

## Ombudsman's Determination

Applicant	Mr G
Scheme	Aegon Section 32 buy-out plan ( <b>the Plan</b> )
Respondent	Aegon (Scottish Equitable plc) ( <b>Aegon</b> )

## Outcome

1. I do not uphold Mr G's complaint and no further action is required by Aegon.

## Complaint summary

2. Mr G has complained that:-
  - He did not choose to transfer his pension benefits into the Plan.
  - He cannot now transfer the Plan to another pension arrangement.
  - He cannot take pension benefits at age 55.
  - He was misled by Aegon when he was advised to get advice from an independent financial adviser (**IFA**).

## Background information, including submissions from the parties

3. Mr G was a member of the Cassidy Davis Administration Limited Pension Scheme (**the Scheme**) from November 1985 until April 1992.
4. The Scheme was wound up in 1999 and the Trustee of the Scheme arranged for Mr G's accrued pension benefits to be transferred into the Plan with Aegon.
5. When Mr G was a member of the Scheme, his employment was contracted out of the State Earnings Related Pension Scheme (**SERPS**). This meant that the Scheme, as a condition of contracting out, had to provide a Guaranteed Minimum Pension (**GMP**) at State Pension Age (**SPA**). The GMP would have to be at least equal to the benefit that would have been payable from SERPS. When the Trustee of the Scheme arranged for Mr G's pension benefits to be provided by the Plan in 1999, this also included a guarantee to pay the GMP at SPA.

6. The application form completed by the Trustee when setting up the Plan confirmed Mr G's annual GMP at the date he left the Scheme was £320.84, which would be revalued to SPA (age 65).
7. The Plan's policy document set out the amount of 'Reserved' and 'non-Reserved contributions' and said, "The Reserved Contributions are reserved for a Guaranteed Minimum Pension of £320.84 revalued to State Pension Age of £1,455.98."
8. The Terms and Conditions of the Plan state, amongst other things, that:

4B Reserved Units

"Scottish Equitable shall provide the Contract-out Benefits from the Policy proceeds. Reserved Units will be used in the first instance to provide Contracted-out Benefits. However, if the Reserved Units are not sufficient to provide the Contract-out Benefits, then Scottish Equitable shall use the non-Reserved Units..."

Under Part II (10)

"The reserved Units (together with any non-reserved Units) as set out in Condition (B) shall be applied to provide, at least, the Contract-out Benefits as follows.

(a) An annuity for life for the Member payable from State Pension Age equal to Revalued GMP ...If the Member retires before State Pension Age, no pension under sub-section (a) shall be payable before State Pension Age unless the Reserved Units are sufficient at the Pension Commencement Date to secure the benefits under section (1)..."

9. On 25 September 2018, Aegon wrote to Mr G and said:-
  - The Plan was a Trustee Proposed Section 32 buy-out plan which was set up by the Trustee of the Scheme when his pension benefits were transferred.
  - As the previous Scheme was contracted out of SERPS, Aegon had taken over the obligation to pay the GMP at SPA from the Plan.
  - If the value of the Plan did not meet the cost of the GMP then Aegon would meet the cost of providing the GMP, but no tax-fee cash from the Plan would then be provided.
  - Given the economic conditions it was unlikely that the total value of the Reserved and non-Reserved funds would be sufficient to cover the GMP, and Aegon would "top up" the value so that Mr G would receive the GMP as promised at SPA.

10. On 8 October 2018, Aegon sent Mr G an up to date statement of the Plan's value. It said:

“If, at retirement, there isn't enough in the reserved fund to cover the cost of your GMP we'll use the value of you non-reserved fund to cover the shortfall. If the policy values can't cover the shortfall, we'll cover any additional cost to provide your GMP.

Any excess in your policy value, after the cost of the GMP has been calculated can be used to provide additional benefits.”
11. Mr G asked Aegon if he could take the full amount of the Plan as a lump sum instead of the GMP.
12. On 8 November 2018, Aegon replied to Mr G and explained there was no lump sum option as the Plan had to pay the GMP. It suggested that he should seek advice from an IFA about his options.
13. Mr G later queried whether he had to receive the GMP or whether the amount could be transferred.
14. On 19 November 2018, Aegon wrote to Mr G and explained that the Plan had to pay the GMP as the previous Scheme was contracted out of SERPS. Regarding his request to transfer the GMP benefits in accordance with the Regulations made under section 97 of the Pension Schemes Act 1993, the GMP had to meet a statutory requirement set by the Government. That statutory requirement was that the transfer value must be at least the cash equivalent of the GMP. In Mr G's case, a transfer could not proceed because the transfer value of the Plan did not meet the cash equivalent value of the GMP.
15. In February 2019, Aegon received a letter of authority from Mr G to deal with his IFA.
16. On 15 February 2019, Aegon wrote to the IFA. Aegon provided full details of the Plan and explained that if there was not enough money in the Plan to cover the cost of providing the GMP before retirement age then Mr G would not be able to claim early payment. Aegon would meet the full cost of the GMP at age 65 regardless of the value of the fund, as stipulated in the Terms and Conditions of the Plan. Aegon also confirmed that a transfer could not proceed because the transfer value of the Plan did not meet the cash equivalent value of the GMP.

### **Adjudicator's Opinion**

17. Mr G's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aegon. The Adjudicator's findings are summarised below:-

- The Trustee had met its obligations by setting up the Plan when the Scheme was wound up, as the Plan guaranteed to provide Mr G with at least the GMP at SPA.
  - The Plan now had a shortfall because the cost of providing the GMP had increased significantly since 1999. The shortfall was being met at Aegon's expense and the Plan therefore provided Mr G with a valuable guarantee.
  - The Adjudicator appreciated that Mr G was frustrated as he had very limited options under the Plan, but this was not a consequence of maladministration on the part of Aegon.
  - Aegon had not done anything wrong as it was meeting the Terms and Conditions of the Plan.
  - Aegon was unable to provide financial advice so it was not unreasonable for it to explain this was an option to Mr G.
18. Mr G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr G submitted his further comments which do not change the outcome. He said:-
- There is no evidence that he agreed the Plan should be set up, so the contract was not legally binding.
  - Aegon failed to provide him with the current status of the Trustee.
  - It is questionable that Aegon are "protecting" his funds or administering the Plan properly, as a substantial sum of money was now locked into the Plan.
  - He wanted evidence to substantiate Aegon's claims that the Plan continued to experience a shortfall.
  - He is unhappy that he received an annual statement confirming a "valuation" of just over £55,000, but Aegon then refused to allow him access to the funds, or transfer to another Scheme.
19. Mr G also raised a new issue that was not part of his original complaint. He has now said Aegon's investment strategies have failed to maintain the growth that has been witnessed across the majority of other sectors. As Mr G has not raised this element of his complaint with Aegon previously no finding will be made here regarding that issue. Mr G is free to raise this as a new complaint with Aegon. However, in general poor investment returns are not necessarily indicative of maladministration and certainly not in relation to Section 32 buy-out policies. Mr G can of course seek further details of the funds his pension fund is invested in, the actual returns on those funds and seek advice from his IFA on any alternative fund choices to mitigate his circumstances.
20. I agree with the Adjudicator's Opinion and note the additional points raised by Mr G.

## **Ombudsman's decision**

21. Mr G argues that the Plan is not “legally binding” as he did not agree for it to be set up. Mr G also argues that Aegon are not administering the Plan properly, as he is unable to access his pension funds.
22. When Mr G was a member of the Scheme, he was contracted out of the SERPS. This meant that the Scheme, as a condition of contracting out, had to provide a GMP at SPA. When the Scheme was wound up, the Trustee had to then secure all the members pension benefits for which it was responsible, including Mr G's. Therefore, as a Scheme member at the date the Scheme was wound up Mr G had no choice but to be enrolled in the Plan, in order for the Trustees to ensure their liability for any GMP benefit was discharged. Mr G's consent was not required and so this part of his complaint is not upheld.
23. As the Adjudicator has already explained the Plan, like many Section 32 buy-out plans, now has a shortfall because the cost of providing the GMP has increased significantly since it was first taken out. I appreciate that Mr G remains unhappy, as he cannot currently take his pension or transfer because the value of the Plan is insufficient to cover the cost of providing the GMP at SPA. However, this is not as a consequence of maladministration of the Plan on the part of Aegon.
24. Aegon is acting within the Terms and Conditions governing the Plan and will make up the shortfall between the value of the Plan and the cost of providing the GMP from its own resources to pay the revalued GMP at SPA.
25. I do not consider the increased cost of providing the GMP could be predicted by Aegon or the Trustee in 1999, when the Plan was set up. There was an expectation that the Plan would provide pension benefits in excess of the GMP.
26. When the Scheme benefits were secured by the Trustee in 1999, Aegon would not then have need for further contact with the Trustee. I consider Aegon provided Mr G with details of how to trace the Trustee in a genuine attempt to help him and this does not mean Aegon has administered the Plan improperly.
27. Aegon acted correctly when it provided a valuation to Mr G, even if his options were limited. It is unable to provide financial advice, so it was reasonable for Aegon to explain to Mr G, as part of the valuation, that he had the option of seeking advice from an IFA.
28. I do not uphold Mr G's complaint.

**Anthony Arter**

Pensions Ombudsman  
17 September 2020

