

## Ombudsman's Determination

|             |   |
|-------------|---|
| Applicant   | Mr Y  |
| Scheme      | Friends Life Personal Pension Plan (the <b>Plan</b> ) |
| Respondents | Friends Life  |

## Ombudsman's Determination and reasons

1. Mr Y's complaint is upheld and to put matters right Friends Life should pay Mr Y financial compensation for the loss he has suffered and the distress and inconvenience caused by its error.
2. My reasons for reaching this view are explained in more detail below.

## Complaint summary

3. Mr Y's complaint is summarised as follows:
  - Mr Y was provided with incorrect information when he contacted Friends Life to request drawdown and a cash lump sum from the Plan.
  - He says the incorrect information caused undue delay and prevented him from accessing his benefits from the Plan.
  - Friends Life acknowledged that Mr Y was not told that he had a small window between 27 March 2015 and 6 April 2015, to go into drawdown.. It apologised to Mr Y and calculated that his loss amounted to £460 and also offered compensation of £300.
  - Mr Y did not accept the payment from Friends Life and believes his losses amount to £4,775, (which figure was derived from as a loss of market value on the entire fund over a different period of time).

## Background information, including submissions from the parties

4. Mr Y first contacted Friends Life in January 2015, to request drawdown from the Plan (and a cash lump sum). Friends Life informed Mr Y that his request could only be actioned after his 55<sup>th</sup> birthday on 27 March 2015.

5. When Mr Y contacted Friends Life on 27 March 2015, he was incorrectly informed that he would need to wait until after 6 April 2015. Mr Y made further attempts after this date and received more contradictory information.
6. Mr Y complained to Friends Life and received £50 compensation in June 2015. Mr Y remained dissatisfied and transferred his fund to Aviva on 14 September 2015, whilst still continuing with the complaint process. Mr Y confirmed that he will be taking his money out of this account “slowly” over the next few years “for tax purposes”.
7. In its final complaint response dated 9 November 2015, Friends Life informed Mr Y that he “had a small window period between 27 March 2015 and 6 April 2015 to take Drawdown and Tax Free Cash...but unfortunately [he was] not told this at the time”. Friends Life apologised for this error and offered Mr Y compensation of £760. The value of Mr Y’s fund had gone down from £53,561.57 on 27 March 2015, to £51,721.63 on 14 September 2015. Friends Life said he would have experienced loss on the 25% cash lump sum so it calculated that this amounted to £460 (rounded up), and it offered Mr Y an additional £300 for distress and inconvenience caused.
8. Mr Y did not accept the offer and does not believe that this is sufficient compensation. He says that his fund value when he started the process was £56,163 but this had fallen to £51,388 by the time he transferred his fund in the Plan.
9. During the course of our investigation, Friends Life provided amended figures for Mr Y’s fund value in March and September 2015. It is noted that the terminal bonus had not been included in its letter of 9 November 2015. It confirmed the total surrender values including terminal bonus as follows.

|                 | <b>27 March 2015</b> | <b>14 September 2015</b> |
|-----------------|----------------------|--------------------------|
| Surrender value | £53,276.57           | £51,721.63               |
| Terminal Bonus  | £2,282.80            | £1,869.77                |
| Adjustment      | - £81.68             | - £15.44                 |
| <b>Total</b>    | <b>£55,477.69</b>    | <b>£53,575.96</b>        |

10. From these recalculated figures, the difference in Mr Y’s fund value is £1,901.73 instead of £1,839.94 (a difference of £61.79). Friends Life confirmed that it is willing to rectify this.
11. At our request, Friends Life also confirmed that had Mr Y taken the cash lump sum (of £13,869.42) in March 2015 and taken drawdown, his maximum annual income would have been £2,558.91 which would have been £213.24 per month. (It would not have been taxed as it was under the relevant thresholds across both financial years.) Friends Life pointed out that had Mr Y been in drawdown an annual management

charge would have been deducted monthly and he would have had to be in a different fund.

## Adjudicator's Opinion

12. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by Friends Life. The Adjudicator's findings are summarised briefly below:
  - There had been maladministration by Friends Life because it did not inform Mr Y that he had a small window to take a cash lump sum and drawdown product. Mr Y suffered actual financial loss as a result of that maladministration.
  - Mr Y's intention was to take 25% of his fund as a lump sum and then use a drawdown product to withdraw small periodic amounts from his fund. This view is supported by the fact that Mr Y appears to have taken out a drawdown product with the new provider, Aviva.
  - As Mr Y was not withdrawing the full amount of his benefits in the Plan as a lump sum, it is correct to calculate what he lost on lump sum he could have taken on 27 March i.e. 25% of £1,901.73 (the total fall in fund value) which is £475.43. This is Mr Y's loss in respect of the lump sum he would have received.
  - Mr Y would have also received drawdown payments. He has suffered a further loss in respect of this. His maximum drawdown limit would have been £2,558.91 for the pension year starting on 27 March 2015. On balance, it is likely that he would have taken monthly payments so he has missed out on receiving drawdown payments from March to September 2015. This amounts to a total of £1,492.68 based on him receiving monthly payments of £213.24.
  - The compensation offered by Friends Life for distress and inconvenience should be increased from £350 to £500.
  - Taking into consideration the amounts already received and the other deductions, Friends Life should pay a further £1,359.73 to Mr Y.
13. Both parties contested the method used to arrive at financial loss calculation and the complaint was passed to me to consider.
14. There was also an issue about how much compensation Mr Y had already received from Friends Life. He has now confirmed that he has only received £50 which tallies with records held by Friends Life.

## Ombudsman's decision

15. I find that keeping Mr Y out of his lump sum and his income drawdown for the period 27 March to 12 September 2015 (**'the relevant period'**) was maladministration.
16. Turning first to the lump sum, Friends Life submit that Mr Y should receive £475.43 compensation representing 25% of the loss of market value incurred over the relevant period. I agree that these are the relevant dates for calculation because they reflect the period during which Mr Y was prevented from going into drawdown. I agree that 25% of the fall in market value should be compensated (rather than the whole loss in value) because 25% was the maximum available tax free lump sum. I therefore agree that Friends Life should pay £475.43 compensation in respect of the delay in paying the lump sum.
17. I turn now to the missing income drawdown part of the complaint. Friends Life does not believe that Mr Y has suffered a financial loss in respect of the missing income drawdown payments. If the money not drawn down were still sitting in the new account I would agree with that submission. However, it is not. The £1,492.68 which he would have taken is now short by the amount which the market fell over the relevant period. According to Friends Life's own calculation that is 7 monthly payments of £213.24, a total of £1,492.68. Friends Life should compensate Mr Y for the fall in market value on that sum in addition.
18. I agree, that if Friends Life are to put Mr Y back in the position he would have been had they allowed him to commence income drawdown in March 2014, it would have been on the terms which applied to the product at the time, including any charges which they were entitled to levy under the terms as they then stood. If there is difficulty now in understanding whether those charges would have been earned or which fund Mr Y would have been in had he moved out of with profits, that is not his fault; the usual principles of compensation require any doubt to be resolved in his favour.
19. For the reasons set out above, I uphold Mr Y's complaint.

## Directions

20. Within 28 days of this Determination, Friends Life must:
  - pay Mr Y £475.43 in respect of the market loss on his lump sum.
  - calculate and pay the market loss over on the missing income drawdown of £1,492.68 over the relevant period.

**PO-9743**

21. Pay Mr Y £450 for distress and inconvenience, (i.e. £500 less the £50 already paid to him). Mr Y has my sincere condolences for his bereavement. Friends Life should revert to me if there is further difficulty in understanding how to calculate the financial loss.

**Karen Johnston**

Deputy Pensions Ombudsman  
2 June 2016