

Ombudsman's Determination

Applicant	Mrs N
Scheme	Kwik Fit Pension Plan (the Plan)
Respondent	Aviva

Outcome

1. I do not uphold Mrs N's complaint and no further action is required by Aviva.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs N is unhappy that Friends Life, now part of Aviva, misquoted the value of her late husband's pension policy.
4. She says that following the assurances of the higher value quoted to her, she made plans and incurred expenditure which she would not have done had she known the correct value of the Plan.

Background information, including submissions from the parties

1. In June 2005, Mrs N's husband, Mr N, sadly passed away following an accident at his workplace.
2. On 5 July 2005, the National Insurance Contributions Office, part of Inland Revenue, wrote to Friends Life saying that Mr N had passed away, and there might be a beneficiary entitled to pension benefits derived from the protected rights built up in the Plan.
3. Internal notes from Friends Life show that following this notification, it wrote to Aon Consulting (**Aon**), presumably the Plan Administrator, asking it to confirm that all contributions had been received so it could surrender the policies and issue the relevant paperwork. Aon did so, however it appears that neither Friends Life nor Aon held an up to date address for Mr N in order to write to his next of kin, Mrs N, about the Plan.

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4. In 2006, Aon said that it was using “the Traceline service” to allow it to find out where Mr N’s death had been registered and to find out whom it should contact for a copy of the death certificate.
5. In a letter dated 28 November 2006 from Friends Life to Buck Consultants, which presumably was the new Plan Administrator, the following was stated:

“I enclose a reissued claim form for your information, listing our requirements to enable us to settle the claim. As the total claim is less than £200.00 and the trustees have so far been unable to trace any beneficiaries, they have asked us to pay the claim to them, so they could hold the claim proceeds in the trustee bank account for five years in case a beneficiary is found.”
6. The attached claim form cited a plan value of £103.20.
7. Mrs N says that in 2012 or 2013, Inland Revenue (which merged with HMRC in 2005 but will be referred to as Inland Revenue in line with Mrs N’s submissions) sent her a letter saying that she was due funds from a policy in Mr N’s name. She says she telephoned Friends Life soon after receiving this and was told that the Plan was valued at around £16,000.
8. On 1 April 2014, internal notes from Friends Life record the following:

“Tel. call received from: Policyholder’s wife

I have asked the caller to send in written confirmation that the member has died.

Email to SPOC or NGP mailbox will suffice and have pointed out that the fund value will be open to market movements until written confirmation has been received.”
9. On 9 April 2014, following the above, Friends Life wrote to Mrs N outlining the documents required to settle the claim. The claim form document within this stated that the total lump sum death benefit payable was £118.35.
10. In April 2015, Friends Life merged with Aviva.
11. On 18 November 2015, a Friends Life representative made the following notes on its internal system:

“Call received from [Mrs N]

She would like to know wha [sic] is going on with this pension policy.

She has called up before and vastly different amounts are being quoted, POM says amount of £16,969.07

However, amounts written off from UDI are £16.17 + £102.18.

Firstly, we need to make sure which is [sic] amount is correct...”

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12. On the same date, the following further notes were made by Friends Life:

“I have looked through previous history and have come to the conclusion that the POM entry is definitely incorrect, member has never had anywhere near £16k in this policy.

Disinvestment units total £118.00 approx

Timeline put together in case we need to refer to this.”

13. On 19 November 2015, a Friends Life representative made the following notes on the system:

“Call received from [Mrs N]

Explained that figure is £118.00, obviously she was not happy about [sic] but accepted.

In the mean time [Mrs N] requested a letter stating value of this plan, how we got it wrong and can we prove amount is correct.”

14. On 23 November 2015, Friends Life issued a letter to Mrs N confirming that the value of the Plan was £118.35 and enclosed a statement. It also said:

“Please accept my sincere apologies that we previously confirmed another larger amount to you. This figure was incorrectly noted on the front of [Mr N]’s record in April 2014. However, the underlying investments only ever totalled the smaller amount mentioned above.”

15. On 29 February 2016, Mrs N wrote to Aviva and said that although it was treating the matter as an administrative error, she failed to see it as such. She asked why these figures were given to Inland Revenue if they were incorrect and requested a copy of all the records Friends Life held for Mr N. She said she had been given the incorrect information from three different people and departments and asked for the issue to be dealt with by Aviva’s Director’s or Chairman’s office.

16. On 2 March 2016, Aviva confirmed that Mrs N’s concerns had been brought to the attention of its Chief Operating Officer.

17. On 7 April 2016, Mrs N wrote a detailed email of the situation to Aviva. She made the following points:-

- Mr N’s death had been due to an electric shock he suffered at work. She had pursued a claim in regard to the accident through the court system.
- Three years ago, she received a letter from Inland Revenue saying Aviva had been trying to contact her, but they had a previous address.

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- She called Inland Revenue and was given Aviva's details. She was told that she was entitled to "a large sum of money."
- She then contacted Aviva and after various identity checks, it confirmed that Mr N had a pension worth over £16,000.
- She wanted to ensure the money was spent in the right way. Some of it would be used to pay off a loan and credit card but most would go towards her son who had been verbally offered an ice hockey scholarship in Canada. She had notified his school that he would not attend sixth form but would go to Canada for two years to try and make a name for himself in the sport while obtaining a good education.
- As she was a skilled worker she would qualify to work in Canada and the scholarship would allow their visas to be granted. This plan was made possible by the £16,000 worth of funds they believed they would have.
- She had contacted Aviva on at least three different occasions and spoke to various departments, all of which confirmed that she was entitled to £16,000.
- Aviva now claimed the actual policy value was closer to £100 but she had doubts about how it could be sure this was correct. Further, no explanation had been given as to why different amounts had been quoted.
- This had caused her a great deal of anxiety and upset, and Aviva ought to "pay the price" through its insurance rather than through her or her son.

18. On 31 May 2016, Aviva's Chief Operating Officer responded saying:-

- Mrs N should have been able to rely on Aviva to provide accurate and correct information when she called it about the Plan.
- He sincerely regretted that Mrs N was told on a number of occasions that the benefits due were significantly higher than the correct value of the policy. Unfortunately, there was a mistake with the value held on its records. The error was not realised until Mrs N contacted it again to query why the amount on the claim form was much lower than what she had been told previously. It had looked into this and was not able to ascertain when or how the mistake was made.
- Prior to 2011, the scheme trustees would have been responsible for locating any of the Plan's potential beneficiaries. It was not clear whether the trustees or Friends Life contacted Inland Revenue for these details; or, if Inland Revenue had been notified of the value of Mr N's benefits.
- Under the Plan's rules, it could only return the correct value of the policy. If it were to pay the higher fund value it had incorrectly quoted, this would be placing Mrs N in a more favourable position than its other customers.

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- It was sorry for the additional distress and upset it had caused. Although it was unable to pay the higher amount, it had arranged for a cheque for £1,000 to be sent to Mrs N which it hoped she would accept with its apologies.
19. The matter was subsequently referred to The Pensions Advisory Service (**TPAS**).
20. On 23 March 2017, Mrs N emailed TPAS in regard to the financial loss she had suffered because of the misinformation provided by Friends Life. She said:-
- Her financial losses would be by way of travel to the USA with team GB, which she did on the basis that she had money coming to follow this through and enable her son to take up an ice hockey scholarship in the USA.
 - However, upon looking at the education in America, she decided to aim for Canada. She had made enquires to colleges/high schools but as her mother passed away in 2014, she had decided to put these plans on hold.
 - There were costs for the team trip which she would not have stretched herself to afford if she had not been due a significant amount of money.
 - She was still incurring costs as a result; her son joined a team which is a 100-mile round trip as he needed this experience before trialling in Canada. However, she no longer had the finances to travel initially for this or pay for a deposit on a flat, as the money from Mr N's pension was meant to cover this.
 - They had extended their USA trip, which she would not have done otherwise. Overall, the costs were approximately £4,000 as they stayed in hotels for the trials and for training prior to tournaments.
21. On 24 March 2017, Mrs N explained that they had moved from the address Friends Life had on its system in 2001, so letters must have been sent to this former address for some time. She believed Friends Life contacted HMRC, due to the size of the claim, who in turn phoned her and said there was a "considerable sum" due to her.
22. On 18 April 2017, Mrs N provided the TPAS representative with evidence of the plans she made, and expenditure incurred, which included:-
- A letter dated 20 February 2014 from the National Executive Committee to Mrs N's son's headteacher, saying that he had been selected to represent Great Britain at a hockey tournament in Las Vegas and would need to be in America between 10 to 28 July 2014.
 - An invoice dated 30 April 2014 for Team GB training, flights and costs for a player's kit, totalling £3,486.34.
 - A Las Vegas hotel invoice for stay during the dates 24 to 28 July 2014, totalling \$934.08.

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- An explanatory note from Mrs N saying the following: “loss of earnings 1-week unpaid (zero hours contract) £600, trials and training costs £600 including hotel/fuel/fees, 6 months prior (not including meals) club fees 1 year £600 (subsidised), food for tournament £350.”
23. On 20 April 2017, the TPAS representative asked Mrs N to respond to his question concerning the extent of financial reliance she placed on the incorrect information.
24. On 3 May 2017, Mrs N provided the following responses:-
- She did not have a letter stating she was owed £16,000 and had only received a letter from Inland Revenue, which advised she had a “large sum of money outstanding; it no longer held a copy of this letter.
 - She was not advised about the correct position until an official letter from the chairman of Aviva in 2015. She had kept the monies safe with Aviva which would be used to get to Canada, for renting a car and flat, and for general expenses until she gained employment there.
25. On 29 May 2017, Mrs N sent a letter of complaint to the TPAS representative for him to forward to Aviva. This said:-
- When she learnt she was due a sum of £16,000, it brought a great deal of relief. She had called to check the fund would be earning interest and on each occasion over the 18-month period this amount was re-confirmed.
 - She decided to keep the money with Aviva as she knew it was safe and gaining interest. She knew she needed to be shrewd with the money and did not want to be tempted to purchase other necessary items. She was aware that her son was becoming an increasingly good ice hockey player and knew the right thing to do with the money was to allow him certain opportunities; he trialled for Team GB in 2013 over several months and was offered a place on the team.
 - To give him the best training throughout her son’s trials, she changed his team to one based further away. He represented Great Britain in Las Vegas in July 2014 and gained a verbal scholarship whilst there. It was verbal because a written offer would not be given two years in advance, where she had explained that they would stay in the UK for his GCSEs.
 - They opted for Canada as she felt the education was better. She felt her job in education law would afford her the opportunity of joining an international school, employed in admissions. She began studying the Canadian education system.
 - They had close friends who had moved to Canada and they had agreed that they could initially stay with them.

- Family, friends and neighbours knew of their plans not to stay in the UK for sixth form. She planned to rent their house to fund the rental in Canada, with it being managed by a builder that was a family friend.
 - Late in 2014 she received a letter from Friends Life saying the amount due was closer to £100. She was distressed by this and still tried to fulfil their plans, but it was not possible financially. This amount would not fund going to Canada and their day to day expenses for three months, with funds for a further three months in reserve as a back-up. She had incurred the costs of the USA trip for the planned move.
26. In a table of costs compiled by Mrs N supplied with the above letter (**the table**), the overall amount incurred in reliance on the misinformation – which included expenses for trials, flights, their hotel and other miscellaneous costs – was £9,950.
27. On 10 October 2017, Mrs N confirmed to the TPAS representative that she did receive the £1,000 compensation payment which Aviva had offered.
28. The complaint was subsequently referred to this Office.
29. On 31 July 2018, Aviva sent us its formal response. This said:-
- It was not in dispute that an incorrect value was provided by Friends Life. However, it was unclear when exactly this first happened, how many times this occurred and over what period, before the correct value was confirmed on 9 April 2014.
 - Despite previous searches made by Friends Life, no evidence could be found of an incorrect value being quoted over the phone or otherwise before 9 April 2014.
 - It was unclear what the extent of Mrs N's irrevocable financial loss was, due to the lack of evidence on how long she was in receipt of the incorrect information.
30. On 5 November 2018, Mrs N confirmed that she did not receive a letter from Friends Life dated 9 April 2014 requesting various documents to settle the claim.

The Pensions Ombudsman's position on the provision of incorrect information

31. The basic principle for negligent misstatement, in the absence of any additional legal claim, is that a scheme is not bound to follow incorrect information, such as retirement quotes, transfer values or early retirement. A member is only entitled to receive the benefits provided for under the scheme rules, based on correct information accurately reflecting the scheme rules.

32. Broadly, the Ombudsman will provide redress if it can be shown that financial loss or non-financial injustice has flowed from incorrect information given. For example, the member may have taken a decision in the expectation of receiving the higher benefits which they would not otherwise have done, such as retiring early. The Ombudsman will also consider whether it is more likely than not that a member relied on the incorrect information to their detriment and that it was reasonable for them to do so. An example of this is where the member had already decided to take early retirement before receiving the incorrect information. In this case it is unlikely that any claim for financial loss would be upheld on that basis alone.
33. The above sets out the Ombudsman's views very generally on the application of, negligent misstatement. It is for guidance only; each case will turn on its own facts.

Adjudicator's Opinion

34. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised below:-
 - Mrs N said that she received a letter from Inland Revenue regarding being owed a sum of money from the Plan. Whilst neither party has been able to provide a copy of this letter, this was logical when considering that Inland Revenue had been aware that the policy remained unclaimed.
 - This was further supported by evidence which suggested it was Mrs N who first made contact with Friends Life about the Plan, on 1 April 2014, at which point it asked her to send in various supporting documents. It is unclear whether any value for the Plan was disclosed to her at this point. In emails between TPAS and Aviva, it was suggested that contact had potentially been made prior to this, but there were no such records and the 1 April 2014 call was at odds with this.
 - A letter followed the above call, dated 9 April 2014 in which the correct value of the Plan was provided. Mrs N has said that she did not receive this. The course of events which followed suggested that Mrs N was not aware of the correct value of the Plan until at least November 2015. A call note of 18 November 2015 corroborated that prior to this date, a policy value of around £16,000 had been given. A further call note from that day indicated that it was an entry on "the POM" which had stated this amount, so it was likely that this difference in records was what caused the previous incorrect information to be given.
 - Mrs N followed up on the above discrepancy the next day, which highlighted the alarm and urgency on her part. It was more likely than not that she did not receive Friends Life's 9 April 2014 letter. The recorded sequence of events supported that she incorrectly thought that the value of the Plan was £16,000, as she had been given incorrect information at points between April 2014 and November 2015. This was reinforced by Friends Life's letter of 23 November

2015 in which it said that the incorrect higher amount was “on the front of” Mr N’s record in April 2014.

- Mrs N said that on at least three occasions, she was told of the £16,000 figure by Friends Life. It was unfortunate that due to Aviva’s lack of records, it was not possible to identify when exactly the misinformation was given. From the records which were available, it appeared that misinformation was given between April 2014 and November 2015.
- In any claim in negligent misstatement, the timeframe was of significance; the spending decisions made would be assessed in relation to the timing of the misinformation. The letter from the National Executive which explained that Mr N’s son had been selected to play in Las Vegas was sent in February 2014, this preceded the error. However, Mrs N maintained that she would not have gone ahead with the trip had she not been told that the Plan’s value was approximately £16,000. Mrs N has listed “expenses for trials in Sheffield”, incurred between October 2013 to May 2014 in the table. These would be discounted as the timing of these did not fit in with that of the misstatement.
- The remaining costs in the table could be considered. This included the trip to the USA, incurred between April 2014 (costs for flights/kit etc.) and July 2014 (hotel and other expenses), costs which Mrs N says she “stretched herself to afford” in the knowledge of funds to be paid from the Plan.
- A key consideration when assessing cases of negligent misstatement was whether it was reasonable for the applicant to rely on the misstatement. Generally, the more occasions in which one was given consistent, incorrect information, the more reasonable their reliance on this information became. However, the timeframe between when it was recorded that Mrs N made enquiries and was given the wrong value (potentially the beginning or middle of April 2014) and the date of the invoice for flights/kit (late April 2014), was fairly narrow; this did not easily lend itself to the principle of reasonable reliance arising from repeated assurances over a period of time.
- Mrs N recalled being misinformed of the Plan’s value on at least three occasions and it was plausible that two of these occasions were in April 2014 (she said she made an enquiry into the Plan gaining financial interest). However, in terms of the reasonable reliance test, being misinformed verbally on two occasions, and without written confirmation, would unfortunately not be sufficient and, accordingly, her claim in negligent misstatement for the losses outlined could not succeed.
- This was not to detract from the conduct of Aviva. Given the sad circumstances under which Mrs N was claiming funds from the Plan, it was extremely regrettable that she was misinformed. In terms of the non-financial injustice Mrs N had suffered, Aviva had paid £1,000 in recognition of this. Although no sum of money could rectify the distress caused to Mrs N as a result of the errors made,

this award aligned with this Office's scale for "serious" non-financial injustice; therefore, no further award would be recommended.

35. Mrs N did not accept the Adjudicator's Opinion and provided the following further comments:-

- After considerable research, she was aware that it was the responsibility of the scheme provider to give information to her as the next of kin on the benefits due, within two months after obtaining her address details in 2012/2013. It was also the provider's duty to issue an annual statement to the member or beneficiary. She was not provided with any documents from Aviva for three years after it became aware of her details and this failure led her to believe the incorrect figure quoted by several departments within Aviva.
- The Adjudicator was incorrect in saying that she had been misinformed on two occasions and that there was no written confirmation of the figures. In 2012/2013, when she was contacted by Inland Revenue she was told they had received a letter confirming a "large amount" was owed to her, which they were not able to disclose over the phone. The fact Inland Revenue had such a letter and figure in writing was sufficient for her to believe this was the case. In terms of the reasonable reliance test, Inland Revenue was a reliable source and the amount was sent in writing to it, so it was irrelevant whether this was also sent to her.
- It was another error among many that Aviva could find no record of this letter. Inland Revenue confirmed it had a record of a letter sent to it by a pensions company although, due to HMRC's systems merging, it could not be found now. A call to Inland Revenue would confirm receipt of the letter.
- In addition to Inland Revenue, she was informed on two occasions in 2012/2013 when she contacted Friends Life by two different departments and three employees that the policy was valued at around £16,000. One of the employees told her they would take her husband's record out of archive and that the figure was written on a print out.
- The evidence for the higher figure far outweighed that for the lower figure.
- The crux of the matter was that an error had occurred and resulted in a financial loss. Guidance said that financial loss should be paid where there is an error, not that compensation can only be paid if the error was made in writing.

36. The Adjudicator responded saying that her opinion remained the same. In summary, she said she did not disagree that Friends Life's communication in this matter was poor, but she felt the £1,000 it awarded was appropriate. She said that written confirmation of the incorrect figure was not essential, but she had concluded that the duration and timing of the verbal assurances given assessed against the expenditure incurred meant that in her view, the reasonable reliance test had not been met.

37. The complaint has now been passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs N for completeness.

Ombudsman's decision

38. It is most unfortunate that in such circumstances, Aviva provided incorrect information to Mrs N. Equally, it is less than satisfactory that Aviva lacks the records to be able to definitively say when and how the errors in question occurred.
39. In any case, from the information available, there is no dispute that Mrs N was misinformed with regard to the value of the Plan. The key point for consideration here is to understand how the timing and frequency of the errors affected Mrs N's decision-making in relation to the items listed in the table and other evidence on her losses.
40. Having had regard to this and the call records, it appears that Mrs N first contacted Friends Life in relation to the plan in April 2014 and I agree it is likely that around this time, Mrs N was misinformed of the Plan's value on at least two occasions. Therefore, I will only consider the expenditure which was incurred from this point. Mrs N has provided details of the costs she incurred in April 2014, in planning for her son's hockey tournament in America, and I understand further expenditure took place in July 2014 whilst she was there. Mrs N contends she incurred these costs in reliance upon the incorrect value of the Plan, however, I cannot find evidence of misinformation preceding these decisions other than the two which I have accepted took place in April 2014.
41. Unfortunately, I do not consider that these verbal assurances would be sufficient to meet the reasonable reliance test in respect of the spending which followed up to July 2014.
42. Mrs N has placed considerable weight on her communications with Inland Revenue. However, it is the point at which Mrs N was incorrectly made aware of the value of the Plan which is significant; only once this figure was known to her could she make specific plans. It is not in dispute that Inland Revenue did not disclose this figure to her and only said that she was due a large sum of money. Hence, the information given by Inland Revenue is not relevant to my consideration of whether Mrs N's claim in negligent misstatement is successful; rather, it forms the background to the error.
43. Lastly, I agree that the award paid by Aviva, in respect of Mrs N's non-financial injustice, is appropriate in the circumstances and do not direct a further payment to be made.

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44. Therefore, whilst I have considerable sympathy for Mrs N, I do not uphold her complaint.

Anthony Arter

Pensions Ombudsman
19 December 2018