

Ombudsman's Determination

Applicant	Mr H
Scheme	Friends Life Trustee Transfer Plan (the Plan)
Respondent	Friends Life

Outcome

1. I do not uphold Mr H'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. Mr H has complained that he was given erroneous information by Friends Life about the date which would be used to calculate his transfer value and subsequent transfer payment. The fund value quoted to him the day before his transfer payment was actually processed was £1,500 higher than the amount he received.

Background information, including submissions from the parties

4. Mr H had a pension policy with Friends Life, now part of Aviva Plc. His pension pot was invested in two lifestyle funds.
5. Section 3.13 of the Plan document dated 2 August 2011 states:

"If You want to, the value of all or part of the plan can be transferred to another scheme... The transfer date will be either:

- the date that We receive all of the information required to enable Us to complete Your transfer request; or
- any other date that We allow that You agree with Us.

You must ask Us for a transfer payment in writing. The amount of the transfer payment will be worked out in line with section 4.7".

6. Friends Life said that a copy of the Plan document would have been issued to Mr H when the policy was initially set up, as part of the set up process.

7. Section 4.7 of the Plan document states that, 'if a member's entire fund is to be transferred out, the value of their fund will be equal to the number of units held multiplied by the unit price at the next valuation of units after the transfer date, plus a final bonus for any units held in the with profits fund.'
8. Friends Life explained that reference to 'any other date We allow' in section 3.13 of the Plan document, applies where a member gives prior notice that they want to select a particular retirement date and that date is agreed in advance with Friends Life. If no date is selected, the date its last requirements are met will be the date used as the 'transfer date'. Friends Life does not allow a member to select a date after making an application, as it would be considered as 'playing the market'.
9. Under certain conditions, a pension scheme member may be entitled to a 'protected tax free lump sum' on retirement. That is, a lump sum of greater than the normal 25%.
10. On 22 February 2017, Friends Life received Mr H's application to transfer out his funds, less his protected tax free lump sum entitlement. He requested that the funds be transferred to a drawdown policy with Standard Life.
11. Friends Life said that Mr H's completed application was the final requirement in the transfer process.
12. In order to avoid any potential 'for playing the market' by either party, Friends Life's standard procedure is to use the date its last requirement is received as the 'transfer date'. When it receives an application, it begins the process of disinvesting and aims to process the transfer payment within ten working days.
13. Prior to making his transfer application, Mr H said that he contacted Friends Life on 23 August 2016 and then on 11 January 2017. He asked whether it was possible 'to agree a date to freeze the transfer value,' due to market volatility, and offered to pay for this service. Both times, he was told that this was contrary to the process, as Friends Life did not know how long the application would be ongoing. Friends Life said the Plan value could only be determined on the date of transfer.
14. Friends Life said that it is not aware of the conversations Mr H had with Aviva in January 2017. In any case, the date of Mr H's conversation was before Friends Life received his application to transfer. Friend Life said that it had found no evidence to indicate that the position was not clarified to him before he transferred out.
15. On 27 February 2017, Mr H said that Standard Life informed him that Friends Life had a problem with his tax free lump sum entitlement and had refused to process his application. Mr H said that following receipt of this news he spent two days engaging with Friends Life to provide further details and clarification to resolve the issue.
16. Friends Life said that, in the majority of cases, it requires more information than is provided in the transfer application. Consequently, it is common practice to request further details.

17. Friends Life accepted that after it queried Mr H's protected tax free lump sum entitlement with Standard Life, there was some confusion on whether the transfer would go ahead, which prompted Standard Life to contact him on 27 February 2017. Friends Life highlighted that Mr H's transfer and lump sum payment were processed in seven working days.
18. On 2 March 2017, Friends Life wrote to Mr H and confirmed that his fund value was £111,469 as at his retirement date, 22 February 2017. Friends Life confirmed his tax free cash entitlement of £46,474 had been paid (plus late payment interest of £12.66), and that £64,995 (plus late payment interest of £17.70) had been paid to Standard Life.
19. Mr H said that when he contacted Friends Life on 1 March 2017, he was quoted a fund value - his transfer payment was £1,500 lower than the amount quoted. Mr H says that it came as a surprise to him that the transfer value was backdated to 22 February 2017, given that Friends Life had initially refused to process his application.
20. Friends Life says the loss Mr H is claiming is entirely due to market fluctuations. While a detailed actuarial calculation would show the exact difference, based on bid prices Mr H's fund value would have been approximately £1,200 higher if a price date of 2 March 2017, had been used.
21. Friends Life does not accept that a mistake has been made, the date of settlement used in Mr H's case was correct and in accordance with the applicable terms and conditions. Friends Life had reviewed recordings of telephone conversations on 28 February 2017 and 1 March 2017, and had found no evidence that figures were quoted to him during either of those calls.
22. Friends Life has provided call recordings of its conversations with Mr H on the two dates.
23. During his call on the morning of 28 February 2017, Mr H said that Standard Life had indicated a possible issue but Friends Life had previously confirmed, in January 2017, that everything was in order. The call handler said that Friends Life was 'checking something out' to ensure that he got his protected tax cash entitlement and was working on his case. The call handler agreed to call him back.
24. During the call on the afternoon of 28 February 2017, the call handler said that the earlier call handler was waiting for an update from the relevant team and would call Mr H once she had received this. He was informed that Friends Life needed to ensure that everything went through correctly. Mr H said that he had been going back and forth with the Friends Life's retirement team and had finally received confirmation about his tax free lump sum; he had in the past left messages but his calls were not returned. He said that he needed to complete the process before the end of the tax year. The call handler agreed to liaise with her colleague and provide an update the following day.

25. During the call to Mr H on 1 March 2017, he was told that the transfer would hopefully be processed on 2 March 2017, but was not quoted any figures. Mr H then asked whether the value on that date would be used to work out the final payment. The call handler first confirmed this, and then clarified that the value would be as at the date Friends Life received his forms. Mr H said he was looking at the value and it had gone up; and that he would be happy if the value on 2 March was used; Friends Life had indicated to him in the past that the value would be as at the date the transfer was processed. The call handler said she would check and confirm later that day or the following day.
26. There is no evidence to corroborate that Friends Life provided further clarification on the issue of the transfer date.
27. Mr H considers £1,500, to compensate him for the alleged shortfall in the transfer payment, would be reasonable compensation.

Adjudicator's Opinion

28. Mr H'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:-
 - To avoid any potential by either party 'for playing the market'-, Friends Life's standard procedure is to use the date its last requirement is received as the 'transfer date'. This practice appears consistent with sections 3.13 and 4.7 of the policies terms and conditions.
 - Under those terms and conditions, Friends Life is entitled to determine the value of his transfer payment as at the date it received all of the information it required to complete the transfer.
 - Any incorrect information he may have been given on 23 August 2016 and 11 January 2017, does not materially change the outcome of his complaint.
 - On 1 March 2017, the call handler initially said that the final transfer payment would be valued at the time it was processed. But then clarified that it would be as at the date Friends Life received his application.
29. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H provided his further comments but these do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr H for completeness.

Ombudsman's decision

30. Contrary to the Adjudicator's Opinion, Mr H says Friends Life did not make any enquiries after receiving his application. Had this been the case, Friends Life must be able to provide evidence of this.
31. Mr H said that he had to spend two days engaging with Friends Life, and provide additional information to persuade Friends Life to process the transfer. It therefore follows that the transfer date should have been 28 February 2017, the date he provided the last additional information to enable Friends Life to process his transfer request, in line with sections 3.13 and 4.7 of the Plan document. It seems to him that Friends Life 'are the ones playing the market'.
32. Mr H's main complaint is that Friends Life has acted contrary to its previous advice to him by backdating the transfer date to 22 February 2017, and that on 1 March 2017 Friends Life had misinformed him regarding the value of his fund.
33. I will consider each aspect of his complaint in turn.
34. With regard to the transfer date, the key question is whether the approach taken by Friends Life was consistent with the policy terms. The fact that Friends Life received Mr H's application on 22 February 2017, is not in dispute.
35. The Plans policy terms defines the 'transfer date' as the date Friends Life receives all of the details required to enable it to complete the transfer. Or, an alternative date may be permitted by Friends Life and agreed with the member. There is no suggestion that the Plan document was not issued to Mr H, or that he agreed with Friends Life an alternative transfer date.
36. The method used to determine the transfer date, removes the risk of either party manipulating or circumventing the financial markets by claiming a more favourable date.
37. Friends Life said that it had all the information required to complete Mr H's transfer request when it received his application on 22 February 2017. Given the sequence of events I am satisfied that this was the case.
38. I acknowledge that Mr H was initially told on 1 March 2017, that the transfer value would be as at the date the transfer was processed, That said, and notwithstanding the fact that the Plan document set out the position, the call handler corrected herself and stated that it would be determined as at the date his application was received.
39. But the call handler should have called back and re-confirmed the position for the avoidance of doubt. There is no evidence that they did.
40. The call recordings provided by Friends Life do not support Mr H's assertion that he was quoted figures on 1 March 2017. Given that Friends Life acknowledge that there was a difference of around £1,200 in the values quoted for the different days, I find it

more likely that he obtained the value from Friends Life. But without evidence to verify the context in which it was provided, I do consider that this changes the outcome.

41. I fully accept that Mr H would have been inconvenienced over the two day period he liaised with Friends Life, following its initial queries concerning his lump sum entitlement. However, I do not consider this matter justifies an award of £500, the minimum I would direct for distress and inconvenience.
42. In conclusion, in the absence of an alternative transfer date agreed with Friends Life in advance, I find that Friends Life acted correctly in using the fund value as at the date of the application, and in line with section 3.13 of the Plan document.
43. Therefore, I do not uphold Mr H's complaint.

Anthony Arter

Pensions Ombudsman
23 October 2017