

## The complaint

Miss T complains that Scottish Friendly Assurance Society Limited (SF) gave her incorrect information when she was deciding how to access her pension, which caused delays and a financial loss.

## What happened

Miss T had a Group Personal Pension with SF. In February 2022, when Miss T was approaching her 60<sup>th</sup> birthday, SF sent her a retirement options letter, which included the current value of her pension - £7,478.43 - and some information about how she could access her benefits.

On 27 April 2022 Miss T called SF. During the course of this call Miss T decided that she wished to transfer her pension into a product with SF which allowed flexible drawdown withdrawals. SF said it would send out details of her options and said she would need to select one of SF's funds for her pension to be invested into.

On 4 May 2022 SF sent Miss T a letter giving her details of the current value of her pension, which was £7,038.16 and the three options she had if she wished to access it. They were:

- Purchasing an annuity (with the option of taking some tax-free cash).
- Taking income drawdown (with the option of taking some tax-free cash) by transferring to a pension product which allowed drawdown.
- Taking benefits in full or in part as a lump sum.

SF included with this letter further details of each of the options.

On 14 May 2022 Miss T completed her options form, and selected

- ii) Transferring to a product that provides Income Drawdown.

On 27 May 2022 SF emailed Miss T and attached the forms required to transfer her pension to another provider. Miss T replied on 29 May 2022 asking why she had been sent these forms as she didn't want to transfer out, she wished to change to a product with SF which provided income drawdown, as advised in the call on 27 April 2022.

SF responded on 2 June 2022 and explained that Miss T's current pension scheme did not allow the income drawdown arrangement for its members. It apologised if it hadn't provided clear information about her retirement options, but transferring to another provider was her only option if Miss T wished to go ahead with drawdown.

Miss T emailed SF later the same day. She said she had been clearly advised that the drawdown option was available with SF, both in the letters she'd received on 18 February 2022 and 4 May 2022, and in her phone call on 27 April 2022. She asked for a manager to respond to explain the contradictory information urgently as her fund value was decreasing

during the delays.

Miss T followed this up on 8 June 2022 and raised a formal complaint as she'd not had a response. She said the information she'd been given was late, confusing and contradictory, and left her unable to make properly informed decisions. And during the delays the value of her pension fund had dropped by 17% which caused her distress. She said she wished to withdraw all of her pension as a small pot lump sum and asked to be told how this would be actioned as soon as possible.

On 10 June 2022 SF emailed Miss T with confirmation that she was unable to take income drawdown whilst remaining with SF, and she would have to transfer to another provider should she wish to choose this option. It included the required transfer forms.

On 27 June 2022 SF sent Miss T details of the small pot lump sum option, and said her pension was currently worth £6,385.73. It included an application form for her to complete should she wish to take this option.

On 17 August 2022 SF emailed Miss T its final response to her complaint. It apologised that its communications had been confusing, resulting in changes to the way Miss T wished to access her funds, but it said it did not provide advice on how benefits could be paid. It also apologised for the delay in responding to her complaint. It said that it was disappointed with the experiences Miss T had encountered whilst trying to withdraw her funds, and agreed the service she had received had not been to the level she should expect. But whilst it was sorry she'd had this experience, SF did not uphold Miss T's complaint as she hadn't returned the forms for it to process the small pot withdrawal. But it arranged for £200 worth of vouchers to be sent to Miss T by email as an apology for the inconvenience caused.

Miss T sent the completed application form for the small pot lump sum payment to SF on 22 September 2022, and SF confirmed on 3 October 2022 that the current value of her pension - £5,204.84 - would be paid to her on the next payroll date, 24 October 2022.

On 5 October 2022 Miss T complained to our service. She said that she had been wrongly advised that she was able to transfer to a product with SF which allowed drawdown from her pension. She had experienced very confusing messages from SF and was worried about the value of her pension so had requested to withdraw her entire fund. She had made a formal complaint but had not received a final response from SF. She said she had delayed returning the form for withdrawal as she had wanted to see how SF responded to her complaint, but having not heard anything she went ahead and sent the form back. She said the delays caused by SF had meant her pension fund value had dropped by over 26%.

Having considered Miss T's complaint our Investigator thought SF hadn't treated her fairly. He thought that it was likely that Miss T would have decided to take the small pot lump sum during the phone call with SF on 27 April 2022 had she been correctly told that drawdown was not possible with SF. He thought SF should complete a calculation to establish if Miss T had suffered a financial loss, and set out the basis on which he thought the calculation should be carried out. This discounted the period where Miss T had delayed in returning the application form required to receive the lump sum. He also thought the £200 SF had offered Miss T was fair and reasonable in the circumstances.

Miss T replied and said she thought the whole period should be considered in the calculation, as the whole circumstances had exacerbated the significant health problems she was experiencing, and she hadn't returned the form as she was waiting for SF to respond to her complaint. She also expanded on how she had been personally affected by SF's mistakes. She also told us how she felt the messaging system SF had used was confusing and added to her stress.

SF also replied. It explained that it thought the timeline the Investigator had set out was unfair. It agreed to conduct a loss calculation but thought the dates to be used should reflect the service level agreements (SLA) of five working days it had in place for the provision of documents, and not the arbitrary 24 hours the Investigator had thought should be used.

The Investigator reconsidered everything in light of these submissions. He didn't agree with Miss T that the whole period between 27 April 2022 and when she submitted the form should be used in the calculation. He didn't think SF were responsible for the period between when Miss T had been sent the required form and when she actually sent it back. But he did think there was some merit in SF's argument that a turnaround period of 24 hours for the provision of documents was unfair. He thought that four working days was acceptable, so amended his proposed calculation dates to reflect this. He didn't think that it was unreasonable for SF to use the messaging system it had, but explained that he thought SF should pay Miss T a total of £500 for the distress and inconvenience she'd been caused as this more fairly reflected the impact on her.

Miss T maintained that the whole period should be considered. SF argued that its SLA of five days had been agreed at a high level within its organisation so should be accepted in this complaint. As no agreement could be reached this matter came to me for a decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so I agree that Miss T's complaint should be upheld, as I don't think SF have treated her fairly. I'm satisfied that SF should undertake a calculation to establish if Miss T has suffered a financial loss, and I will set out the methodology it should use. This is broadly in line with what was proposed by the Investigator, but does take into account the SLA in place at SF with regard to document production. I understand Miss T will be disappointed that I don't think SF should use the entire period of the complaint when undertaking the calculation, so I'll explain my reasoning.

Miss T was approaching her 60<sup>th</sup> birthday, and was considering taking the benefits from the pension she held with SF. She had obtained some advice from an independent pension advisory service before speaking to SF on the phone on 27 April 2022. I've listened to a recording of this call. Having done so I'm satisfied that Miss T already knew that she was unable to take her pension in the form of an annuity as its value was too small. I'm satisfied that she wished to take her benefits, and knew that this could only happen by drawing an income from her pension, or taking it as a lump sum. But I'm also satisfied that Miss T knew that taking a lump sum or income from the pension could affect the state benefits she was in receipt of, so this was a serious consideration for her.

Having listened to the conversation I can see that SF mistakenly told her that she was able to take the benefits from her pension in the form of drawdown without transferring to a different provider. And transferring was something that Miss T wanted to avoid as it would incur transfer fees which would deplete her already relatively small pot value. So once Miss T heard that drawdown was possible with SF, she decided to take this option as a variable income suited her circumstances. But this was an error by SF – drawdown was never available to Miss T due to the specific nature of her pension plan. As she wished to take the benefits of her pension, her only options were to transfer to another provider and enter a drawdown arrangement, but this would incur transfer fees, or take the entire pot as cash from SF.

As Miss T discounted transferring to another provider due to the fees involved, I'm satisfied

that had she been given the correct information in the call on 27 April 2022, Miss T would most likely have elected to receive the full value of her pension as a small pot lump sum.

But the incorrect information meant that she wrongly selected the option of drawdown on her application form. And she was caused confusion when she was sent forms to enable her to transfer to another provider. Miss T wasn't told until 2 June 2022 that she was unable to take drawdown from her pension whilst it was with SF.

I can see that she emailed SF about the contradictory information on 3 June 2022, and then made a formal complaint on 8 June 2022. In this second email she also requested to take the value of her pension in the form of a small pot lump sum. But this request wasn't responded to until 27 June 2022, when SF sent the necessary form for Miss T to complete.

So the incorrect information given to Miss T by SF on 27 April 2022 has caused delays here. I'm satisfied that the small pot lump sum application form which was sent on 27 June 2022 ought to have been sent following the call on 27 April 2022. And as the value of her pension on 27 June 2022 (£6,385.73) was less than the value SF quoted on 4 May 2022 (£7,038.16), I can see Miss T has most likely suffered a financial loss due to the error by SF.

So I need to decide when, had Miss T been given the correct information on 27 April 2022, the relevant forms would most likely have been sent by SF; when these would most likely have been received, completed and returned by Miss T; and when the lump sum would most likely have been paid to Miss T.

The request for the lump sum form ought to have been made on 27 April 2022. The timeline as set out by the Investigator hasn't been challenged by Miss T or SF, except that SF has explained that it has an SLA of five days for this type of form to be sent out, as opposed to the four days proposed by the Investigator. And I don't consider this five-day SLA unreasonable. The form itself would need to be requested, sent to the relevant department, personalised and then sent for posting. So I have amended the time-line, outlining how matters should have progressed had an error not been made by SF, proposed by the Investigator by one working day to reflect this reasonable SLA.

- 27 April 2022: Form requested (+5 working days)
- 4 May 2022: Form despatched (+5 working days)
- 12 May 2022: Form received by Miss T
- 15 May 2022: Form returned by Miss T (+3 working days)
- 19 May 2022: Form received by SF (+4 working days)
- 26 May 2022: Withdrawal instruction put in place by SF (Value A)

So, I'm satisfied that had Miss T been given the correct information during her call with SF on 27 April 2022 it is likely that she would have requested to take the small pot lump sum, and the withdrawal instruction would likely have been put in effect on 26 May 2022.

SF didn't dispatch the required form until 27 June 2022. But the form wasn't returned to SF by Miss T until October 2022, and by this time the value of her pension fund had dropped further. So I need to decide if this further delay, between June 2022 and October 2022, and the subsequent loss in pension value, was due to any errors on the part of SF, and I don't think it was. I'm satisfied that SF should not be held responsible for this additional delay and the associated loss in pension value.

I can see from the original call, and from Miss T's correspondence with SF and our Service, that Miss T was concerned about the drop in value of her pension. All the valuations SF sent her between April 2022 and when it sent the application form on 27 June 2022 showed continual reductions in value.

Miss T has explained that during the summer of 2022 she was experiencing significant health problems, and I thank her for her candour about these very personal circumstances. She has also explained that she was waiting for SF's final response to her complaint, which she didn't seem to receive. But whilst I have considerable sympathy for her health issues, I can't see that SF were aware of these, or could have done anything else in the circumstances. The resolution of her complaint against SF wasn't required for her to take her pension funds, and as I've said above, there was a steady decline in the fund's value during this time so Miss T had some responsibility to mitigate any losses that occurred. The transfer couldn't be completed until Miss T returned the required form, which SF had sent to her on 27 June 2022. And it needed this form completed and returned before it could do anything else, and I don't think it would be reasonable to expect SF to follow this up with Miss T in the event she didn't return it in a timely manner.

So it is for these reasons I do not agree that the entire period until when Miss T actually returned the form should be used in the loss calculation. I'm satisfied it should be calculated using a theoretical date worked out from the point she was sent the form, and reasonable turn-around times, as set out below:

- 27 June 2022: Form despatched (+5 working days)
- 5 July 2022: Form received by Miss T
- 8 July 2022: Form returned by Miss T (+ 3 working days)
- 14 July 2022: Form received by SF (+4 working days)
- 21 July 2022: Withdrawal instruction put in place by SF. (Value B)

In addition to any loss calculated I also think Miss T should receive compensation for the distress and inconvenience she's been caused. And I agree with the Investigator that £500 is fair and reasonable. SF have not commented on this point, so for completeness I will explain why I think it is reasonable.

Miss T told SF during the call on 27 April 2022 that she was long-term disabled and was going to retire on ill-health grounds. This was never explored further by SF to see if there was anything further, or indeed different it could do to assist Miss T in the process, and I think this ought to have been done. Miss T has given our service a great deal of detail about how her illness affects her life. I can see from her testimony that the incorrect information she was given, and the subsequent forms and emails she's received have all taken a considerable effort for her to deal with, and taken alongside seeing the value of her pension fund fall, I agree that this is likely to have caused her significant distress.

Miss T has told us that she never received the £200 shopping vouchers that she was sent by SF. Given the problems she's described which caused her difficulty in accessing emails I think it likely that she didn't get them. And this has not been disputed by SF anyway. So I'm satisfied that SF should pay Miss T the full £500 as compensation for the distress and inconvenience she's been caused.

## Putting things right

A fair and reasonable outcome would be for SF to put Miss T as far as possible, into the position she would now be in but for the incorrect information, and the subsequent delays it caused.

I'm satisfied that Miss T would have taken the small pots lump sum at the outset, and this would have been put in place (not necessarily paid) on 26 May 2022.

To compensate Miss T fairly, SF should:

- Calculate the value of Miss T's pension fund on the date the withdrawal instruction ought to have been actioned – 26 May 2022 (Value A)
- Calculate the value of Miss T's pension fund on the date the withdrawal instruction could have been actioned had Miss T returned the form in a timely manner – 21 July 2022 (Value B)
- If B is less than A then there is a loss, and the difference should be paid to Miss T. If B is more than A then there is no loss to Miss T, and no compensation would be payable.
- Any loss calculated should be paid directly to Miss T. However, tax would have been payable at Miss T's marginal rate on 75% of the total. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Miss T won't be able to reclaim any of the reduction after compensation has been paid.
- It is reasonable to assume that Miss T is a basic rate taxpayer, so the reduction would equal 20%. However, Miss T would have been entitled to take 25% of the lump sum tax-free, so the reduction should only be applied to 75% of the compensation. This results in an overall reduction of 15%.
- Details of the calculation should be provided to Miss T in a clear, simple format.

Interest should be added to the compensation amount at 8% simple per year. This should be calculated from the date payment would have been made (taking into account the next payroll date following 26 May 2022) until the date of settlement.

Income tax may be payable on any interest paid. If SF consider it is required by HMRC to deduct income tax from that interest, it will need to tell Miss T how much it has taken off. It will also need to provide Miss T a tax deduction certificate in respect of interest should Miss T ask for one, so she can reclaim the tax on interest from HMRC if appropriate.

## My final decision

I require Scottish Friendly Assurance Society Limited to pay redress to Miss T as calculated using the methodology set out above.

In addition, I require Scottish Friendly Assurance Society Limited to pay Miss T £500 compensation for the distress and inconvenience she's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 29 June 2023.

Chris Riggs  
**Ombudsman**