

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

Applicant	Mr William Workman
Scheme	Michelin Pension and Life Assurance Plan (the Plan)
Respondent	Friends Life

Subject

Mr Workman's complaint against Friends Life is that there were online problems with their website which resulted in the loss of the fund switch requests that he had made. He says that this in turn led to a loss in the value of his funds.

The Pensions Ombudsman's determination and short reasons

The complaint should not be upheld against Friends Life as although there may have been website problems which prevented a switch request there were alternative methods open to Mr Workman that he could have used.

DETAILED DETERMINATION

Material Facts

1. The Plan is part of Michelin Tyre plc's pension arrangements. It is a defined contribution scheme managed by Friends Life. Mr Workman has provided a copy of a letter from the trustee of the scheme plus printouts which say that all switches submitted online will take effect using the next day's available unit price.
2. It is indirectly relevant that on 21 March 2013 Mr Workman called Friends Life in relation to making an investment switch. He followed this up with an email to Friends Life with details of the switch to be made.
3. Mr Workman says that in June 2013, in anticipation of his retirement he wanted to move his investments to reduce his exposure. He says that he experienced problems after logging into Friends Life's online systems in the days leading up to 21 June 2013. He was unable to complete an online switch request for a number of days and did not actually get an instruction into place until 25 June, by email, causing him a loss as his investments fell in value. He says he called on that day to make a complaint. He moved all his funds into the money market fund.
4. Mr Workman complained again to Friends Life on 3 July 2013 who said that they would respond in due course. He says he was told that they would need to wait and see an engineer's report.
5. In their response of 16 August 2013 Friends Life apologised for the switch problems he experienced but said that whilst he was unable to make a switch by using their website there were other ways he could have contacted them to make the changes. They accepted instructions by post, email, fax or by hand in addition to internet instructions. Their "first choice" method of change was a completed fund switch form. And while they do not normally accept telephone requests they accepted them in exceptional circumstances subject to agreement from a team manager. As other methods were open to him they did not think compensation was appropriate.
6. Mr Workman retired on 31 December 2013.
7. A report provided by Friends Life's IT department shows a large number of successful logins by Mr Workman between 1 June 2013 and 29 June 2013, with multiple successful logins on many of the days. There were a total of 54 successful logins listed between the period 14 June and 25 June 2013 inclusive.

8. Over that time, Mr Workman's fund value rose and fell as follows:
- 14 June 2013 – £57,490.15
 - 17 June 2013 – £57,800.13
 - 18 June 2013 – £57,598.05
 - 19 June 2013 – £57,578.94
 - 20 June 2013 – £57,759.79
 - 21 June 2013 – £57,149.21
 - 26 June 2013 – £56,283.67 (this value was after funds were switched into the money market funds)

Summary of Mr Workman's position

9. There was a loss on his funds due to problems with the online facility. The information provided by Friends Life showing successful log-ins does not include details of the unsuccessful attempts he made to complete fund switch transactions. He made several attempts to switch his funds using the online facility but it failed to allow him to do this resulting in a loss of funds. He asks that he be compensated for the loss of funds. His estimated that investment dropped from £56,722 on 24 June and by the time the switch went through it was only £56,132. This loss figure did not take into account his earlier attempts where losses were incurred due to the system not working. (These figures are not consistent with those above but nothing turns on that).
10. Like most people he was no expert on pensions and relied on direction from those responsible for the administration of the Plan. He had taken more interest in his plan recently as he was approaching retirement at the end of 2013. He had started to make changes to the Plan based on personal advice he had been given and was advised by Friends Life to make the changes via a switch form or online. But they did not tell him that there could be problems with the online system. Neither did they ever tell him anything about a "first choice" method and their literature never highlighted any particular method as such.
11. He had become aware around the relevant time that retirement at the end of the year was very much a possibility for him and so he was closely monitoring his funds with a view to switching to a safer option.

12. In the days leading up to Friday 21 June 2013 he had been on the website with a view to switching his investment. He made a number of unsuccessful attempts in carrying out this function, but is unable to confirm exactly the first date when he attempted to switch his investments but thinks it was around 19/20 June. The reason he gives 21 June 2013 as the appropriate date for assessing any loss is because it was on that particular date that he started to notice the fund value drop.
13. He was able to login to the site and view his investment fund details. When he got to the "Open Investment Tool" part of the menu he was denied access. He tried the "Switch my money" option as well to no avail. He checked the site again on the morning of Friday 21 June but had the same problem. He tried again later that day and got a message saying that the site was closed for an "annual clean down" and would not be available until Monday (he adds that the fact that there is no log-in activity for 22 June 2013 is because of the clean down exercise). Had he been given prior notice of the closure he could have taken a different course of action. The login report showed that he was monitoring his investments carefully.
14. He tried again on 24 and 25 June without success and then contacted Friends Life by telephone on 25 June. He was advised to email the switch request. He was also told that they would need to wait for an engineer's report as to why the facility was not working. But no report was ever forthcoming.
15. He had not taken any screen prints or kept any other evidence of the online issues as he had not thought this would have been later needed at that time. In response to Friends Life's comments that there were no system issues at that time he says he did not imagine the issues that occurred.
16. The online problem was not resolved for a number of days after he reported it. A further problem with the online system occurred on 27 July and he called Friends Life regarding this. So it was more than just an occasional problem. Also two of his colleagues are happy to bear witness that they had similar problems with Friends Life's system.
17. He was aware of the fund switch form and had used it in the past. The problem with this form was the time delay in getting the form to Friends Life and also the concern that it might not get there at all (he cites a colleague as saying that his switch form had gone missing and no switch took place on his colleague's

account). In his conversations with a Friends Life advisor he was told the easiest method was to use the online facility. It was of no help to be told that alternatives were available after the event. The system did not provide details of alternative options when an error occurred and the “Having problems logging in?” screen was only relevant if experiencing problems logging in. There was no clear instruction on what to do once difficulties arose. He was not aware until recently that a fund switch could be done by phone, with the switch taking effect immediately and this should be communicated to members. The option to perform a switch by phone was not brought up during his call of 25 June 2013 and there was no mention of it until the letter of 16 August 2013. Also not everyone had access to a fax and email. There was also no provision for problems that occurred over a weekend with the helpline closing on Fridays at 5.30pm.

18. The fact that he had made a fund switch using email in March 2013 was irrelevant as the whole process was new to him and very much a learning experience. He had since been told that the online system was the best to use for switches and that is why he persisted with this method.
19. He had used “two different computer systems”, one at home and one at his workplace, while attempting to carry out the transaction and so it was highly unlikely that he had experienced the same problem on both systems from his end.
20. Also advance notice should be given when the website was to go down for a weekend. If such information was made available earlier then he believes that it would prompt members who are considering switches to act sooner and in a more decisive manner rather than wait in the hope that the system would be fixed.
21. He was now drawing a pension income and had not moved his monies away from Friends Life. He asks that the loss of £590, or any higher value that Friends Life record on 21 June 2013, be paid directly to him.

Summary of Friends Life’s position

22. Unfortunately they do occasionally experience website problems and they try to resolve them as quickly as possible. Although the website is a tool that they provide they do offer alternative arrangements if a member wants to switch their

funds. Occasionally they need to improve or alter their systems but they ensure alternatives are in place. They can confirm that there was no “annual clean down” or “engineering report” and there were no problems with their online system in June 2013. On occasions their system may have gone down for a short period of time, for no more than a few hours, but it was up and running shortly after.

23. If Mr Workman had been unable to switch funds on 21 June 2013 online or to log-in to the system then they could have accepted a switch by phone, post, fax or email. They had previously only indicated the options available to him, not any first choice method. They note also that Mr Workman completed a switch by email on 21 March 2013. He was therefore aware of the use of email as an acceptable method.
24. Their system provides details of alternative contact methods; an example screenshot has been provided to my office. This lists a telephone number and email for their administration team under the “Having problems logging in?” section.
25. If Mr Workman had called the same day he would have received the same price date as if the switch had been made online. However they did not receive instructions until 25 June 2013. Investment performance works both ways and he could have seen an increase in funds as a result of the delay in contacting them.
26. They are unsure as to where Mr Workman got his information regarding an annual clean down. There was no scheme amendment to the Michelin plan in June 2013. Also there was no engineering report produced. Also the report from their IT team showed that there had been a lot of successful activity in June 2013, including on 21 June 2013. There was a bulk switch applied to the scheme in March 2013, but this was prior to the issues that are being raised.

Conclusions

27. Mr Workman is clear that he experienced problems with the online system. Friends Life in turn say that they had no significant problems with their systems during June 2013 and at most their system may have been down for a couple of hours at a time.

28. I am happy to accept Mr Workman's account that he was able to login to the system but unable to action any switches once he was in the system. Indeed the fact that he logged in so many times on certain days (such as logging on twelve times on 21 June 2013 alone) suggests that it is likely that he was having problems. However that alone would not be enough for me to uphold his complaint or agree that injustice had occurred as a result of the problem.
29. But first, I cannot say with confidence *why* Mr Workman was having difficulties. It is possible, though inconsistent with his account, that the problem was not with Friends Life's website, but somewhere else. I do not have sufficient evidence to decide, on the balance of probabilities, that Mr Workman was actually prevented by Friends Life from making the on-line switch that he wanted to make.
30. Second – and more importantly – Friends Life are not liable for any loss if Mr Workman could have prevented it. I can see that if he was unsuccessful, then leaving matters and trying again a little later would have been reasonable. But at some point, if the timing of the switch was significant to him, Mr Workman should have considered the alternatives. Mr Workman questions what would have happened if he had sent a postal instruction or email request, but it was not received by Friends Life. But I cannot compensate him on the basis of what might have happened in a hypothetical scenario.
31. Although some of the methods, such as posting a form, might have taken a little bit longer to effect the end result would have been the same whichever method was used, i.e. a switch would have taken place. Sending a posted instruction would obviously be the slowest method. But faster methods such as using a fax or email were available (Mr Workman says that not everyone would have access to such facilities – but he did have access to email at least.) And he was aware that he could have used email to action a switch, having used that method in March 2013.
32. For the reasons given I do not uphold the complaint.

Tony King
Pensions Ombudsman

28 November 2014