

Ombudsman's Determination

Applicant	Dr D
Scheme	Friends Life Pension Policy (the Policy)
Respondents	Friends Life (formerly Sun Life)

Ombudsman's Determination and reasons

1. I do not uphold Dr D's complaint and no further action is required by Friends Life.
2. My reasons for reaching this view are explained in more detail below.

Complaint summary

3. Dr D has complained that she was told, in November 1996, that the Policy was fully portable and could be altered without charge. However, Friends Life is now seeking to apply surrender charges for transferring the Policy.

Background information, including submissions from the parties

4. Dr D commenced the Policy with Sun Life (now Friends Life) on 1 March 1995. The Policy has a retirement date of 10 May 2026.
5. Following a request, Sun Life wrote to Dr D's independent financial adviser (**IFA**) on 28 November 1996 (**the 1996 letter**). The 1996 letter included the following –

"I am writing to confirm that all pension contracts offered by Sun Life are fully portable. This means that should the client's employment status alter at any time in the future the policy can be amended, at no cost to the client, to suit their requirements.

For example; self employed regular personal pension plan, the client joins a company with a pension scheme in force. The personal pension plan is made paid up and a new free standing avc plan is taken out on a no loss basis i.e. Capital Unit period reduced to that of the IPP. Although the client has effectively two policies there will only be one policy fee which will apply to the free standing avc.

Alternatively, a member of a company scheme leaves and is now self employed, the bid value of the units under the scheme is transferred across to the new personal pension plan. Again the CAP unit period is reduced accordingly”.

6. Following this, Dr D’s IFA wrote to her on 2 December 1996. The letter said –

“Following my last letter and several attempts to contact you by telephone, I am now pleased to enclose the following.

An application form for the Sun Life Free-Standing AVC which you need to convert your personal pension, together with an illustration and key features of the plan. I also enclose a copy of a letter received from Sun Life which explains that in making this change to your plan there is no cost to you...”

7. Dr D stopped paying premiums into the Policy in May 1997 when she joined a company pension scheme. Sun Life wrote to her on 12 May 1997, saying –

“Premiums under your Personal Pension Plan were discontinued following the premium due on 1.4.1997 as requested as you advise that you have joined your company pension scheme and are therefore no longer eligible to contribute to a Personal Pension.

As stated in section 2.7 of the policy booklet any outstanding charges payable to Sun Life have been met by cancellation of the appropriate number of Capital Units...

Half the monthly administration charge will continue to be payable and will be met by cancellation of accumulation units each month...

Except as stated, the terms and conditions of the contract remain unchanged”.

8. In June 2013, Dr D requested, and received, a transfer value illustration. This showed that she would incur charges of about £1,675 if she went ahead with a transfer.
9. Dr D complained about this in March 2014. She said that although she was aware of the charges, she was really complaining about the exit charges. In its response dated 27 March, Friends Life referred Dr D back to the IFA that sold the Policy to her. It did not uphold the complaint.
10. Dr D asked for a review of the decision on 2 April 2014. Friends Life replied on 9 April and 28 April 2014. It said that the exit charges were made up of capital units being surrendered prior to the normal retirement date. It said that her IFA should have explained it to her at the point of sale as it formed part of the terms and conditions of the Policy. It said that she was told, in November 1996 and May 1997 that she could have transferred without charge to another policy with a similar charging structure prior to April 2001.

11. Friends Life said that the option to move to a policy with a similar charging structure was no longer available due to a change in pension legislation in April 2001. Dr D's request for them to waive the charges was turned down.
12. Dr D brought her complaint to us. She says that it is unfair that she can no longer transfer to another policy within Friends Life without a penalty. The 1996 letter stated that the Policy was fully portable and could be amended at no cost. She believed that the ability to transfer without cost was open-ended and she was not told that there was a time limit to it. She accepts that the terms and conditions of the Policy provides for the surrender of capital units on transfer. However, she says that the key features document merely says that she "may incur penalties" on transfer or early retirement and this is not definitive that she would incur penalties.
13. Friends Life says that surrender penalties were part of the Policy that Dr D agreed to. It says that a transfer to another policy could only be done at no charge if the funds were being moved to a policy with a similar charging structure. Dr D had the opportunity to do so in 1996/1997 but did not do so. Friends Life says that it no longer offers such policies after April 2001.

Adjudicator's Opinion

14. Dr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by Friends Life. The Adjudicator's findings are summarised briefly below:
 - Dr D generally accepts that the terms and conditions of the Policy allow Friends Life to levy surrender charges.
 - The 1996 letter to Dr D's IFA explained that Sun Life (now Friends Life) would allow a policy to be made paid up and a replacement policy taken out, at no cost.
 - Dr D's IFA understood that Dr D was able to transfer without charge to a Free-Standing AVC. Dr D made the Policy paid up but did not take out the replacement Free-Standing AVC suggested by her IFA.
 - Although there was no time limit on the opportunity to amend the Policy, there is no longer any product with a similar charging structure for Dr D to have as a replacement policy.
 - Friends Life did not say that Dr D could surrender the Policy without charge. It is entitled to impose the surrender charges on the Policy.
15. Dr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr D provided her further comments many of which were not new. Essentially I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Dr D for completeness.

Ombudsman's decision

16. Much of the complaint turns on the 1996 letter. In my view, the 1996 letter commits Sun Life to permitting accruals into the scheme (or one which is indistinguishable in charging terms) whatever the member's employment status. It does not deal with circumstances in which a member ceases accrual and does not deal with the question of transfers to another scheme. As defined in the letter, 'portable' was not the concept of carrying funds from one scheme to another, but of keeping on using the same scheme through multiple employment situations.
17. Dr D accepts that the terms and conditions governing the Policy state that surrender charges would be applicable in the event of transfer to another scheme but submits the term should not apply to a transfer which is internal to Friends Life. I disagree. Transfers out of the scheme are dealt with in Rule 12.1. It covers transfers to any other personal scheme. It does not distinguish between internal and external transfers. The question is solely whether a payment is to be made to another scheme. In Rule 2 'Scheme means this personal pension scheme' i.e. the one constituted under the particular Rules and Policy, including the arrangements about capital units. It does not follow that transfers within one provider are within one scheme.
18. The letter of 12 May 1997 from Sun Life said that the terms and conditions of the Policy remain unchanged after it was made paid up. Accordingly, any charges (including surrender charges) remain payable. Allowing Dr D to now transfer to another product without similar charges would effectively mean that she could avoid the charges altogether.
19. Dr D has raised the issue of promissory estoppel, also known as estoppel by representation.
20. As mentioned by Dr D, for estoppel by representation to apply, the following requirements need to be satisfied:
 - there has been a clear promise or a representation on which it was reasonably foreseeable that the person to whom it was made would rely;
 - the party claiming estoppel acted in good faith and relied on the representation;
 - as a result he/she acted to his/her detriment; and
 - the party who made the representation or promise is now pursuing a claim that is inconsistent with the representation or promise.
21. I do not think that estoppel applies in Dr D's case. In my view, as I've said above, the 1996 letter does not promise that Dr D would not pay surrender charges to transfer out of the scheme under any circumstances. The 1996 letter said that Dr D would be able to continue to contribute to the policy without paying twice for capital units even if

her employment status changed. What Dr D is now considering, i.e. carrying out an internal transfer some 16 years later to a policy without a similar charging structure, is not covered by the 1996 letter. Accordingly, there was no clear promise made to her that she would be able to transfer out of the scheme without cost.

22. Dr D points out that the law changed in 2001, arguing that this was because exit charges were considered unfair. However, I must apply the law as it stood at the date the contract was formed.
23. Therefore, I do not uphold Dr D's complaint.

Karen Johnston

Deputy Pensions Ombudsman
17 May 2016