

Ombudsman's Determination

Applicant	Mr S
Scheme	Davies Implements Ltd Self-Administered Scheme (the Scheme)
Respondents	Friends Life

Outcome

1. Mr S' complaint against Friends Life is partly upheld, but there is a part of the complaint I do not agree with. To put matters right for the part that should be upheld Friends Life should pay total compensation of £1,000.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S has complained that Friends Life could not initially trace the Scheme, and that as a consequence of this he received no information regarding his potential retirement benefits.
4. Mr S has highlighted the lack of information from "December 2014 to June 2016" to have been of significant inconvenience as he was unable to make adequate "pensions, tax and succession" decisions.

Background information, including submissions from the parties

5. On 9 October 1992, Equity & Law Assurance Society plc (whose book of business was subsequently acquired by Friends Life) agreed to provide a "Pension Plan" for Mr S under the 'Multipension Trustee Plan'. This Scheme was designed to be a single contribution investment contract.
6. A single contribution of £210,954.86 was paid into the Scheme when it was first taken out. There were no subsequent payments.
7. Mr S appointed DC Financial Limited (**DC Financial**) as his independent financial advisor (**IFA**) in late 2015. DC Financial has suggested this appointment was made due to a failure by Friends Life to trace Mr S' Scheme in 2014.

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8. On 9 November 2015, DC Financial provided Friends Life with a signed letter of authority appointing it as Mr S' IFA. The same letter also contained various scheme information requests.
9. On 12 November 2015, Friends Life confirmed in writing that it was unable to trace the Scheme using the information provided by DC Financial. This was consistent with previous answers it had given Mr S regarding his scheme.
10. DC Financial challenged this and Friends Life was eventually able to trace the Scheme. Friends Life was then in a position to issue generic information to DC Financial. Unfortunately, Friends Life issued a letter to DC Financial that was incorrectly dated 20 October 2015.
11. DC Financial then contacted Friends Life for further details, including a request for a transfer value. A protracted period of correspondence followed. During this period Friends Life provided DC Financial with incorrect and misleading information regarding the Scheme bonuses.
12. Friends Life also explained that as Mr S had passed his 75th birthday, without claiming payment, a "fictitious" date of birth had been entered onto its systems to allow "ongoing updates and applications of any applicable bonuses". As such, Friends Life was unable to provide any definitive scheme values including, the requested transfer value, until the matter was resolved.
13. On 25 April 2016, DC Financial wrote to Friends Life with a formal complaint. In this letter, DC Financial explained that, among other things, it had serious concerns that the information provided by Friends Life would be inaccurate.
14. On 26 May 2016, Friends Life issued the outstanding transfer value with a value of £335,410.82. Mr S elected to transfer his benefits and returned the necessary paperwork via DC Financial on 16 June 2016. The transfer was finalised on 8 July 2016. The final amount transferred was £336,462.61.
15. In recognition of the distress and inconvenience caused to Mr S, Friends Life offered £500 compensation before the complaint came to the Ombudsman.
16. As a consequence of Friends Life's actions Mr S has applied for significant compensation to account for the following:
 - Emotional strain
 - The cost of employing a Financial Advisor
 - Loss of time in dealing with this issue
 - The cost of setting up a new pension plan
17. DC Financial have suggested that the request to transfer was as a direct result of Friends Life's poor service.

Adjudicator's Opinion

18. Mr 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:

- Friends Life acknowledges that it initially failed to trace the Scheme and then it provided incorrect information regarding the Scheme.
- The initial failure to trace the Scheme amounts to maladministration.
- Friends Life has offered compensation in recognition of the distress and inconvenience this matter has caused.
- The original single contribution paid in 1992, represented a significant investment by Mr S.
- Distress and inconvenience incurred as a result of maladministration is considered a non-financial injustice, and as such any compensation awarded will be modest in nature.
- The Pension Ombudsman's normal position on professional fees, is that, it is currently possible for applicants to resolve complaints without the need for professional help, as free advice and guidance is available from The Pensions Advisory Service (**TPAS**), among others.
- Friends Life's maladministration contributed to the appointment of DC Financial however there were a number of readily accessible advice services available to Mr S, free of charge.
- Mr S, as a prudent person, would have had to seek financial advice and guidance from a professional financial planner before choosing how best to use his benefits.
- The decision to transfer benefits was made by Mr S, he was not induced to do so, and took this decision, presumably with the benefit of advice received from DC Financial.
- Friends Life should not be required to reimburse Mr S for either the appointment of an IFA or a decision he made based entirely of his own free will.
- It is likely that Mr S would have made the decision to transfer his benefits even if the maladministration had not occurred. This is because he wanted to explore the possibility of partial surrender or flexible access, neither of which are offered by Friends Life.

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19. DC Financial Ltd did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. DC Financial Ltd provided their further comments which are summarised below:
- The Adjudicator has not understood the severity of this complaint or the effect it has had on Mr S.
 - The compensation suggested in the Opinion was insufficient and does not adequately compensate Mr S.
 - Mr S "cannot remember" ever having received any "periodic valuations" from Friends Life.
 - The transfer value "cannot be trusted" as Friends Life had lost the Scheme and only located it after DC Financial became involved.
 - Any financial loss cannot be quantified until a full breakdown of the transfer valuation calculation is provided.
 - Friends Life was unable to provide a valuation for two years.
 - All "faith" has been lost in Friends Life's ability to manage the Scheme. This is the only reason for transferring the Scheme.
 - Substantial compensation is warranted for the distress and inconvenience this matter has caused. In addition, Friends Life should reimburse Mr S for the professional fees he incurred.

Ombudsman's decision

20. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by DC Financial Ltd for completeness.
21. That Mr S made a significant investment in the Scheme in 1992 is not in question. Consequentially it stands to reason, that being told that the Scheme was untraceable would have undoubtedly caused Mr S significant distress. Further, once the Scheme was traced the lack of readily available information would have made financial planning problematic at best. I acknowledge this would have caused Mr S a good deal of inconvenience.
22. Distress and inconvenience are classed as non-financial injustices, and as such any compensation awarded as a result will be more modest in nature than any redress awarded for an actual financial loss.
23. DC Financial have suggested that until the transfer calculation method is provided it cannot be said with certainty if there has been a financial loss.

24. That Friends Life was initially unable to trace the Scheme is regrettable and does amount to maladministration. However, I can see nothing to suggest that the calculation method used was incorrect and no evidence that it has been challenged. I can therefore see no evidence of financial loss.
25. DC Financial have also said that Mr S felt compelled to transfer as a direct result of Friends Life's inability to adequately manage the Scheme thereby incurring financial cost. DC Financial also strongly disagreed with the Adjudicator who had said:
- "I cannot therefore see why Friends Life should reimburse Mr S for a decision he made entirely of his own free will and would likely have made even had the maladministration not occurred. Further, in its letter of 25 April 2016, DC Financial referenced the pension freedoms that had recently been announced as being one of the chief reasons for Mr S' request for a transfer value".
26. I agree with the Adjudicator. In its complaint letter of 25 April 2016, DC Financial make it clear to Friends Life that Mr S was considering accessing his benefits piecemeal and that:
- "Without an accurate valuation, partial surrenders cannot be made with any confidence that they will not be seriously depleting the capital.
27. The same letter goes on to say:
- "There is now greater flexibility with pension death benefits and succession planning, it is questionable whether this plan is still appropriate".
- "As a transfer value cannot be generated you are effectively forcing the client to remain within the policy and not benefit from the new more flexible rules.
28. This letter clearly references 'partial surrender' of the Scheme and alludes to flexible access draw down, or at least taking advantage of the Government's pension freedoms. Neither of these facilities were offered by Friends Life at that time, and so Mr S will have had to transfer to a different provider in order access his benefits in the manner described. DC Financial have also suggested that this policy may not have been "appropriate" for Mr S, giving the strong impression a transfer was highly likely regardless of the level of service.
29. It cannot therefore be said that maladministration on the part of Friends Life was the cause of the transfer. I conclude it was likely Mr S would have elected to transfer in order to access his benefits flexibly even if the service level had been adequate.
30. Regarding the professional fees charged by DC Financial which have also been referenced as a financial loss suffered by Mr S, it is currently possible for applicants to resolve complaints without the need for professional help, as free advice and guidance is available from, among other organisations, The Pensions Advisory Service (**TPAS**). I will therefore not generally award costs associated with bringing a complaint. DC Financial have been unable to show what work it carried out in

locating the scheme, other than standard correspondence, that could not have been done by any of the free services available to Mr S.

31. As mentioned earlier, Mr S had made a significant investment in the Scheme and it seems reasonable to suggest that seeking professional advice would have been the prudent course of action. In any case I have found it likely that Mr S would have transferred out. He would therefore have incurred IFA costs in any event due to the need to seek financial advice on transfers above a certain value. I cannot see therefore why Friends Life should reimburse professional fees.
32. As DC Financial have pointed out the new pension freedoms that were announced in 2015, introduced more flexibility regarding how pension schemes such as this can be used to secure retirement benefits. DC Financial charges its clients in one of three ways:
 - 1) On an hourly basis;
 - 2) A fixed percentage charge of the total funds managed or transferred;
 - 3) A monthly retainer fee.

In this case the fee paid was a fixed rate percentage of the transfer value.

33. Friends Life acknowledges that it fell well short of its our service standards in this case. Given the sum at stake and the persistence of the problem I am satisfied that Mr S would have suffered very significant distress and inconvenience. This would have been compounded by the subsequent delays in obtaining meaningful scheme information once the Scheme had been located.
34. Therefore, I uphold Mr S' complaint to the extent that Friends Life should pay total compensation of £1,000.

Directions

35. Within 14 days of the date of this determination, Friends Life shall pay Mr S a total of £1,000 (and may offset any amounts already paid to him by way of compensation) for the significant distress and inconvenience caused to him by its maladministration.

Karen Johnston

Deputy Pensions Ombudsman
28 July 2017