

The complaint

Mr H complains that Scottish Friendly Assurance Society Limited (Scottish Friendly) didn't pay the proceeds of his pension plan within the 2021-2022 tax year as it said it would. He says that as a result he paid more income tax than he should have done which he could have avoided by deferring his state pension from the following tax year. He also complains about Scottish Friendly's delay in acknowledging and dealing with his complaint.

What happened

On 15 February 2022 Mr H contacted Scottish Friendly with a view to fully encashing the pension policy he held with it. Mr H wanted the transaction to be completed within the 2021-2022 tax year. He was sent the relevant paperwork on 17 February 2022 which included all the available retirement options. It noted a fund valuation of £20,719.03. Mr H returned the documents which were received by Scottish Friendly on 4 March 2022.

On 21 March 2022 Scottish Friendly contacted Mr H to see if he had considered the option of an enhanced annuity based on what he'd stated within his completed risk questionnaire. Mr H confirmed his intention (to draw the benefits) and on 24 March 2022 he contacted Scottish Friendly to check on the status of his request – and was told the payment should be made that tax year. But four days later Scottish Friendly told Mr H that it wouldn't be possible to complete the payment within that tax year.

So Mr H complained. He said he'd been told his pension would be paid to him within the 2021-2022 tax year, and if he'd been told that wouldn't be the case, he would have deferred his state pension. He said that, because of the delay, he'd paid income tax of £2,716.80 on the proceeds instead of £589.20.

Initially Scottish friendly upheld the complaint and accepted it had caused delays in processing the claim which, more likely than not, prevented payment being made in the 2021-2022 tax year. It paid Mr H compensation of £250 and said it would consider his other financial loss (the income tax) on receipt of information from HMRC.

Mr H subsequently provided further information from HMRC and in August 2022 Scottish Friendly accepted that it had caused Mr H to suffer a financial loss and that it would pay additional compensation of £2,069.28. But this was based on a fund value from August as Scottish Friendly said it was unable to backdate the value to March 2022. It sent Mr H a letter dated 26 September 2022 confirming it would be paying the compensation to his account.

But Mr H was unhappy with this outcome as he believed it didn't take into account the interest he would have earned on the compensation if it had been paid within the 2021-2022 tax year - nor did it use the fund value that would have been applicable at that time. So he brought his complaint to us where one of our investigators looked into the matter. He said it should be upheld because he thought that Scottish Friendly deprived Mr H of the use of his funds from April 2022 and should pay simple interest at 8% on the pension payment from 5 April 2022.

Scottish Friendly didn't agree with the outcome as it said that the delay in processing the payment until September was caused by Mr H as it provided the necessary forms to him in April 2022 – but he didn't return them. So it didn't think it was fair for it to pay late payment interest.

The investigator sought further clarification from Scottish Friendly and revised his opinion of what should be done to put things right. He said that Scottish Friendly should compare the payments Mr H had received from the fund with what he would have received if payment had been made on 28 March 2022 – these payments should be reduced notionally using Mr H's marginal rate of tax during this time. He said that if this represented a loss to Mr H that loss should be brought up to date using a benchmark reasonably equivalent to the returns he would have received by putting his money into a savings account.

Scottish Friendly remained of the view that it had already paid sufficient compensation and didn't think we'd taken sufficient notice of the length of time it took Mr H to return his pension forms after April 2022. It asked for the complaint to be referred to an ombudsman – so it was passed to me to review.

My provisional decision

In my provisional decision I said that Mr H's complaint should be upheld. I set out a revised method to calculate the redress which ensured his tax position would be restored to what it would have been had the payments been made in the 2021-2022 tax year. I also set out how Scottish Friendly should calculate the financial loss Mr H may have suffered by not being able to put the payments he should have received within the earlier tax year into his savings account.

Neither party had any further comments to make following the provisional decision, so I see no reason to depart from my provisional findings and I'll reiterate the reasons for my conclusion below.

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.

Mr H contacted Scottish Friendly in February 2022 to encash his pension policy and wanted to receive the proceeds within the 2021-2022 tax year. However, although Scottish Friendly suggested to Mr H that the transaction would occur within the specified tax year – this didn't happen. Scottish Friendly's complaint response from June 2022 set out its position. *"Whilst the customer helpline agents did not guarantee you would benefit from your policy in the last financial year, if we had not delayed sending our requirements, I have no doubt you would have been able to claim on the benefits within the 2021-2022 tax year and I am sorry for the impact our delay has caused you financially."*

So there's no dispute here that both parties accept that Mr H's benefits should have been paid within the 2021-2022 tax year. Therefore my main consideration is whether the redress and additional compensation that Scottish Friendly offered is fair and reasonable.

Scottish Friendly's offer

When I looked at Scottish Friendly's calculation I thought it was fair in the way that it calculated the tax that had been due. But it seemed inconsistent with Scottish Friendly's position that it ought to have paid the benefits within the 2021-2022 tax year, for it to use a fund value from September 2022 – which was when Mr H eventually returned the forms needed to release his pension. I thought that if Scottish Friendly thought it should have paid the benefits earlier, then it should have used a fund value from the 2021-2022 tax year as well.

Scottish Friendly says that because Mr H delayed the return of the forms - which it had previously issued in April 2022 - it shouldn't have to pay either late interest or redress based on an earlier fund value. But I don't think Mr H was focused on returning the forms promptly after the end of the tax year as he was trying to get the other information Scottish Friendly wanted from HMRC to resolve his complaint. I think he wanted the matter to be sorted out before worrying about returning the outstanding forms.

I don't think it was materially important when the forms were returned after the end of the 2021-22 tax year, as Scottish Friendly had already accepted it should have paid benefits within the 2021-2022 tax year. So my view is that it should have used a fund value from around that time – based on when it thought it would reasonably have made the payment within the 2021-22 tax year.

When should the value of the plan have been calculated from?

I've thought carefully about the date that should be used to calculate Mr H's pension benefits and any compensatory tax refund. Our investigator said it should have been 28 March 2022, but I don't think the available evidence supports the position that payment would have been made on this date. Mr H contacted Scottish Friendly on 24 March 2022 to check upon the status of the transaction and was told the funds should be paid by the end of the tax year – but I note that stage three of Scottish Friendly's process hadn't been completed at that point. This involved the issuing of the forms that were eventually sent out in April 2022. So, I think it's unlikely these forms could have been sent to Mr H – and returned, so that payment could be made by 28 March 2022. And I also note that two of the four days here spanned a weekend.

But of course, I still need to establish which date I think could have been used, and in doing so I note that Scottish Friendly's transfer process has four stages. Scottish Friendly is entitled to use whatever process it has decided upon – as long as it completes a customer's request within a reasonable timeframe, and it makes them aware of the various stages and the likely time it could take to complete. But I don't think Scottish Friendly satisfied either requirement here. During the two conversations it had, it suggested payment "should" be made within the 2021-2022 tax year. I think this was unlikely to be achievable based on Scottish Friendly's actual process.

I'm also mindful that some parts of the process – such as the two to three weeks that Scottish Friendly took to confirm if Mr H wanted to use an open market option and consider enhanced annuities with other providers, seemed "drawn out" in these circumstances. I'd usually expect Scottish Friendly to have been made Mr H aware of that facility within the initial pack it sent him on 17 February 2022.

This makes it all the more difficult to be specific about fixing a date by which Scottish Friendly either had all the outstanding information and any requirements to pay or was in a position to complete payment of the benefits. But I am nevertheless satisfied that the payment ought to have been made by the end of the 2021-22 tax year- which is the position that Scottish Friendly adopted as well.

Therefore, I think the only reasonable course of action here is to tell Scottish Friendly to set the final fund value calculation date as the last possible date of the tax year which would have then allowed it to pay Mr H's pension benefits within the 2021-2022 tax year. Scottish Friendly should confirm that by showing how many days it took to pay Mr H in September 2022 after the date it calculated the final fund value, and applying that factor to the redress methodology I've set out below.

Putting things right

To compensate Mr H fairly, Scottish Friendly must put him as close as possible into the position he would now be in if it had paid his pensions benefits within the 2021-2022 tax year.

So Scottish Friendly must:

As at the date of this final decision, work out the benefits that Mr H would have received based on a fund value calculation date which would then have ensured payment of the benefits by the last day of the 2021-2022 tax year.

Using this figure, Scottish Friendly should pay any additional tax free cash beyond that which it has already paid Mr H, along with any additional non tax free cash element which may have been higher as at that date. It should then restore him to the tax position he would have been in had the payments been made within the previous tax year – using the information it already has relating to his tax circumstances.

It should also pay, if it hasn't already, £250 for the distress and inconvenience caused by raising Mr H's expectations of when his benefits would be paid.

But Mr H has also suffered a financial loss as he should have received his benefits by the end of the 2021-2022 tax year when he would have put them into his savings account – which is what he did when he eventually received them.

So I think Scottish Friendly should uplift the entirety of the net funds (identified above) which Mr H ought to have received by 5 April 2022 using the rate - at the time - of the actual savings account into which he put the money.

This should be used as a benchmark up to the point of actual payment in September 2022, and then the same uplift on the difference in the amount he would have had in his possession from that point up to the date of settlement – and pay this to him as compensation. Further interest must be added to the compensation amount at the rate of 8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance).

My final decision

For the reasons that I've given I uphold Mr H's complaint against Scottish Friendly Assurance Society Limited, who should pay Mr H the amount that arises from the calculation as set out above. Scottish Friendly Assurance Society Limited should provide details of its calculation in a clear and simple manner.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 August 2023.

Keith Lawrence
Ombudsman