

complaint

Mrs C complains Friends Life Services Limited applied a penalty when she withdrew some money from an investment she had with it. She's also unhappy about the way her complaint was handled.

background

Mrs C's adviser had asked Friends Life what the options were for making a withdrawal to avoid incurring a penalty. But Mrs C says the form Friends Life later sent to her didn't provide the option she needed to avoid the penalty and it didn't tell her what else she could do to avoid it. As a result she selected an option which meant the penalty was applied.

Our adjudicator concluded Friends Life hadn't given Mrs C enough information so she could make her instructions for the withdrawal clear on the form. As a result she suffered a financial loss. He calculated Mrs C would've incurred a tax liability if the withdrawal had been processed as she'd wanted. He recommended Friends Life refund to Mrs C the penalty she suffered less the tax liability she would've had to pay. He also recommended Friends Life pay her compensation of £200 for the way it had dealt with her concerns.

Friends Life accepts it didn't handle the complaint well and agreed to pay Mrs C £200. It doesn't agree it should pay her anything more. It said it had processed the withdrawal in accordance with the instructions she gave and it couldn't have been aware of her personal tax situation.

Mrs C thinks the whole of the penalty should be refunded as she'd have taken the money from different (penalty free) investments if she'd known any liability would be incurred.

I issued a provisional decision as follows:

I considered my decision to be this to be a finely balanced, but I found myself in agreement with the adjudicator that this complaint should be upheld. However, I didn't agree with the redress he had suggested.

Friends Life's records showed that the adviser contacted it and asked what was the highest amount that could be surrendered without suffering any surrender penalties. It told her how much and she submitted a surrender form withdrawing £120,000 with the lowest chargeable gain. This did not equate to a penalty free withdrawal. She said that the form was confusing and she thought she had completed it to ensure that she didn't incur a penalty.

The business pointed out that Mrs C had signed to say that she had read its 'Think Twice' document and should have taken advice as to the implications of her withdrawal. I thought that response missed the point somewhat. It was clear that Mrs C took advice and was clear minded on what she wanted to do. She also made it clear to Friends Life that she wished to avoid a penalty on withdrawal. The problem occurred in the completion of the form. It doesn't provide an option for withdrawing the maximum amount without triggering a surrender penalty. Mrs C says that a sister company does provide this option which I presume helps customers avoid the problem that she encountered.

I appreciated the business' position. It considered it didn't do anything wrong in that it processed the request made by Mrs C. However, I considered it was clear from the preceding email exchange that she wished to avoid a penalty and I believed it was only the

poor drafting of the form that resulted in the penalty being charged. I also considered the business proved a poor level of guidance following her request for advice on how to withdraw funds without incurring a penalty.

The adjudicator suggested that Friends Life refund the penalty less a small tax liability he believed Mrs C would have occurred. Mrs C has explained that she could have accessed sufficient funds to meet her needs without incurring a tax charge. This has been confirmed by her adviser. As such I considered the tax charge to be a red herring. I considered the key issue was that Mrs C incurred a withdrawal penalty she clearly wanted to avoid and had presumed she had done so when she completed the form. I believe the business should return it to her. The adjudicator had also suggested compensation of £200 for the trouble and upset Mrs C faced which was accepted by the business.

Mrs C confirmed she accepts my provisional decision and doesn't have any more comments she wants me to consider.

Friends doesn't agree with my conclusions. It said, in summary:

- at the time Mrs C asked for the withdrawal she had the option to select other parts of her investments as they were no longer subject to a penalty;
- taking the investment in that way would've led to a significantly higher chargeable gain so Mrs C opted for the most tax efficient way of taking out her money;
- Friends Life carried out the instructions it'd been given by Mrs C;
- Mrs C is now in a better financial position overall so it wouldn't be fair to refund the surrender penalty.

my findings

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

Friends considered what Mrs C might have done to withdraw money from other investments she held with it and concluded that she couldn't have avoided a tax charge. It has calculated that the method and fund she chose gave her the best outcome even with the withdrawal charge. Mrs C had already explained that she had alternative investments which were not held with Friends and this had been confirmed by her adviser, but I sought further clarification of the options available to her. She has provided details of her other investments and I am satisfied that she could have accessed £120,000 from these without suffering a charge or tax liability.

I consider it is reasonable to assume that she would have used these other funds rather than suffer the penalty of £3,339.63. I believe this addresses the arguments put forward by Friends save for the claim that it was merely carrying out Mrs C's instructions. However, I consider I have already covered that point in my provisional decision and I see no merit commenting further. As such my view remains unchanged and my provisional decision stands.

my final decision

My final decision is that I uphold this complaint and I direct Friends Life Services Limited to refund the penalty of £3,339.63 to Mrs C and pay her £200 compensation. Under the rules of

the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 1 August 2016.

Ivor Graham
ombudsman