

complaint

Mr D has complained that his monthly annuity payment is delayed, if the due date falls on a weekend or Bank Holiday. He'd like Friends Life and Pensions Limited to move the due date forward to compensate on these occasions.

background

Mr D banks with a private bank, which used a larger bank for its payment clearing services. Friends Life also used its own bank to send annuity payments. There were therefore three banks involved in getting the pension payments to Mr D.

During 2008, when it appears Mr D also banked with a private bank, he had told Friends Life that his payments sometimes arrived late. Friends Life agreed on that occasion to move his due date for all payments forward by one day.

When Mr D complained recently that the issue was still sometimes happening, Friends Life wouldn't agree to change the due date any further.

One of our adjudicators didn't consider Mr D's complaint should succeed. The 'due date' was defined in Mr D's annuity document as the date his pension was 'payable' each month. In her view Friends Life hadn't guaranteed that the payments would reach Mr D on a particular day. Given the number of different banks involved, it wasn't in a position to guarantee this. It was also under no obligation to move Mr D's due date.

Mr D didn't agree. In summary, he said:

- The Financial Ombudsman Service was abdicating its responsibility to look after the policyholder.
- He wasn't just pursuing the matter for himself. Many other people who depend on getting their pension payments on a certain date each month might be affected.
- It's not simply a matter of moving the due date forward again, as the new date will sometimes fall on a non-working day.
- The state pension, and his other pension payments, are paid early when they fall on a non-working day. So Friends Life should do the same.
- By not bringing the payments forward, Friends Life was benefiting from additional interest.
- His annuity was compulsory when he took it out and he never received the terms and conditions.
- His adviser at the time told him he would get his payments monthly. He assumed this would always be on the same date.

As agreement couldn't be reached, the case was passed to me to make a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I understand Mr D feels strongly about this matter. To assist with my review I've listened to his phone calls with the adjudicator in which he made his points very clearly.

I think it's important to set out that the Financial Ombudsman Service isn't a consumer champion. We look at complaints impartially and consider what is fair and reasonable weighing up the rights and interests of both parties; not just one party.

As with many other pension providers, Friends Life uses Bankers' Automated Clearing Services (BACS) to make payments. This runs on a cycle over three working days (counting the first day as when the transmitting bank gives the instruction; and the third day as when the receiving bank gets the payment).

Friends Life notes the 'due dates' with the payments, and they're batched together in this way. It sends details of each batch to its bank seven days before the due date. So it's then up to Friends Life's bank to interpret, within the limitations of the banking system, when to begin the payment cycle for that payment. In the same way that "day 3" of the BACS cycle for direct debits due on a non-working day ends up being the following working day, it appears "day 3" for receipt of Mr D's pension is also the next working day.

I agree with the adjudicator that Friends Life hasn't made a binding contractual commitment that Mr D will *receive* his money on or before the due date. When stating that it is 'payable' on the due date, it's inherent that sometimes this day is a non-working day. And the BACS system isn't able to get a payment to Mr D's bank exactly on that day. Friends Life wasn't explicit in the contract about what would happen over a weekend or Bank Holiday. So I consider that for Mr D to get his pension on the following working day is a fair and reasonable interpretation of the contract in those circumstances.

The fact that Friends Life may sometimes, as a result, get an additional day's interest before it makes the payment doesn't in my view alter how the contract can fairly be interpreted. And I don't think this is a material point in Mr D's own complaint; given that Friends Life has actually been willing to move the due date for his annuity forward by one day, when it was under no obligation to do so.

The terms and conditions of Mr D's plan may have been available to the financial adviser who sold it to him. But my understanding is that they're also part of Friends Life's standard mailing to new policyholders, together with the schedule for their plan. I accept that Mr D doesn't think he received a copy from either party. So he says that, as he arranged with his adviser for the payments to be made on a certain date, he assumed they would always be paid on *or before* that day.

To support that assumption Mr D explains that it would be consistent with what the State pension and his other pension providers do. I don't dispute that it was a fair assumption for Mr D to make. I don't know if (for instance) his contracts with his other pension providers are more explicit – or they have just chosen to interpret them in his favour. That is a choice they're entitled to make. But whilst I know I'm bound to disappoint Mr D here, none of this can bind Friends Life to interpret his contract in the way he would like it to.

I also think Friends Life was entitled to point out when it answered Mr D's complaint that not all banks credit a BACS payment on "day 3" of the cycle. My understanding is that customers of some banks – and they're likely to be the major banks who are members of BACS – will see a BACS payment on their statement on the Saturday; even if it wasn't due to be cleared until the following Monday or Tuesday.

That's because their bank will have been told on day 2 of the cycle that the payment is about to be made, and they may have taken the decision to credit it for the following day (even if that's a non-working day). Indeed that's likely to be the case if Mr D's payments were made *directly* into an account with the bank that his own private bank uses for clearing.

Mr D says he doesn't accept this explanation, because it would mean his payments were *a/ways* delayed by a day. I don't agree. It's only likely to happen when the due date falls on a non-working day. Only then is the clearing bank likely to be aware of a forthcoming payment for several days, but his own bank may not be.

Although I'm only required to consider the individual circumstances of Mr D's complaint, I'll therefore just say that I'm not satisfied there are as many people whose payments are delayed beyond their due date as Mr D suggests. Mr D also thought the adjudicator had said we'd received a lot of complaints against Friends Life about this issue. This seems to be a misunderstanding; it seems the adjudicator was speaking from her career experience when dealing with payments in general involving private banks.

Mr D tells us he isn't looking for financial compensation. He just wants to get his payments moved forward whenever they are due on a non-working day. *Even if* I had concluded that Friends Life should do this – and I have not – it would be likely to require additional programming to be built into its payment system. Otherwise it would be unlikely that Friends Life could ensure the payments were always made accurately in the way Mr D suggests.

I realise Mr D accepts this and understands that there would be a cost to Friends Life in changing its systems. But that isn't actually the problem here. The ombudsman service's powers are limited to resolving individual complaints. If I uphold a complaint I can require a business to pay compensation to an individual consumer. But even if I thought it appropriate I can't require wholesale changes to Friends Life's payment system in order to achieve Mr D's objective of improving it for all its customers.

I know this will be disappointing for Mr D. I've heard our adjudicator explained about the limits of the ombudsman's powers during their early conversations. And I'm aware Mr D is in the process of contacting the regulator, who does have the wider oversight over Friends Life that would be needed if Mr D is able to achieve what he's seeking. To manage Mr D's expectations, due to the way it operates the regulator may not provide individual feedback on any concerns that are brought to its attention.

my final decision

I do not uphold Mr D's complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 February 2016.

Gideon Moore
ombudsman