

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE PENSIONS OMBUDSMAN

Applicant	Mr Peter Trebilcock
Scheme	Friends Life Number 3 Stakeholder Pension Scheme (the Scheme)
Respondent	Friends Life

Subject

Mr Trebilcock complains that Friends Life have refused to allow him to transfer from another scheme into what they describe as the Milestones Plan.

The Pensions Ombudsman's determination and short reasons

The complaint should be upheld against Friends Life because the Terms and Conditions of the Scheme are contractual and state that he can make a transfer payment from another scheme at any time and there is no reason that the transfer in should be separated out from his existing membership of the Scheme.

DETAILED DETERMINATION

Material Facts

1. Mr Trebilcock is a current employee of Friends Life. He has been a member of its group personal pension arrangements, though contributions to it by him or on his behalf have stopped. (I do not have details of the actual scheme of which he is a member as a result of joining the group personal pension, although I understand that it is a different registered pension scheme to the Scheme.)
2. Mr Trebilcock took out a stakeholder pension (that is, technically he joined the Scheme) in April 2009. It was sold online. I understand that he is still contributing to it. It seems that buyers of the online product are regarded by Friends Life as a distinct category of members of the Scheme. They refer to Mr Trebilcock as having taken out a “Milestones Plan”. He says that it was not identified to him as a Milestones Plan at the time – or indeed until 2013 after he raised the complaint that has now reached me. But since it is necessary to distinguish between the online membership and general membership of the Scheme, I shall retain the term.
3. Friends Life have provided terms and conditions set out in a Friends Provident document dated December 2008, headed “Stakeholder Pension U385”. That document refers to the rules of the “Friends Provident Pensions Limited Personal Pension Scheme”. I have assumed that this scheme is the same as the Scheme despite the difference of name, but anyway the outcome of the complaint does not depend on the rules themselves.
4. Section 1.1 of the terms and conditions begins:

“This document describes the conditions that apply to your plan with us. This plan is a contract between you and us.”
5. Section 2.2 says:

“Transfer payments can be paid into your plan from another scheme at any time. These may include protected rights”.
6. A Key Features Document of November 2008 says that pension plans held with another company can be transferred into the Scheme.

7. In 2013 Mr Trebilcock requested that his group personal pension be transferred into the Scheme. He says that he has a contractual right to make such a transfer. He also says that one of the requirements for a pension scheme to be a stakeholder pension scheme as defined in the Welfare Reform and Pensions Act 1999 is that it must accept transfers in.
8. He wants to transfer because the Scheme is the arrangement to which he is currently contributing. He argues that it cannot be said now that he will be worse off as a result of transferring.
9. Friends Life refused. Their general position was that they could not allow transfers in to a Milestones Plan. They say that as an on-line product it is sold without the need for advice from a financial adviser. They “were uncomfortable” about members transferring in without advice. They have referred to a later Key Features document which says that transfers-in are not allowed.
10. They accept that the legislation requires them to accept transfer values. However, it is their position that provided they accept them into the Scheme (even if not the Milestones Plan) they are meeting the legal requirements. They say that this would, however result in separate statements and reference numbers, which they accept might be an inconvenience.
11. They also point out that the Scheme has a 0.8% annual management charge (AMC) when Mr Trebilcock’s group personal pension policy has an AMC currently of 0% as an active member. However, even if he were to leave the group personal pension the AMC would be 0.5%, which is still lower.
12. Very late in our investigation of the matter, Friends Life acknowledged that the Key Features Document that was published in November 2008 and was current when Mr Trebilcock joined the Scheme said that transfers-in were permitted. So they said that they would allow the transfer.

Conclusions

13. Friends Life said that the transfer was not possible, but they did not point to any document which prevented it, save a Key Features document which was published long after Mr Trebilcock joined the Scheme, and so cannot be relevant to him.

14. Mr Trebilcock has a clear right – as set out in the terms and conditions, which are stated to be contractual (and would have been so, even if not stated) – to transfer in to the Scheme. If I understand Friends Life correctly, they are saying that the right to transfer into the Scheme was always present, but there was no right to transfer in such a way that the transferred funds would be mingled with the Milestones Plan. But the relationship between the on-line product and the Scheme has never been clearly articulated either to Mr Trebilcock or to me. Indeed I am still not completely sure of it.
15. Mr Trebilcock's request to hold all of his assets in the same arrangement is a reasonable one. It may or may not be in Mr Trebilcock's long term financial interests to make the transfer. I think his reason is primarily convenience, which could be a valid consideration even if it came at a cost. If Friends Life had a good reason to deny him his request, they did not explain it properly to him or to me. On the face of it, he had a contractual right and there was no difference in treatment between the online Milestones Plan and any other part of the Scheme.
16. Friends Life have now agreed to the transfer. I make the direction below for completeness.

Directions

17. Within 28 days of the issue of this determination Friends Life must allow Mr Trebilcock to transfer the value of his group personal pension policy into the Scheme in such a way that it is treated as if the investments resulted from further contributions to the existing arrangement.

Tony King
Pensions Ombudsman

16 October 2014