

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

<b>Applicant</b>	Mr Graham Butler
<b>Scheme</b>	Friends Life New Generation Pension ( <b>the Plan</b> )
<b>Respondent</b>	Friends Life (formerly Friends Provident)

**Subject**

Mr Butler complains that Friends Life, the administrators of the Plan, failed to carry out his instructions as he had expected and they also provided him with misleading information.

**The Pensions Ombudsman's determination and short reasons**

The complaint should not be upheld as Mr Butler was not given any reason to think that his previous investment instructions were reversed, nor was he given any misleading information.

## DETAILED DETERMINATION

### Material Facts

1. Some of the correspondence referred to below was sent in the name of Friends Provident, but for ease I refer to Friends Life, whatever the source.
2. Mr Butler's original retirement date under the Plan was 21 November 2011, his 65<sup>th</sup> birthday.
3. Contributions were originally being paid to the FP Balanced Index Fund of Funds. Mr Butler had also chosen the Balanced Lifestyle Investment Programme under which in the five years leading up to his retirement date his fund would be gradually transferred from the FP Balanced Index Fund of Funds to cash and fixed interest investments.
4. On 20 June 2006 a letter from Friends Life said that the lifestyle programme would start on 21 November 2006 in accordance with the "Lifestyle Guide" provided when he joined the Plan. If he wished to change or cancel the programme he needed to contact them.
5. In late 2011 Mr Butler advised Friends Life that he wished to postpone his retirement date. He was sent a form to complete for this purpose.
6. An annual statement sent to Mr Butler on 7 November 2011 gave a breakdown of his investments under the Plan. This showed that no units were held in the FP Balanced Index Fund of Funds. His monies were split between the cash and fixed interest funds.
7. A form headed "I wish to postpone my retirement date" was completed by Mr Butler on 9 November 2011. He ticked "I want to postpone taking all my pension benefits" but left blank a space for a new retirement date. The form refers to being able to "...find further information about postponing on pages 12 and 13 of your retirement brochure". It also said:
 

"If you do not specify a date we will change your retirement date to age 74 or the date you tell us, and then write to you to let you know we've done this. We will not send any more information to you until nearer your new retirement date."
8. Friends Life sent a letter to Mr Butler on 14 November 2011 saying that they had received his instruction to postpone his retirement benefits to 21 November 2020. The letter also said:

“...This change will be made from 21/11/2011 and we’ll continue to collect payments.

You currently have a Lifestyle investment programme which stops on your selected retirement date. Lifestyle investment programmes are designed to move your investments into lower risk funds as you approach retirement.

If we do not hear from you we will:

1. Invest payments received after 21/11/2011 according to your investment instructions below and the investment programme.

Fund	% of contribution
FP Balanced Index Fund of Funds	100

2. Your investment programme will change so that it is targeted to end at 21/11/2020. This change will affect where we invest any future payments.
3. Change your retirement date to 21/11/2020.

If you want to alter your investment instructions, retirement date or investment programme choice, please complete and return the attached form. We recommend you speak to your financial adviser when considering the options...”

9. Friends Life sent another letter on 15 November 2011 which said:

“The recent change in your selected retirement date may also affect your investment programme.

Where your investment programme is targeted to end at your selected retirement date, any investment programme fund movements which have already taken place will have been in accordance with the programme based on your previous selected retirement date. All future investment programme fund movements will now be based on your revised retirement age...”

Mr Butler says that he did not receive this letter.

10. Friends Life received a request on 23 March 2012 from NatWest Independent Financial Services asking for information on the Plan, including fund choices. They responded with the requested details on 26 March 2012. They also sent Mr Butler a copy of this correspondence in a letter of 27 March. Mr Butler says that he did not receive either of these letters from Friends Life or from his then adviser.

11. Friends Life also sent an annual statement to Mr Butler on 6 November 2012 with details of the funds he was currently invested in. This gave a very low unit holding in the FP Balanced Index Fund of Funds. Mr Butler says that he did not receive this letter.
12. In October 2013 a review of his financial situation was started by Mr Butler with a new financial adviser. He went into the Friends Life website on 22 October to obtain details of the Plan and discovered that most of his funds were still invested in cash or fixed interest securities. He emailed Friends Life the same day.
13. Friends Life responded on 6 November 2013. They said that in November 2006 they had written to him to notify that the lifestyle programme would be starting. From then until November 2011 his funds had been moved accordingly and were reflected on his annual statements. When they received his request in November 2011 to defer his retirement age at that point he would have almost reached his current retirement date and his funds reflected this. The retirement date was then changed to November 2020 and the new lifestyle programme would start five years prior, taking into account previous fund movements. However they do not undo any previous lifestyle movements.
14. My office wrote to Friends Life and asked for a formal response to Mr Butler's complaint. As part of this my investigator asked for a copy of the "retirement brochure" as referred to on the form that Mr Butler completed when deferring his retirement age. In response Friends Life provided a copy of a retirement brochure, which appears to be from May 2013, and pointed to the section that says:

"What if I want to retire earlier or later than planned?

Postponing your retirement

You can postpone your retirement date to any future birthday beyond your selected retirement date...

Other factors to consider

...

Investment Choice

If you change your retirement date, the investment funds you have chosen to invest in will remain unchanged...If you wish to change your investments, please let us know...If you are looking to retire later than

expected and your plan is in a Lifestyle or Lifetime Investment, your retirement fund will have been moved to lower risk investments as you approached your retirement date. Please note that your investments will remain in lower risk funds unless you specifically request an alternative course of action...”

15. Mr Butler says that he has never seen the above guide and that it was dated some 18 months after his decision. He has provided us with a copy of the “Make the most of your retirement” guide that he did receive, which was dated March 2011. That version of the booklet included the wording that “If you change your retirement date, the investment funds you have chosen to invest in will remain unchanged...” but none of the subsequent wording quoted above in relation to lifestyle funds.

### **Summary of Mr Butler’s position**

16. The 14 November 2011 letter said that his investment programme would change so that it was targeted to end in 2020. As the purpose of the lifestyle programme was to move his investments into lower risk funds near his retirement date he naturally took this to mean that with nine years to run until retirement his investments would be re-invested in the FP Balanced Index Fund of Funds and that the lifestyle programme would start again on 21 November 2015, i.e. five years before his new retirement date. It never crossed his mind that his monies might remain “languishing” in cash and fixed interest investments, where it would not earn enough money to cover the management fees, and there was nothing in the letter to suggest that this was the case.
17. The letter did say that further payments would be invested in the FP Balanced Index Fund of Funds. But it was unrealistic to invest new payments into this fund whilst leaving the bulk of the investment in fixed interest and cash funds.
18. While there was no mention in the 2011 correspondence that funds would be automatically moved back into the FP Balanced Index Fund of Funds of more significance is the fact that there was no indication that they would not be so moved. The information that he received was not in an acceptable format and had it said clearly that his existing funds would have remained in cash and fixed interest investments unless he instructed them to the contrary then he would have acted. The letter of 14 November 2011 gave completely the opposite

impression. It also said that his investment programme would change so that it was targeted to end in November 2020.

19. He did not become aware of an issue until October 2013. The member summary tab on the Friends Life website said that the lifestyle programme would start on 21 November 2015, which is what he understood from the 2011 letter. However he was horrified to find that the investment summary showed that monies were still invested in cash and fixed interest funds.
20. The response of 6 November 2013 was the first indication that he received that previous lifestyle switches had not been undone. It was obvious that if he had been told this earlier he would have given specific instructions for the previous switches to be undone.
21. He had not been copied in on the letter that was written to NatWest Financial Services and had never been made aware of its contents as he did not continue to use them for pension advice. He had not received the statement dated 6 November 2012 either. Having been told he would not be sent any more information until nearer his new retirement date he was not expecting any further statements. Nor had he reviewed his investments on-line prior to October 2013 as he thought he was safely invested in the appropriate fund as the markets continued to improve. He also did not receive the letter of 15 November 2011, and the copy recently supplied to him was on "Friends Life" headed paper (other communications around that time had been on "Friends Provident" headed paper).
22. He had lived at his current address for over 20 years. His address does not have a house number but a house name. There is a nearby restaurant with a similar name and on a small number of occasions he has received mail intended for them. While he has immediately forwarded any mail he has received in error to them he doubts whether they have reciprocated the gesture and has no doubt that, over a period of time, correspondence intended for him has ended up with them. But he finds it hard to believe that three items in a two year period from the same source could end up with them.
23. In relation to the "Make the most of your retirement" guide provided by Friends Life he had never seen a copy of the version that they sent. A paragraph that they have relied on in their response to the complaint is completely missing from

his version. This suggests that Friends Life had realised the serious omission from their literature, perhaps from someone like him raising the issue, and then corrected it in May 2013. If he had been provided with a statement to this effect in any literature or communications he would have been alerted to the issue. In his view the inclusion of this additional paragraph is an acceptance by Friends Life that previous information was so misleading that it lulled him and others into a totally false sense of security with regards to their funds.

24. He has kept all documentation that he had received from Friends Life and Scottish Amicable and the Prudential before them. He has no record or recollection of receiving any “Lifestyle guide” as referred to by Friends Life in 2006. He did receive a different guide on the New Generation Personal Pension Plan, which has a short Lifestyle section, but this simply said under that section that if you wished to change your selected retirement age then you should let Friends Life know. In the absence of any contrary wording it was reasonable to assume that this was so the existing investment programme could be realigned to the new retirement date.
25. His pension fund had been eroded through no fault of his own. The poor wording in various communications received had lulled him into a false sense of security. There was a general failure to fully communicate to him the ramifications of his decision to defer his retirement date. And specifically there had been an extremely misleading statement in the letter of 14 November 2011. His pension fund was now underfunded by £80,531 (the figure he gave was as at 7 November 2013) and he asks for an appropriate amount to be added to the Plan to rectify this.

### **Summary of Friends Life’s position**

26. Their letter of 14 November 2011 explained the position regarding Mr Butler’s investment programme. It clearly said that his programme fund movements, which had already taken place, will have been in accordance with the programme on his previous selected retirement date. It explains that the postponement of the retirement age to 2020 will be made from November 2011 and goes on to explain what will happen with payments received from 21 November 2011. It did not cover payments received before that date and so they believe it should be clear to customers that there will be no change to how previous contributions

are invested. There was also no mention that funds would be automatically moved back into the FP Balanced Index Fund of Funds. While they were sorry that the position was not as assumed by Mr Butler they do not view that they are at fault for this.

27. As Mr Butler did not provide them with direct instructions for his funds to move back into that which he had previously selected they remained in the cash and fixed interest funds. Contributions received after the letter were invested in the FP Balanced Index Fund of Funds as this was the existing investment instruction and the additional contributions were not affected by the lifestyle option as they were received after the decision to defer the retirement date. They could not transfer a pension fund's investments without a direct instruction from the Plan's holder. Since the complaint was made they had now received the instructions for a switch which has since taken place in November 2013 (all of Mr Butler's investment is now held in the FP Balanced Index Fund of Funds).
28. Mr Butler should have been aware of the make-up of his investments from the letters sent to both him and his then advisers in March 2012 and in the annual statement sent on 6 November 2012. These letters were correctly addressed and so there was no reason to believe that they were not delivered to Mr Butler. It was not clear why he did not receive some of the correspondence and they have no record of any letters being returned to them undelivered. He also had the opportunity to view his investments on-line.
29. They apologise for sending a later version of the retirement brochure than that sent to Mr Butler in 2011. While the wording in the current version explains more clearly the position they remain of the view that the correspondence that was sent to Mr Butler at the relevant time did clearly confirm that only future contributions were being affected by the change of retirement date.
30. It was not now clear what document the "Lifestyle guide referred to in their letter of 2006 was.
31. In relation to the issue over some letters being on "Friends Provident" letterhead and others on "Friends Life" letterhead they have said the following. When the relevant letters were produced they would have been on the letterhead in use at the time, which was Friends Provident. The system that



reproduced these letters would have automatically selected the current letterhead.

## Conclusions

32. Mr Butler is of course correct when he says that the purpose of a lifestyle programme is to move investments into lower risk funds near a member's retirement date. But it does not follow that the choice of a later retirement date automatically meant the lifestyle programme would be reversed and then restarted.
33. The instruction given by Mr Butler was to extend his retirement date. I do not think that it could be construed as also being an instruction to switch, or undo, investment transactions that had taken place previously. In my view Friends Life are correct when they say that they could not move a policyholder's investments without a specific instruction to do so (a lifestyle instruction is slightly different in that it effectively involves them acting on a pre-existing general instructions, rather than specific instructions given at the time of each switch). The only decision that Mr Butler made was to change his retirement date and Friends Life adjusted this accordingly and told him that the lifestyle instruction would also restart five years from his new retirement date, unless he advised them otherwise.
34. The letter of 14 November only referred to changes to future payments and Mr Butler's new retirement date. There was no reference to any past investment transactions made, and so my view is that Mr Butler came to his belief as a result of his own thoughts and not because he was misled into doing so.
35. Mr Butler adds that without specific wording to the contrary this letter gave the impression that the "Lifestyle Investment Programme" would be undone. But, as I said above, the letter only made reference to how future contributions would be invested. It said nothing about past contributions and I do not think that an ordinary person standing in Mr Butler's shoes would have assumed that it meant that existing investments would be altered at all.
36. The letter of 15 November 2011 was clearer in saying that past investment switches were done in accordance with the old selected retirement age and future switches would take place from the new lifestyling date. Mr Butler says that he did not receive this. He also points to other communications he says he did not receive. The letters were all correctly addressed and usually my view on

such matters is that, on the balance of probabilities, post arrives at its destination (particularly in this case when there are several letters and it is very much against the odds that they all went astray). Mr Butler refers to some problems he has had with receiving post. But even if I were to agree that the post was possibly delivered to an incorrect address that would not help him as it would not have been Friends Life's fault.

37. In my view it is not likely that communications were not sent by Friends Life or that they have been fabricated for the purposes of this investigation. I am satisfied with the explanation offered by Friends Life that those letters that they have recently reproduced appear on Friends Life letterhead, as opposed to Friends Provident as they would have been when originally sent. (I also see that the change of name took place during the time that the documents were sent).
38. Mr Butler says that although he was told that he would not be sent any more information until nearer his retirement date Friends Life claim to have sent him an annual statement. It is likely that Friends Life simply meant that no more retirement reminders or retirement option forms would be sent to him until nearer his new retirement date. I doubt that they meant that *all* communications would cease. In fact there would have been a statutory obligation to provide annual statements.
39. Mr Butler also points to the revised wording used in the newer retirement brochure. He says that the additional paragraph is an acceptance by Friends Life that previous information was misleading. That Friends Life has made the wording in the guide clearer does not amount to an admission that the previous wording was misleading, just that it was capable of being improved in their view. Nor do I find, taken with the other material, that it was misleading.
40. For the reasons given I do not uphold the complaint.

**Tony King**  
Pensions Ombudsman

4 November 2014