 2014, the annual administration fee became payable. Friends Life observed that the SIPP remained active until 26 January 2015, which was 115 days after the SIPP anniversary date. It provided Mr N with a pro-rata refund of £541 for the period between 26 January and 6 October 2015, when the SIPP was inoperative.
23. On 29 December 2016, Mr N forwarded a report by Leodis estimating the investment return on funds which they consider could have achieved if Friends Life had forwarded funds on 7 August rather than when they actually did so. This showed a return of 4.63% over the period.

Adjudicator's Opinion

24. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by Friends Life. The Adjudicator's findings are summarised briefly below:
- The transfers guide which Friends Life sent to Leodis on 18 August 2014 mentioned that a cash transfer would typically take between two to four weeks to process, and that property transfers could take longer. Nevertheless, the guide did not provide any further clarification with regard to the additional time a transfer could take to complete where the sale of a property was involved.
 - During the course of the Adjudicator's investigation, Friends Life had said it had waited until the end of the third quarter to pay the VAT due on the sale of the property holding to HMRC because doing so earlier would have required the services of a tax specialist. The Adjudicator did not consider this to be a satisfactory explanation and took the view that it was not reasonable in the circumstances for Friends Life to wait until the end of October 2014 to pay the applicable VAT to HMRC.
 - With reference to the two to four week timeframe for completing cash transfers referred to in Friends Life's transfer guide, the Adjudicator found that Friends Life could reasonably have finalised the transfer by early August 2014.
 - Since Leodis had provided evidence that Mr N had lost out on investment return as a result of Friends Life's delays, the Adjudicator concluded that he had suffered a financial loss.
25. Friends Life did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

26. Friends Life also provided its 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 Friends Life for completeness. In summary, these are:

- Friends Life had seen no evidence of the request made on 2 July 2014. The earliest date Mr N gave Friends Life any indication that he intended to start drawing an income from his pension savings was when he emailed it on 3 December 2014 asking for a final and definitive valuation so that he could search for the best annuity rates.
- Mr N appointed Leodis in August 2014, Friends Life responded to their requests for further information at that time, which included current values and an illustration showing projected benefits to age 75 with no further contributions, suggesting that at this point, he had not made a firm decision to start taking a retirement income.
- The transfer guide stated that property transfers can take longer than two to four weeks to process and they are unclear why the Adjudicator concluded it was reasonable to expect the transfer to have been finalised within this timeframe as Mr N had not made any definitive decisions at that time.
- Friends Life could not have paid the VAT which was due to HMRC until the end of October 2014 because doing so would have required the services of a tax specialist.
- They did not accept that there is evidence to warrant calculation of redress based upon an assumed earlier date of transfer in early August 2014.

27. Mr N also provided further comments, submitting that:

28. Friends Life had already acknowledged his email request of 2 July 2014.

- He knew from the outset there was never a chance of taking out an annuity with Friends Life.
- The appointment of Leodis in August 2014 was not significant because he was considering a number of different advisers at that time and could not talk sensibly to an adviser until Friends Life had issued a final valuation. He could not make any firm decisions to transfer or enter drawdown until he knew what amount he had available.
- He did not consider moving his fund out of cash while it was still with Friends Life because he expected to empty the SIPP in the very near future.
- It should have been obvious to Friends Life what he was trying to achieve when he emailed them on 2 July; in his view they had some obligation to guide and advise him about the procedures to draw a pension. Instead he got numerous generic

reports and example annuities based on varying inaccurate and spurious valuations upon which he could not rely to base an instruction to them.

- It soon became obvious that he had to seek the help of an FA towards the end of July 2014 and between them they ‘battled’ to obtain a transfer value.
- He did not ask for transfer of funds any earlier because Friends Life said they would not give an accurate figure until they had paid the VAT and that was only confirmed as done on 27 November 2014. That was the earliest point at which Mr N believed he had an accurate figure.
- He provided evidence that he had in fact invested the transferred funds in the Minerva SIPP, consistent with the approach recommended by Leodis Wealth.

Ombudsman’s decision

29. I find that Friends Life unreasonably delayed providing Mr N with the information which he needed to make decisions about how to draw an income from his fund, which was maladministration.
30. The email which Mr N sent to Friends Life on 2 July 2014 was a clear statement of his wish to convert his fund into a retirement income. Friends Life have acknowledged this email in the course of prior correspondence. I do not agree that they have seen no evidence of this request.
31. Moreover, in his email of 17 July 2014 to Friends Life, in which he chased the benefits quotation, Mr N noted that the sale of the property was agreed on 5 February 2014 but not completed until 1 July 2014. He added, “I have been waiting more than five months to access my pension fund”. In light of this, I do not agree with Friends Life that Mr N did not give any indication that he wanted to begin taking an income from his pension savings until 3 December 2014. Mr N told Friends Life that he was planning to start drawing his pension benefits in his email of 2 July 2014, and he reiterated this fact in his email of 17 July 2014.
32. I am satisfied that the valuation information sent to Mr N directly and via Leodis was inadequate for Mr N’s stated purpose. The warnings which came with the unreconciled quotations clearly told him not to base the kind of decisions he needed to make on the information provided. Friends Life then told Leodis they could not confirm the fund value until the VAT was actually paid. Therefore I do not see how Mr N could have been expected to request a transfer any earlier than he did. In any event, given their response to the request for valuation, I conclude there was no reasonable prospect of Friends Life releasing the funds until they had paid the VAT.
33. I do not accept Friends Life’s explanation that the delay was justified by the need to pay the VAT. The current administrator accepts that in similar circumstances it would

withhold the VAT until HMRC demanded it but would not hold up access to the fund. I can see no good reason why Friends Life could not have issued a reconciled valuation on 3 July 2014, the day after Mr N requested the information he needed to make his decisions. By then Friends Life had received the Solicitor's completion statement, disclosing the VAT amount due; the fund was all in cash and all that was required was the arithmetic to subtract the VAT amount.

34. In addition, I note that in its letter to Mr N dated 25 July 2014, Friends Life accepted that the only asset held within the SIPP was cash and that as such, it should have been able to provide him with a benefits quotation sooner. As the property sale was completed before Mr N requested the transfer I find that the relevant service standard for transfer was that for a cash transfer, ie two to four weeks.
35. Friends Life point out that Mr N appointed Leodis in August 2014 and suggest that at this point, he had not made a firm decision to start drawing a retirement income. I have already found that Mr N made it clear in his emails of 2 and 17 July 2014 that he required a benefits quotation because he wanted to start taking a retirement income. It is apparent from Friends Life's 18 August 2014 reply to Mr N, from Leodis' communication to Mr N in November, and from the email which Mr N sent on 3 December 2014 that when seeking the final valuation figure he was still undecided as between annuitisation and drawdown, but I am satisfied that he had a settled intention to draw on the Friends Life fund to create a retirement income in some form. I find that Friends Life's delay prevented him from putting that intention into action and if they had acted promptly he would probably have made his decision to transfer and enter drawdown much earlier.
36. Turning to Friends Life's argument that there is no evidence to warrant calculation of redress based upon an assumed earlier date of transfer in early August 2014. I have already found that Friends Life should have been able to provide a valuation on 3 July 2014. I have considered when the transfer would probably have completed if a reliable valuation had been issued at that date. Friends Life's records do not evidence any reconciled valuation sent in response to Mr N's request of 3 December. It appears that Mr N and Leodis in fact relied on the valuation sent on 5 December 2014 when taking the decision to request the transfer. Transfer forms were completed and the transfer was made by 26 January 2015, a period of 37 working days which spanned Christmas and New Year. I therefore conclude that had the valuation been sent by 3 July 2014, the transfer would probably have concluded no later than 15 August 2014. Mr N has produced a bank statement showing funds were invested in accordance with the advice provided by Leodis five days after they were received into the Minerva SIPP. I therefore conclude that but for the delay the same investment would probably have taken place no later than 20 August 2014. I accept Mr N's explanation that he left the money in cash because he expected to access it imminently and consequently do not consider that he should be considered responsible for any of the lost investment return. On the above timeline, the Friends Life fund would have been closed before the next annual management charge fell

PO-12372

due and I therefore conclude that Mr N has suffered further financial loss to the extent of that charge.

37. Therefore, I uphold Mr N's complaint.

Directions

38. To put matters right, I direct that within 21 days of Mr N providing the relevant fund performance data to Friends Life, it shall pay to Mr N's Minerva SIPP a sum representing the difference between the investment return that would have accrued had it completed the transfer on 20 August 2014 and the investment return that has actually been achieved on the funds..

39. I direct Friends Life to provide Mr N with a refund of the portion of the annual administration fee that has not already been reimbursed within 21 days of the date of this Determination.

Karen Johnston

Deputy Pensions Ombudsman
18 September 2017