PO-17814

Ombudsman's Determination

Applicant	Mr L
Scheme	Friends Life Personal Pension Plan (**the Plan**)
Respondent	Friends Life (**FL**)

Outcome

1. I do not uphold Mr L's complaint, and no further action is required by FL.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr L's complaint about FL is that he believes that his benefits under the Plan should attract a higher annuity rate than the one that FL applied to him.

Background information, including submissions from the parties

4. In 1987 Mr L started to contribute to the Plan, a with-profits personal pension plan managed by FL (then known as Friends Provident Life Office). He agreed to contribute £42 each month. The maturity date was stated to be 9 December 2026, his 70th birthday.

5. Under condition 3 "Normal Benefits", Mr L's policy document stated that the annuity would be payable for life annually in arrear, but under Condition 4 "Optional Benefits" he could apply to receive a reduced annuity payable monthly, with the option of a guaranteed payment period lasting up to ten years after his death. Condition 4 said that "The amount of any annuity provided under the above options will be determined by the Office".

6. In 2004 FL reviewed its annuity terms, imposing a 7.5% reduction (**the 7.5% Loading**) in cases where the policyholder selected a guaranteed payment period.

7. In September 2016 Mr L decided to take his annuity from his 60th birthday in December 2016. He received several annuity illustrations from FL. Except in the case of an annuity increasing annually in payment, the illustrations said that "Guaranteed Annuity Rates (GAR) apply to your fund. Please see your GAR fact sheet for more information."

8. Mr L applied for his annuity to be paid monthly in arrear, with no annual increases but with a guaranteed payment period of ten years.

9. In calculating Mr L's requested annuity, FL applied an annuity rate of 8.45% to his accumulated pension fund.

10. Shortly after submitting his application to FL, Mr L found a "FP Guaranteed Annuity Rate Fact Sheet" (**the 2003 Fact Sheet**) that had been sent to him in 2003. It stated that FL's pension plans starting on or after 1 October 1976 had guaranteed annuity rates available from age 60 to age 70, and explained:

> "As there are many different ways to take your pension benefits, it is impossible to list each rate. However, we show below a number of comparative types of pension benefit and their corresponding guaranteed annuity rate."

11. The 2003 Fact Sheet set out several annuity rates, including an annuity rate of 9.46% for an annuity starting at a male policyholder's 60th birthday, payable monthly in arrear, with a guaranteed payment period of five years.

12. Another fact sheet that was issued by FL in 2016 referred to less generous annuity rates, including 8.8% for an annuity starting at a male policyholder's 60th birthday, payable monthly in arrear, with a guaranteed payment period of five years.

13. Later in 2016 Mr L phoned FL to say that he wanted the better 2003 rate to apply to his pension.

14. When FL said it would apply an annuity rate of 8.45% to his pension from December 2016 Mr L made a formal complaint.

15. On 14 December 2016 FL rejected Mr L's complaint, saying that it could not use its 2003 annuity rates. It pointed out that an annuity with a guaranteed payment period of ten years, as chosen by Mr L, was not listed on the 2003 Fact Sheet.

16. In a letter dated 28 December 2016 Mr L pointed out that not every annuity specification could be listed in the 2003 Fact Sheet, and said that its opening wording referred to guaranteed annuity rates, implying they could not be worsened; he thought that an annuity rate of around 9.1% should apply to his pension, not 8.45%. He said he was not aware at that time that he could have cancelled the annuity within 30 days if he was unhappy with its terms.

17. When Mr L contacted the Pensions Advisory Service (**TPAS**) in 2017, it explained to him that his policy wording governed the matter; this made clear that guaranteed annuity terms applied only to an annuity that was payable annually in arrear with no guarantee period. Therefore, FL could use a different basis for other types of annuity: the basis used for Mr L was still more generous than the rate that Mr L could have obtained from another insurer on the open market.

18. Mr L commented that FL's communications were unfair, unclear and misleading.

19. Mr L then contacted us.

Adjudicator's Opinion

20. Mr L's complaint was considered by one of our Adjudicators, who concluded that no further action was required by FL. The Adjudicator's findings are summarised briefly below:-

- FL's annuity payments were governed by FL's policy terms.
- The annuity that was chosen by Mr L was payable monthly in arrear, with a guaranteed payment period of ten years. That guaranteed payment period was clearly more valuable than a guaranteed payment period of five years. The guaranteed annuity rate of 9.46% did not apply to Mr L's benefits because he had not selected a guaranteed payment period of five years as shown in the 2003 Fact Sheet. The appropriate annuity rate applicable for a pension with a guaranteed payment period of ten years, instead of five years, was not one of the examples set out in the 2003 Fact Sheet, and was the rate decided by FL.
- Therefore, having opted for a guaranteed payment period of ten years, Mr L was not entitled to a guaranteed annuity rate of 9.46%.
- It was therefore the Adjudicator's opinion that the complaint should not be upheld.

21. Mr L did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr L provided his further comments which 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 L for completeness.

22. Mr L accepted that an annuity with annual increases would not have a guaranteed annuity rate, but maintained that an annuity without annual increases would have a guaranteed annuity rate; therefore, he considered that his annuity should have a guaranteed annuity rate of 9.14%, which he calculated by disregarding the 7.5% Loading.

Ombudsman's decision

23. Mr L decided to draw his benefits in 2016, before his policy maturity date in 2026. His policy makes clear that in those circumstances the amount of the annuity is determined by FL. Mr L chose the form of the annuity, selecting an annuity payable monthly in arrear, with a guaranteed payment period of ten years. That form of annuity was not shown on the 2003 Fact Sheet. Therefore, FL was not obligated to apply any of the annuity rates set out on the 2003 Fact Sheet.

24. The annuity rate that FL applied to Mr L's policy was less generous, namely 8.45%. However, this was a guaranteed annuity rate as it was better than the rate that he could reasonably have expected to receive from another insurer on the open market.

25. Lastly, FL had no obligation to waive the 7.5% Loading that it introduced in 2004, which Mr L disregarded when making his calculations.

26. Therefore, I do not uphold Mr L’s complaint.

Anthony Arter

Pensions Ombudsman
5 June 2018