

The complaint

Mr R has complained to Scottish Friendly Assurance Society Limited about bonuses on his Flexible Income Annuity (FIA). He's also unhappy with the service received since Scottish Friendly took over his plan from MGM.

What happened

The background to this complaint is well known to both parties so I've not detailed the history and surrounding correspondence in full. Instead, I've summarised what has happened below.

Mr R took out a FIA plan in 2010. The plan was originally held with MGM but Scottish Friendly took the plan over in 2015. Since October 2021, Mr R has been in correspondence with Scottish Friendly regarding concerns about the Lifetime bonus only increasing marginally since the plan started and concerns about Scottish Friendly failing to acknowledge and respond to his correspondence.

Mr R tried to resolve the above concerns directly with Scottish Friendly but he was not satisfied with the responses received, or the £50 compensation it had offered him for the delay in responding to him. So Mr R referred his complaint to our service for an independent review.

One of our investigators reviewed matters and didn't uphold Mr R's concerns about the bonuses. The investigator also thought the offer of £50 for the delay in Scottish Friendly responding to Mr R was fair, given the detailed nature of the enquiries he'd made.

Mr R didn't accept the investigator's finding and provided further comments and calculations in support of his arguments. The investigator reconsidered matters but maintained his view. This position was ultimately endorsed by another investigator.

Summary of the investigators' findings

- **Lifetime bonus**

The investigator thought it was clear that, given the intricate nature of the calculations and the amount of times that they require review, it would be unfeasible for Scottish Friendly to have to provide these. The decision to decrease the bonus could have been based on years of data with each period containing various data points.

Within the terms and conditions document it does not state that the business would disclose the actuarial assumptions used within the calculation but that it would follow their advice. It also confirms that the rates are not guaranteed and, as such, The investigator didn't think Scottish Friendly needed to provide calculations or to justify any fluctuations in the bonus rates.

The calculations Mr R has provided are based on his own assumptions; not on the actual

basis the calculations are completed by Scottish Friendly actuaries. But in any event, this Service doesn't provide an auditing service of calculations.

When Scottish Friendly took over from MGM in 2015, Mr R received a welcome letter. This explicitly said the terms and conditions of the policy had not changed, so the investigator thought the plan was still subject to the same review process as it was under MGM.

The investigator didn't think there was evidence that MGM/Scottish Friendly guaranteed Mr R's income would increase over time. The Lifetime Bonus is just one element of the policy and it's not guaranteed. The documentation provided during the sale was not misleading and there's no evidence that MGM/Scottish Friendly mis-sold the policy. In fact, it was sold by another firm (Firm A). MGM, now Scottish Friendly, is the product provider not the seller.

- Delays in responding to Mr R's concerns

In terms of the delays associated with Mr R's requests, Scottish Friendly had acknowledged that it did not meet its standards. But Mr R didn't think the offer of £50 from Scottish Friendly was sufficient for what he considered to have been poor service, particularly when compared to the £350 Mr R received in 2019 for another service issue.

The investigator agreed the service could've been better but thought Scottish Friendly had acknowledged and apologised for the poor service.

- FIA plan holders' mutual membership status

The investigator didn't think concerns about changes to FIA plan holders mutual membership had formed part of Mr R's complaint to Scottish Friendly and so it wouldn't now be appropriate for this service to consider these without Scottish Friendly having been given the opportunity to do so before our involvement. However, the investigator noted that the 2015 Scottish Friendly welcome letter confirmed that Mr R '...will continue to benefit from being part of a mutual life organisation...'.

The investigator also explained that it may be that where Mr R's membership now differs from MGM, is with regards to who is able to attend AGMs. The Scottish Friendly website explains how this now works and that some delegates can attend AGMs. The website also confirms that 'full details of the nomination process, deadlines, elections and eligibility restrictions are available on request from the Secretary of Scottish Friendly'.

Mr R's response to the investigators' opinions

Mr R didn't accept the conclusion both our investigators reached. In his final submission to this service he continued to raise concerns about the Lifetime bonus. And he's provided further explanation around his own calculations. He has also said that Firm A relied on MGM's documentation when selling the plan. He provided a copy of the "Customer Brochure" he received, which he says does not contain any mention of "Actuaries nor adjustments to the Lifetime Bonus due to changes in life expectancy, in particular he's referred to pages 9 and 16 which refer to the "Lifetime Bonus".

Mr R also says that he wasn't sent a copy of the Terms and Conditions document until 2015, and even then, it had a print date of several years after he took the plan out. He says he should have been sent the correct terms and conditions at the time of the sale. He thinks this was misleading and constitutes mis-selling of the original product.

Mr R says he is getting increasingly concerned about the more wide-spread poor customer service provided by Scottish Friendly. If is allowed to mis-calculate plan holders' bonuses

then substantial moneys that should have been paid out to plan holders have not been distributed properly.

The complaint has been passed to me to reach a final 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.

I'd like to assure Mr R that despite only summarising the background to the complaint and all the surrounding correspondence above, I have considered everything that has been provided by both parties in order to reach a fair and reasonable decision on this matter. But I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

Having done so, I've reached the same conclusion as our investigators in terms of Mr R's concerns about the Lifetime bonus. But I think Scottish Friendly needs to do more in terms of the customer service Mr R has received so I'm upholding the complaint, in part. I've explained my findings below.

Bonuses

The crux of Mr R's complaint relates to the Lifetime bonus. It seems Mr R understands and accepts that the bonuses on his plan weren't guaranteed, but he's disappointed its only increased marginally since the plan started.

I think I should start by clarifying what the Lifetime bonus is. As Mr R will be aware, the "Key Facts" document from the time he took his FIA plan out states, (on page 10) "When Flexible Income Annuity policyholders die, the part of their fund that remains after all benefits are paid is pooled and shared amongst the surviving Flexible Annuity policyholders. We call this the lifetime bonus [**bold is my emphasis**]".

Mr R says that Scottish Friendly hasn't acknowledged the existence of this paragraph in its correspondence. So he thinks it would be fair to assume that it hasn't been including these funds in its calculation of the Lifetime Bonus. But Mr R is mistaken here. I do appreciate that later policy terms don't explain the Lifetime bonus in the same way. But I can confirm that the Lifetime bonus is made up entirely from funds remaining after an FIA plan holder dies, subject to any spousal benefit or guarantee that may be on the plan. This has been confirmed by Scottish Friendly's Actuarial Team.

But as explained in the Key Facts, and Terms and Conditions documents, the Lifetime Bonuses are calculated on a basis set by the Actuary. The level of Lifetime bonus will depend on the death benefits the individual plan holder has chosen, as the cost of providing these benefits is met by a reduction in the bonus. These documents also explain that Lifetime bonuses are reviewed from time to time depending on annuitants' life expectancy.

The assumptions Scottish Friendly Actuaries use are not straightforward. Scottish Friendly's assumptions are based on many factors. Further details about these assumptions are provided in the 2015 terms and conditions. These state:

"We will take into account changes in external published mortality tables, projections and other relevant sources of information, our experience across similar policies, changes in

health and healthcare and other valid reasons that affect our view of future mortality that are outside our control and could not have been reasonably foreseen.

There is no minimum or maximum change to the lifetime bonus rates.”

I do accept that these terms are from several years after Mr R took his plan out. I've only referenced them here because they give a better explanation of the assumptions than in previous documents.

Mr R doesn't think that sales material he was supplied with contained any mention of Actuaries nor adjustments to the Lifetime Bonus due to changes in life expectancy. But I can see that the Key Feature document from September 2009, does state the following under Q9 (page 10):

“Our Lifetime bonuses are reviewed from time to time and in future they could be higher or lower than we estimate in your illustration. If we believe annuitants are living longer than we originally thought, the lifetime bonus will be lower”

Given the above, I think it was clear the lifetime bonus would be reviewed and adjusted dependent on assumptions as to plan holders' life expectancy. And again, similar wording appeared in the terms and conditions document dated November 2009 on page 16, under point 19. I do accept that the Customer Brochure doesn't mention that the bonuses will be reviewed. But it does refer to the Key facts document for further information on the bonuses. And as I've said above, I'm satisfied the Key Facts document made this clear.

In his most recent correspondence to this service, Mr R has provided a further analysis of the bonus he has received, following receipt of his most recent statement. He has reiterated his belief that Scottish Friendly is not treating the Lifetime Bonus calculation correctly. In particular, he doesn't understand how this bonus is not considerably higher during the past few years of the Covid pandemic, which he considers killed many more people in the pension age group yet the Lifetime Bonus has stayed virtually static at 0.7%.

I do understand why Mr R has concerns. The way bonuses are declared on these types of plans has attracted criticism for their lack of transparency, and I accept that it is very difficult for policyholders to satisfy themselves that they have received what they are entitled to under the terms of their investments.

But Scottish Friendly is accountable to the industry regulator, the FCA, for the way in which it operates its with-profits fund. The regulator monitors this. Firms are required to appoint a with-profits actuary and the FCA provides rules and guidance on their duties.

Scottish Friendly also has an independent 'With-Profits Committee' whose remit is to protect the interests of the with-profits policyholders and ensure that they are treated fairly.

I appreciate that Mr R has put a lot of work into his own calculations and that in doing so he has used his own assumptions. But this Service doesn't have the same expertise as the Actuaries Scottish Friendly uses to calculate its bonuses. So we are not in a position to check either his own or a business' calculations of bonuses. And I'm not aware of the FCA having any concerns about the way in which Scottish Friendly is calculating its bonuses.

Mr R said that his main concern was the fact that Scottish Friendly (and indeed MGM originally) have not been addressing the Lifetime Bonus shortfalls payable to clients, and have been pocketing vast sums of profit as a consequence. However, I've seen no evidence to support these allegations. So I'm not upholding this part of his complaint.

Mis-sale concerns

Mr R has raised concerns because he says the main driver for him taking the plan was the Lifetime bonus. I hope now that I have explained that the Lifetime bonus is entirely made up from funds remaining after an FIA plan holder dies, this will put Mr R's mind at ease in terms of these particular concerns.

But if not, and he still has concerns about how the plan was sold, he will need to direct these to the firm that sold the plan, Firm A. I appreciate Mr R feels Firm A relied on MGMs/Scottish Friendly's literature. But I agree with our investigator, I don't think the literature was misleading. It explained how the bonuses work, that assumptions would be made about life expectancy by MGM/Scottish Friendly when calculating bonuses and that they weren't guaranteed. It also explained that these assumptions would be made by actuaries. It was the responsibility of Firm A to ensure it made Mr R aware of how the plan worked.

Full Mutual Membership status

I know Mr R is disappointed that he hasn't been able to attend AGM meetings since Scottish Friendly took over MGM. And that he no longer receives copies of the annual accounts through the post. He believes this means there has been a change to his full mutual status since Scottish Friendly took over from MGM.

Scottish Friendly is still a mutual society but as our investigator explained, it may be that there have been some changes to Mr R's ability to vote and attend AGMs. I can see that our investigator provided Mr R with details of how to find out more information and details of his local delegate.

Mr R believes these concerns were raised in his letter dated 1 March 2022. Scottish Friendly doesn't have a record of this letter being received but I can see that Mr R has provided proof of this letter being delivered. So I think on balance it was likely received. Having said that, I don't think it was clear from this letter that Mr R had specific concerns about his ability to attend AGMs or that under MGM he received copies of the annual accounts by post. This letter references a change to his mutual status and changes to the terms and conditions regarding the bonus.

If Mr R still wishes his specific concerns about attendance at AGMs and receiving the accounts by post to be considered, he will need to refer these issues to Scottish Friendly in the first instance. If he remains unhappy after receiving Scottish Friendly's response on these points, he may be able to refer these matters to this service. However, I should explain that in terms of the transfer in business between MGM and Scottish Friendly, and any resulting changes to Mr R's mutual status membership, these were commercial decisions that a business is entitled to make. And the transfer of business was approved in the High Court. So our Service would not be in a position to comment on these decisions. We may be able to consider how any changes were communicated. But before we can do that, we need to be satisfied Scottish Friendly has had the opportunity to consider these concerns.

Annual charges

In his most recent correspondence to this service Mr R raised additional concerns about the annual charges on his plan. He says these seem to be much higher than when the plan was with MGM. This is a new concern that Mr R has raised and as explained above, before we can comment on this point, we need to be satisfied Scottish Friendly has had the opportunity to consider it. So Mr R will need to raise any concerns he has about the annual charges on his plan directly with Scottish Friendly.

Customer Service issues

Mr R has raised concerns about the general customer service he has received since Scottish Friendly took over from MGM. And I know he's concerned about reviews he's read online. I can only comment on the complaint in front of me; it's not for me to comment on Scottish Friendly's general customer service.

In terms of Mr R's complaint, Scottish Friendly has acknowledged and apologised for the delays in acknowledging and responding to his correspondence and it's offered him £50 compensation.

Mr R doesn't think this is enough and he's referenced a previous complaint he made in 2019 where he received more compensation. But that complaint wasn't referred to our service so I don't know the details and why Scottish Friendly felt that particular issue warranted more compensation.

Having reviewed what happened here, I can see that it took Scottish Friendly until 10 February 2022 to acknowledge Mr R's letter dated 22 November 2021 (although this acknowledgement was only received by Mr R on 1 March). And Scottish Friendly provided its full response on 15 March 2022, more than 15 weeks after Mr R's letter was received.

Because Mr R hadn't heard anything from Scottish Friendly, he called and wrote further letters and I think this additional inconvenience and further frustration could have been avoided, had Scottish Friendly acknowledged the letter when it was first received and explained that due to the nature of Mr R's questions, it would need longer than its usual 5 days to respond.

Scottish Friendly has already offered Mr R £50 for the inconvenience caused by the delay. But as explained above, it's clear this matter has caused Mr R additional frustration and inconvenience. I think Scottish Friendly should pay Mr R pay an additional £150, so £200 in total, as this more accurately reflects the inconvenience caused.

Putting things right

Scottish Friendly should pay Mr R pay an additional £150, so £200 in total, for the inconvenience and frustration caused by the delays in acknowledging and responding to his correspondence.

My final decision

For the reasons explained, I partially uphold this complaint. I direct Scottish Friendly Assurance Society Limited to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 5 October 2023.

Lorna Goulding

Ombudsman