

Ombudsman's Determination

Applicant	Mrs R
Scheme	Friends Life New Generation Personal Pension Plan (the Plan)
Respondent	Friends Life

Outcome

1. I do not uphold Mrs R'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 R has complained that she received a number of incorrect statements from Friends Life in relation to her benefit entitlement under the Plan.
4. She has stated that, based on the amounts shown on these statements, she decided not to make contributions to the Plan during two periods of maternity leave in 2013 and 2015.

Background information, including submissions from the parties

5. In January 2012, Mrs R was employed by the BBC, and subsequently enrolled in the Plan. Mrs R made regular monthly contributions until September 2013.
6. On 20 September 2013, Mrs R went on maternity leave. She subsequently ceased paying pension contributions, and opted out of the Plan from November 2013.
7. On 11 December 2013, Mrs R received her first pension statement from Friends Life. This statement showed an approximate pension value of £20,036. This value appeared to increase consistently in future statements that followed.
8. On 19 September 2014, Mrs R completed her maternity leave and returned to work. However, she did not opt back into the Plan, or resume pension payments. Mrs R's annual statement received in December 2014 showed a pension value of £22,045.
9. On 19 August 2015, Mrs R began a second period of maternity leave, returning to work on 18 August 2016. In December 2015 she received an annual statement valuing her pension at £23,182.

10. Mrs R again did not opt back into the Plan after returning from maternity leave in 2016, and has not done so to date based on the strength of the statements received.
11. In December 2016, Mrs R received her annual statement from Friends Life, which showed her pension to be valued at £16,246. Mrs R telephoned Friends Life to query this, and was told there had been a mistake in the calculations for the 2015 statement. There was no mention of the previous statements at this stage. Friends Life apologised, and confirmed the value shown in the 2016 statement was correct.
12. On 9 January 2017, Mrs R emailed Friends Life to raise a complaint about the 'incorrect' statement received in December 2015. She argued that such a significant error should not have occurred, and that she now found herself approximately £7,000 worse off through no fault of her own. Mrs R requested an explanation, and appropriate compensation.
13. On 11 January 2017, Friends Life responded to Mrs R's complaint. It stated that there had been an error in the manual calculation of her 2015 statement, and apologised for this. Friends Life made an offer of £100 compensation for the inconvenience caused, but confirmed it was unable to compensate Mrs R for the difference between the two statements. Friends Life informed Mrs R she was still able to make contributions for the 2016/17 tax year, until 5 April 2017, and she may be eligible to carry forward unused allowance from previous tax years to enhance her pension.
14. On 12 January 2017, Mrs R emailed Friends Life stating that the compensation offered was not satisfactory, given that the difference in the 2015 and 2016 statements had resulted in direct ramifications on her financial planning.
15. On the same day, Mrs R brought her complaint to this office. She confirmed that, following her initial complaint to Friends Life, she had reviewed statements provided by it since December 2013, which all showed a figure of c. £20,000. Mrs R confirmed she did not consider the £100 compensation acceptable as she had based her decision to stop pension payments during her two maternity leave periods on the basis of the information received from Friends Life.
16. Immediately after contacting this office, Mrs R sent a further email to Friends Life, informing it of the statements dating back to December 2013, all communicating a value of c. £20,000.
17. As part of the Adjudicators' investigation, Friends Life was provided with a copy of all statements provided to Mrs R since 2013. Friends Life had not been made aware there were several statements communicating a similar fund value, until after Mrs R had contacted this office. It concluded that Mrs R had been misinformed on a number of occasions, and increased its offer of compensation to £500.

Adjudicator's Opinion

18. Mrs R'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 committed maladministration in sending incorrect pension statements on a number of occasions, however, it cannot be agreed that this maladministration resulted in Mrs R making an ill-informed decision, as her decision to opt out of the Plan was confirmed prior to her receiving any incorrect statements from Friends Life. Other factors, such as financial strain whilst on maternity leave were likely factors in Mrs R's decision.
 - As Mrs R has not suffered an actual financial loss, rather, a loss of expectation. Friends Life cannot be directed to pay benefits to which a member is not legally entitled.
 - The figures shown in Mrs R's annual statements were only estimates, and were not guaranteed. It is therefore likely that Mrs R's decision to opt out of the Plan was based on her financial circumstances at the time, not her expectations of the fund value payable on retirement.
 - Mrs R did not re-join the Plan after either period of maternity leave, and has not re-joined to date. It would be expected that she would re-join the Plan after discovering the error, to attempt to mitigate her claimed loss. Further, Mrs R still has a significant amount of time in which to recommence payments into her pension, to increase the value, so it is still possible to mitigate her claimed loss.
19. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Upon review of the case Friends Life was asked to provide further information. After a more in depth investigation, Friends Life informed the Adjudicator that a refund request had been made in respect of Mrs R's employer contributions, which appeared to account for the difference between the 2015 and 2016 fund values. Mrs R confirmed her employer did not make her aware of any claim for a refund. Upon Friends Life's request, Mrs R gave her consent for it to contact her employer directly to investigate the matter further. This point remains under investigation by Friends Life.
20. However, I do not consider that this further investigation need delay my making a finding on the original complaint.

Ombudsman's decision

21. The starting point in cases where incorrect valuation statements have been provided is that the individual is entitled to the correct value, not to any overstated value which may have been provided. The exception to this principle is where someone can show that they have incurred financial loss as a result of reliance on an incorrect statement made to them, and that reliance was reasonable.
22. In a scenario such as this, Mrs R would never have been entitled to any misstated fund value and could not be considered to have suffered direct financial loss as a result of not having it. Even where Mrs R did have an entitlement to a matching employer contribution, by opting out she lost her right to it. Mrs R has agreed that her initial decision to opt out of the Plan was not explicitly based on the December 2013 statement, and I have seen no evidence that she relied specifically on the statements when deciding not to maintain her membership of the scheme. I think the more likely explanation is that her reduced income led her to opt out and remain opted out.
23. Since the case was referred to me for review, Friends Life has further investigated the circumstances regarding the reduction in Mrs R's fund value, and it has transpired that a refund of contributions, amounting to almost £7,000, was claimed by Mrs R's employer in 2016. It has been confirmed that all of the statements provided to Mrs R from 2013, have been correct, and the reason for the reduction in her stated fund value in 2016 was as a result of this refund claim.
24. Mrs R has stated that she was not made aware of this refund claim by her employer, and Friends Life has obtained her consent to investigate this matter further. I understand that this investigation is ongoing. I am unable to comment on the issues which this investigation may uncover, as this was not the complaint that was accepted for investigation, nor is Mrs R's employer a named party to the current complaint. I therefore conclude that the best way of resolving the issue between the parties to this complaint, is to make findings on it as it was originally presented. In doing so I make no findings of fact, except the one in paragraph 25.
25. I find that Friends Life made an error, in that it initially advised Mrs R that it had miscalculated her pension benefits and provided her with incorrect statements between 2013 and 2016. A more thorough investigation should have taken place to identify the cause of the discrepancy in the December 2016 statement before Friends Life told Mrs R what had happened.
26. On this basis, I am unable to conclude that any significant maladministration has been committed by Friends Life as it did not, in fact, misinform Mrs R about her pension benefits at any stage.

27. Therefore, I do not uphold Mrs R's complaint. Friends Life are now completing the necessary investigation and will keep Mrs R informed of progress. She may of course bring forward a further complaint if she remains dissatisfied with the outcome of the further investigation now in hand.

Karen Johnston

Deputy Pensions Ombudsman
4 October 2017