

Ombudsman's Determination

Applicant	Mr H
Scheme	Friends Life Executive Investment Pension Plan (the Plan)
Respondent	Aviva Life & Pensions UK Limited (Aviva)

Outcome

1. I do not uphold Mr H's complaint.

Complaint summary

2. Mr H has complained that he was unable to transfer his benefits from the Plan after his 75th birthday.

Background information, including submissions from the parties

3. On 4 August 2004, Mr H wrote to AXA, the former Plan administrator, and asked for the Plan to be deferred to his 80th birthday. In this letter he said that AXA had previously told him that this would be fine, "provided the Inland Revenue agree".
4. On 5 December 2005, AXA wrote to Mr H and supplied information relating to the Plan's value. It also confirmed that "the Plan has been deferred passed [sic] it's Normal Retirement Date."
5. In April 2011, Friends Life wrote to Mr H and said that it had joined with AXA but, from this point, the Plan would be managed by Friends Life. It said that Mr H did not need to do anything as his Plan "had not changed".
6. On 6 April 2011, HMRC introduced legislation that removed the maximum retirement age, however it still allowed policy providers to decide whether to implement this within their schemes. Friends Life has said it did not permit an extension to the maximum retirement age allowed in any of its plans.
7. On 30 May 2013, Friends Life wrote to Mr H and said:-

"Your policy/plan is due to end on your 75th birthday on 24 November 2013 and you will soon need to make a decision about what to do with your pension fund.

You must take action before your 75th birthday. If you do nothing you will lose some important financial options.”

8. On 14 June 2013, following a request for a transfer value estimate, Friends Life wrote to Mr H. Alongside the estimate, it provided the paperwork required to facilitate a transfer.
9. On 20 June 2013, Mr H called Friends Life and requested a copy of the Executive Pension Plan Rules (**the EPP Rules**). During this call he said that he was unhappy that he only had until age 75 to take his benefits.
10. On 28 June 2013, Friends Life wrote to Mr H enclosing a copy of the EPP Rules. The EPP Rules contained a section on late retirement that stated that any change to the Normal Retirement Age (**NRA**), in excess of age 70, must be approved by the Board of the Inland Revenue (now called Her Majesty's Revenue and Customs (HMRC)) (see Appendix One).
11. On 15 August 2013, Friends Life issued another letter explaining that Mr H had to take action prior to his 75th birthday. This letter contained a section that explained what Mr H would have to do in order to take his benefits after the age of 75:-

“Because of the type of policy you have with us, you must buy a retirement income product by your 75th birthday. However, before then you may be able to transfer your policy to a registered pension scheme which allows you more options at age 75...”
12. The letter also had a section headed, “What we will do if we do not hear from you before age 75”. It said:-

“Your policy ends on your 75th birthday. If we have not heard from you by then your pension fund will be used to buy an annuity from us. No payment will be released from Friends Life until we receive your written instructions including the illustration and application request form.”
13. On 24 November 2013, Mr H reached age 75.
14. In February 2015, Friends Life wrote to Mr H notifying him of some changes to the Plan. The changes mentioned related to the “Fund Names, Fund Aims, Fund Risk Ratings and Fund Risk Warnings.” It said that the funds that Mr H was invested in had not changed.
15. On 26 May 2015, an annuity was set up by default. Friends Life said this was due to it being unable to trace Mr H when he reached NRA.
16. In May 2017, Mr H called Friends Life and asked to transfer-out.
17. On 7 June 2017, Hargreaves Lansdown wrote to Friends Life requesting to transfer Mr H's benefits into a self-invested personal pension (**SIPP**).

18. On 21 July 2017, Friends Life contacted Hargreaves Lansdown and said that a transfer was not possible because the Policy had already matured. On the same day it wrote to Mr H and said that, although HMRC introduced legislation that removed the maximum retirement age, it afforded the insurers the opportunity to decide whether or not to permit this on existing agreements. Friends Life chose not to implement a change, so Mr H's maximum retirement age remained age 75.
19. Mr H subsequently raised a complaint. He provided some product literature (**the Leaflet**) that appears to date from 1983. The Leaflet said that NRA is specified at the outset and could subsequently be varied, but must be within the range of 60-80. The Leaflet also said that an NRA in excess of 70 is subject to individual negotiation with the Board of the Inland Revenue. Mr H argued that the Leaflet shows that his NRA should have been 80, so he should be able to transfer his benefits until then.
20. On 11 August 2017, Friends Life responded to Mr H's complaint. It said that the retirement packs issued on 30 May 2013 and 15 August 2013 made it clear that, if Mr H wanted to transfer his benefits, he must do so prior to age 75. Because Mr H did not provide information on how he wished to proceed, his benefits were moved into a holding account.
21. It acknowledged the Leaflet, which said that the NRA can be up to age 80. However, it said that members could only have an NRA above 70 if they applied to the Inland Revenue, which is also explained in the Leaflet. It said that the NRA under Mr H's policy is recorded as age 65, which meant that the Inland Revenue had not agreed to alter Mr H's NRA.
22. In conclusion, Friends Life said that it would not allow the transfer.
23. In October 2017, following Aviva's purchase of Friends Life, Aviva took responsibility for the complaint.
24. On 27 July 2018, Aviva responded to Mr H's complaint. It said that, "...[a]lthough Government legislation was amended to allow policy holders to take their benefits after age 75, the availability of this option is still subject to the scheme rules of the product through the pension provider." It said that it had decided to keep its EPP Rules as they were, so members are unable to transfer-out once they have reached the age of 75. It confirmed that the fund value at age 75 was £96,585.90, and this was used to purchase the default annuity. It also confirmed that it would backdate payment of the annuity to Mr H's 75th birthday.

Adjudicator's Opinion

25. Mr H'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:-
 - The Adjudicator said that Aviva can only pay benefits in accordance with the EPP Rules. The EPP Rules clearly state that the NRA can only be extended if

approved by the Board of the Inland Revenue. There was no evidence to suggest that Mr H received approval to extend his NRA. As a result, the Adjudicator did not agree that the EPP Rules allowed Mr N to transfer after age 75.

- Mr H was told several times that, if he wished to transfer, he needed to do so before age 75. He was also warned that, “if [he did] nothing [he would] lose some important financial options”. The Adjudicator was satisfied that Friends Life had made it clear that, if Mr H wanted to defer beyond age 75, he would have to transfer out of the Scheme prior to reaching age 75.

26. Mr H did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr H provided his further comments, which do not change the outcome. He said:-

- Section 6.1 of the EPP Rules covers NRA. He said that he wished to “defer taking any benefit until he actually retires” in accordance with Section 6.1(iii) (Appendix One). He said that the drafting of this Rule made it unclear that members were only allowed to defer until age 70. He has argued that, as there is “a lack of clarity, the contract should be construed against the party that drafted it”.
- His NRA was recorded as up to age 80 prior to Friends Life’s takeover.
- The letters he received from Friends Life, in April 2011 and February 2015, said that there were no changes to the Plan. Therefore, he assumed that he had to retire by age 80.
- There was no requirement to choose a specific age at deferment, so he should have been able to defer his benefits beyond age 75.
- The letter AXA sent on 5 December 2005, confirmed that, “the Plan has been deferred passed [sic] it’s [sic] Normal Retirement Date.” He said that this showed that his benefits had been deferred.
- His plan commenced in March 1984, therefore he was entitled to ‘continued rights’ in accordance with the Inland Revenue’s Occupational Pensions Schemes Practice Notes (IR12 (2001)) (**OPSPN**) (see Appendix Two). He said that the requirement for benefits to come into payment no later than age 75 does not apply to members with continued rights. He argued that this meant that the up to age 80 clauses, he said were in his original plan, are valid.
- His policy was sold on the basis of its flexibility to choose retirement up to age 80.
- The EPP Rules did not include any mention of members being able to retire up to age 80. He said that this was a main function of the policy, so he wanted to

know when this was removed. He also suggested that the EPP Rules may not have been applicable to his contract.

- Friends Life should not have purchased a default annuity without contacting him. His address has not changed, so it is incorrect to say that he could not be located.
- He should be allowed to retrospectively transfer out of the Plan.
- He should be allowed a Cash Equivalent Transfer Value equal to what it would have been had he transferred at age 75.

27. Aviva responded and said:-

- It is true that paragraph 6.14 of the OPSPN states that there is no requirement, for members with continued rights, to put their benefits into payment by 75. However, it is the EPP Rules that dictate when a member can retire.
- The EPP Rules state that members could only defer taking their benefits until age 70. But, following the introduction of the OPSPN, the maximum retirement date was increased to 75. The EPP Rules only allow members to retire over age 75 if they have received express approval from Inland Revenue.
- There is no evidence that Mr H received such approval, so he could only retire up to age 75.

28. I note the additional points raised by Mr H but I agree with the Adjudicator's Opinion.

Ombudsman's decision

29. Aviva can only allow members to defer their benefits in accordance with the EPP Rules. NRA is defined in Section One of the EPP Rules:-

"Normal Retirement Age cannot be less than 60 (55 for females excluding Special Directors) nor above 70 except with the express approval of the Board of Inland Revenue."

30. Rule 6.1 of the EPP Rules (see Appendix One) deals with late retirement from a deferred status. It says, "If the Policy has been assigned to the member on leaving service the Member can only defer taking the benefits until age 70." Aviva has said that, following the introduction of the OPSPN, the maximum NRA was extended to 75. So, while the EPP Rules often refer to age 70, the OPSPN has effectively increased this age to 75.

31. I find that the EPP Rules are clear, Mr H could only defer his benefits beyond an NRA of 75 if he had received express approval from the Board of the Inland Revenue. Neither party has supplied any evidence to show that the approval had been granted, so Mr H was unable to defer his benefits beyond age 75. Once he reached 75 his policy had matured and, therefore, he had to purchase a retirement income.

32. Mr H has argued that Rule 6.1 of the EPP Rules was not clear on when he could take late retirement. He has argued that “where there was a lack of clarity the contract should be construed against the party that drafted it”. He said that Section 6.1(iii) said that he could “defer taking any benefit until he actually retires”, so he was not limited as to when he put his benefits into payment. However, the following paragraph clearly says that, “if the Policy has been assigned to the Member on leaving Service the Member can only defer taking the benefits until age 70”.
33. Mr H has argued that the age limit of 70 was not mentioned until after Rule 6.1(iii), which said that he could defer until he actually retired. The EPP Rules need to be read as a whole and I am of the view that Rule 6.1 is sufficiently clear, in that there is a maximum age before which members can take their benefits.
34. Mr H has said that he relied on a letter dated 5 December 2005, from the former administrator, AXA, that said, “the Plan has been deferred passed [sic] it’s Normal Retirement Date.” He said that this was confirmation that his benefits had been deferred to up to age 80. While this letter shows that Mr H’s benefits had been deferred beyond the minimum NRA, it does not support Mr H’s claims that his benefits had been deferred up to age 80. During the investigation, the Adjudicator asked for evidence that it had been agreed that Mr H’s benefits could be deferred up to age 80. However, Mr H was unable to supply any. He was also unable to provide evidence that the board of the Inland Revenue had agreed to extend his NRA beyond age 75. Consequently, I am not satisfied that there was an agreement for his benefits to be deferred until up to age 80.
35. Mr H also said that Friends Life wrote to him in 2011 and 2015 and said that there were no changes to the Plan, so he continued to believe he could retire up to age 80. The letters are brief and do not purport to confirm retirement details. The letter in 2011 was a welcome letter that confirmed that the management of his Plan had moved from AXA to Friends Life. The 2015 letter notified him that there would be changes relating to the Plan descriptions. Both letters confirmed that, other than the changes mentioned within, the rest of his Plan would remain the same.
36. Mr H has argued that this showed that this Plan was due to remain the same and, therefore, he expected to be able to retire at age 80. As explained in paragraph 34, Mr H has not been able to provide evidence to show that his expectation was valid. The letters on their own do not suggest that he was able to retire up to age 80, so I do not agree with this element of his complaint.
37. Mr H has argued that there was no requirement to choose a specific age at deferment, so he should have been able to defer his benefits beyond age 75. As I have said previously, the EPP Rules do not allow him to retire beyond the age of 75. If he wished to keep his benefits deferred for longer than this, he would have had to apply to the Board of Inland Revenue or transfer out, an option which was repeatedly explained to him in the run up to reaching age 75.

38. Mr H has argued that, in accordance with the OPSPN, he is entitled to continued rights, so he should be allowed to commence benefits after the age of 75.
39. The OPSPN, which Mr H has referenced, was a practice note, issued by the Inland Revenue, which explained what was required for schemes to be approved as Occupational Pension Schemes. Paragraph 6.1 stated that to be approved schemes, among other things, must pay benefits no later than age 75, which was consistent with wider pensions legislation at the time. Mr H has said that he held continued rights; so, in accordance with paragraph 6.14, he should have been allowed to defer his benefits until age 80.
40. In practice, in order to be approved as an Occupational Pension Scheme, schemes would need to start paying benefits to members before age 75. However, for members with continued rights, they could be paid after age 75 and the pension scheme could still become an approved Occupational Pension Scheme. Mr H has argued that his continued rights meant that he should be allowed to commence payment of his benefits after age 75, this is not the case. The OPSPN meant that Friends Life could have allowed Mr H to take his benefits after age 75 and not been precluded from becoming an approved Occupational Pension Scheme. But the OPSPN did not mean that a scheme had to offer an option of delaying benefit beyond age 75. It was up to Friends Life to decide whether it would alter the maximum commencement age for paying benefits, it chose to continue using 75 as its maximum age. Its decision not to allow retirement after 75 was not maladministration.
41. Mr H has also argued that the Plan was sold to him on the basis of its flexibility to choose retirement up to age 80. He provided a copy of the Leaflet, which showed that he could take his benefits at any time up to age 80 if the Board of Inland Revenue agreed. I have seen nothing within this complaint to show that this option was not available to Mr H. So had he sought, and had the Board of Inland Revenue agreed, he could have extended his NRA. There is no evidence that Mr H made such a representation to the Board of Inland Revenue. So, he cannot argue that the Plan was misrepresented.
42. Mr H also suggested that the EPP Rules may not have been the correct rules that were in place when the Plan was set up. The Trustee responded and said that the Plan was an 'Executive Pension Investment Plan' that had been set-up with effect from 1 March 1984. The Equity & Law standard rules for Executive Pension Schemes set-up from 1979 to 1989 was the EPP Rules. Consequently, I am satisfied that the EPP Rules are the relevant rules governing Mr H's benefits.
43. Mr H has also complained that Friends Life purchased a default annuity without contacting him. He said that his address hadn't changed, so Friends Life cannot say that he could not be contacted. I disagree. Friends Life wrote to Mr H and explained what would happen to his benefits if he did not contact it prior to reaching age 75. It said that, "if we have not heard from you by then your pension fund will be used to buy an annuity from us." Friends Life told Mr H what would happen to his benefits if

he didn't do anything by age 75. He failed to act, and Friends Life did what it said it would. So, I find no maladministration.

44. Mr H has said that he should be allowed to retrospectively transfer out of the Plan and should be allowed a Cash Equivalent Transfer Value equal to what it would have been had he transferred at age 75. I would only direct a respondent to do something in cases where I have found maladministration. In this case, I have found no such maladministration.

45. I do not uphold Mr H's complaint.

Anthony Arter

Pensions Ombudsman
18 November 2021

Appendix One

Executive Pension Plan Rules (EPP(1))

"1 DEFINITIONS

... 'Normal Retirement Age' Means the age at which the Member is expected to retire in normal circumstances as notified to the Member in the Summary of Benefits issued to him. Normal Retirement Age cannot be less than 60 (55 for females excluding Special Directors) nor above 70 except with the express approval of the Board of Inland Revenue....

...6 RETIREMENT (INCLUDING DEFERRED & EARLY RETIREMENT

Normal Retirement Age 6.1 Benefits will normally become payable at Normal Retirement Age. If a Member remains in the service of the Employer after Normal Retirement Age, or if the Policy was assigned to a Member on leaving the Service of the Employer prior to Normal Retirement Age and he does not retire from subsequent employment at Normal Retirement Age, he may exercise any one of the following options:

- (i) to take all the benefits under this Scheme at Normal Retirement Age in accordance with Rules 5.2, 5.3 and 7.1
- (ii) to exercise the cash option described in Rule 7.1 and defer taking the remaining benefits subject to Rule 6.2 until he actually retires
- (iii) to defer taking any benefit until he actually retires as described in Rule 6.2

If either option (i) or (ii) is selected, then the Member will be regarded as having retired for the purpose of these Rules. If the Policy has been assigned to the Member on leaving Service the Member can only defer taking the benefits until age 70. Furthermore, if option (ii) is selected and the Member should die during the deferred period he will be deemed to have commenced to receive pension on the day before his death and the provisions of Rule 8.4 will apply. If option (iii) is selected and the Member dies during the deferred period the proceeds of the Policy will become payable and will be dealt with under Rules 8.1 and 8.3 subject to the limits set out in Rule 10.4...

...11.2 TRANSFER OUT

A transfer payment may be made to another retirement benefit scheme only on the following terms:

- (a) the Employer must ascertain from the administrator of the other scheme details of the Section and Act under which it is approved by the Inland Revenue
- (b) if the other scheme is approved under either the Finance Act 1970 or Section 222(1) of the Income and Corporation Taxes Act 1970 or any fund wholly approved under Section 208 of the latter Act or any other fund, scheme or arrangement approved for the purposes of this Rule by the Board of Inland Revenue
- (c) the Employer must certify to the administrator of the other scheme the amount (if any) of the transfer payment which represents contributions actually deducted from the Member's remuneration
- (d) the terms of any undertaking given to the Board of Inland Revenue relating to transfers being made to schemes not approved under the Finance Act 1970 and which permit some commutation of pension benefit must be adhered to."

Appendix 2

Occupational Pension Schemes Practice Notes (IR12 (2001))

“Part 6. Retirement

General

6.1 Scheme rules may allow members to retire on pension at any time between age 50 and 75. Pension entitlement for a member under a scheme must come into payment immediately on leaving service at or after normal retirement date or if remaining in service no later than the attainment of age 75 except in the circumstances described in paragraph 6.4. (But see paragraph 6.14 in relation to members with continued rights and paragraph 6A.2 in relation to the payment of pension credit benefits.)...

...Members with continued rights

6.14 Paragraph 6.1 which generally requires benefits to come into payment no later than age 75 does not apply to members with continued rights. In the case of such members:

- (a) there is no requirement for benefits to commence at the latest at age 75;
- (b) immediate retirement benefits may be taken on or after normal retirement date even when the member remains in service (see paragraph 7.44)...

...Glossary

Normal Retirement Date

Normal retirement date means the date of attainment by a scheme member of the age specified in the scheme rules as the age at which a member should normally retire.”