

Ombudsman's Determination

Applicant	Ms T
Scheme	ReAssure Limited (previously Legal and General) Section 32 Buy-Out Plan (the Plan)
Respondent	ReAssure Limited (ReAssure)

Outcome

1. Ms T's complaint against ReAssure is partly upheld. To put matters right, ReAssure shall pay Ms T an additional £400 in recognition of the significant distress and inconvenience caused.

Complaint summary

2. Ms T has complained that she was misinformed by Legal and General (now ReAssure) about the options available from the Plan. As a result, Ms T says she took out a loan for £1,000 in the expectation of receiving a cash lump sum from the Plan.
3. Ms T has also complained that she has suffered distress and inconvenience as a result of ReAssure's actions.

Background information, including submissions from the parties

4. Ms T has a Section 32 Buy-Out Plan with ReAssure, which was set up as a result of a transfer of her pension benefits from the Credit Suisse First Boston Pension Scheme (**the Previous Scheme**) in December 1989.
5. When Ms T was a member of the Previous Scheme, her employment was contracted out of the State Earnings Related Pension Scheme (**SERPS**). This meant the Previous 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 Previous Scheme benefits were transferred into the Plan in 1989, this meant the Plan also had to guarantee to pay the GMP at SPA, as a minimum.
6. On 30 January 2019, ReAssure wrote to Ms T as she would reach her selected retirement age of 60 on 1 April 2019. ReAssure confirmed that the Plan's value was £13,548.56 and provided the retirement options available to her. ReAssure also said

Ms T could approach Pension Wise for guidance on her available options or seek advice from an Independent Financial Adviser (**IFA**). It asked Ms T to update ReAssure when she had decided what retirement options she wished to take.

7. Ms T subsequently approached an IFA for advice on her options.
8. In February 2019, Ms T's IFA wrote to ReAssure asking for details about the Plan.
9. On 7 February 2019, ReAssure replied to the IFA and said that:

“The transfer value is £13,291.01 as at 07 February 2019.

Please note there is a Guaranteed Minimum Pension Liability under the Policy, and therefore a pension of at least £1,732.09 pa. must be provided. The amount of tax free cash available at retirement will be subject to the level of the residual fund following payment of the Guaranteed Minimum Pension Liability.”

10. Ms T has said her IFA told her that ReAssure had initially confirmed she could transfer the Plan but then advised that this was not an option. This was due to the value of the Plan not meeting the cost of providing the GMP. Her IFA then advised her that she could take the value of the Plan as a cash lump sum by commuting the Plan under triviality rules (**the Triviality rules**), as the value of the Plan was less than £30,000.
11. In May 2019, Ms T telephoned ReAssure and it confirmed that she did have the option to commute the Plan and receive a one-off cash lump sum under the Triviality rules.
12. ReAssure issued Ms T with the forms required for this option.
13. On 14 June 2019, Ms T completed and returned the forms ReAssure required to take her pension as a cash lump sum.
14. On 4 July 2019, ReAssure wrote to Ms T, providing an illustration of the pension that was available from the Plan, and said:-
 - The value of her GMP exceeded £30,000 and this was the limit set by HMRC. Therefore, the lump sum payment option she had enquired about was not available to her.
 - There were fewer options available to her because the Plan had to ensure the GMP was paid, as a minimum.
 - It recommended Ms T seek advice on her options from Pension Wise or an IFA. The letter also said:

“Important Information About GMP Annuity

Please note the funds in your pension pot are insufficient to cover the cost of providing the Guaranteed Minimum Pension (GMP). We will still pay your

GMP as promised however, there is no tax-free cash payable and the basis on how we pay your pension is fixed so any varying basis you may have requested could not be possible.”

15. On 20 July 2019, Ms T provided the authority for ReAssure to release information to her IFA.
16. On 29 July 2019, Ms T's IFA wrote to ReAssure and asked for details of the Plan again.
17. On 1 August 2019, ReAssure replied to the IFA and provided an updated transfer value and confirmed the information provided in February 2019.
18. On 27 August 2019, the IFA wrote to ReAssure and asked to be removed as Ms T's Agent under the Plan.
19. On 4 September 2019, ReAssure wrote to Ms T following an enquiry about the Plan. This letter explained that when ReAssure had accepted the transfer from the Previous Scheme it had taken over the liability for paying the GMP. This GMP arose as the Previous Scheme was contracted out of SERPS. The GMP from the Plan would provide Ms T with a set level of income which had to be no less than £1,732.09 per year. ReAssure said:-
 - The level of the GMP meant that the Plan could not be commuted for cash under the Triviality rules as the overall benefits from the Plan were worth more than £30,000.
 - The fund value of the Plan was insufficient to cover the Cash Equivalent Transfer Value of the GMP, so a transfer was not possible.
20. On 9 September 2019, Ms T complained that:-
 - She was initially told that she could transfer but was subsequently informed that this was not an option.
 - She was later told she could commute the Plan for a cash lump sum and was then informed this was not an option.
 - She had only recently been told that she had to take the GMP as an income and nothing else was possible.
 - She was “appalled” by ReAssure's conduct and had suffered distress and inconvenience as a result.
21. On 27 September 2019, ReAssure replied to Ms T and said:-

- It agreed it could have been clearer in the information sent to her earlier in the process.
- The GMP had to be paid from SPA, and although this was a “very valuable” benefit, it restricted the options available from the Plan.
- Normally it would arrange to start paying the GMP from her 60th birthday, but Ms T said she wanted to look at different options.
- ReAssure was unable to provide financial advice so the only way for her to obtain advice and guidance was for her to arrange this via an IFA. It had to take care not to be seen to provide advice. This could sometimes mean that it was unable to direct members to the obvious solution, and said:

“Given the promise that we made to pay your GMP it was always most likely that eventually we would be asked to pay it. However, that does not mean that you weren’t free to explore other options and we could not and should not have prevented you from doing so. Your IFA should have explained to you why eventually taking the GMP may be a better option than receiving the cash value of your BOP [the Plan].”

22. When Ms T submitted her complaint to The Pension Ombudsman’s Office, she explained that she had taken out a £1,000 loan in the expectation of receiving the entire Plan as a cash lump sum and is unable to pay back the £228 a month loan repayment. She also wanted to use the cash from her pension to pay for the deposit in a shared ownership property, so she is unhappy at being “misled” by ReAssure.

Adjudicator’s Opinion

23. Ms T’s complaint was considered by one of our Adjudicators who concluded that further action was required by ReAssure. The Adjudicator’s findings are set out below:-
- Ms T only had limited options under the Plan because the value of the Plan was insufficient to cover the cost of providing the GMP.
 - The Adjudicator did not consider ReAssure had done anything wrong by limiting the options under the Plan, as it had to pay the GMP at SPA. ReAssure was meeting the Terms and Conditions of the Plan by making up the shortfall between the value of the Plan and the cost of providing the GMP from its own resources.
 - The Plan has a shortfall because the cost of providing the GMP has increased significantly since 1989. This is due to the investment conditions being different to those in the 1980s. This is not something that ReAssure could have predicted in 1989, and the expectation at the time was that the Plan would provide benefits well in excess of the GMP.

- It was not unreasonable for ReAssure to refer Ms T to an IFA. It would then have been for the IFA to explain the options available to Ms T.
 - It was Ms T's choice to take out a loan and this was in anticipation of receiving a lump sum. This was before any payment of pension benefits had been made. The previous Ombudsman, in case PO-4242, had said that it was very difficult for applicants to claim reliance on incorrect information when they have chosen to "jump the gun" before any pension benefit is paid. ReAssure told Ms T shortly after she returned the forms that she was not entitled to receive her pension as a lump sum under the Triviality rules. So, the Adjudicator did not consider that Ms T should have taken out a loan before she received benefits from the Plan.
 - ReAssure should have explained the options actually available to Ms T much earlier in the process and she also had her time wasted by completing and returning forms on an option that was not available to her from the Plan. The Adjudicator considered this was maladministration and ReAssure should pay an award for the significant distress and inconvenience caused.
24. Ms T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
25. After the Opinion was issued Ms T raised a number of new issues that were not part of the original complaint to ReAssure. As Ms T has not previously raised these issues with ReAssure, I will not consider these points as part of my Determination of her complaint. Ms T is free to raise these new issues with ReAssure.
26. I agree with the Adjudicator's Opinion and note the additional points raised by Ms T.

Ombudsman's decision

27. Ms T has argued she was misinformed about the options available from the Plan and as a result took out a loan in the expectation of receiving a lump sum.
28. 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. It is important to note that in general, poor investment returns are not necessarily indicative of maladministration and certainly not in relation to Section 32 buy-out plans. I appreciate that Ms T remains unhappy as she cannot transfer or take a lump sum 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 on the part of ReAssure.
29. The fact the Plan has not performed as originally expected has meant the value is now not sufficient to meet the cost of providing the GMP. ReAssure is therefore obliged to make up the shortfall from its own funds in order to ensure the GMP is paid. ReAssure is therefore acting within the Terms and Conditions governing the Plan and has ensured that the GMP can be paid at SPA. So, Ms T will receive the

benefits to which she is entitled from the Plan, even if it is not in the form of a lump sum or a transfer.

30. I do not consider that the increased cost of providing the GMP could have been predicted by ReAssure in 1989 when the Plan was first set up. There was an expectation that the Plan would provide pension benefits in excess of the GMP.
31. Ms T has said she took out a loan in the expectation that she would receive a lump sum from the Plan. However, ReAssure advised Ms T shortly after she returned the relevant payment forms that she was not entitled to receive her pension as a lump sum under the Triviality rules. Given the relatively short time between being told she could take a lump sum and then being told this was not in fact the case, I do not consider it was reasonable for Ms T to have taken out the loan in advance of receiving her benefits from the Plan.
32. ReAssure has agreed that the information it provided to Ms T and her IFA earlier in the process could have been clearer and has offered her £100 for the distress and inconvenience caused. I agree that it was reasonable for ReAssure to refer Ms T to an IFA as it could not provide her with advice. However, ReAssure should have explained much earlier in the process the options actually available to Ms T as it was aware that the value of the Plan was insufficient to cover the GMP. It knew that this meant Ms T could not transfer, take tax free cash, or commute the Plan for a cash lump sum. This was only explained to Ms T by ReAssure in September 2019, many months after her initial enquiry.
33. Ms T had to approach her IFA twice and had spent a number of months trying to clarify what options were available. Due to ReAssure's actions, Ms T also unnecessarily completed forms for an option that was not available to her under the Plan. I consider Ms T suffered significant distress and inconvenience as a result of ReAssure's actions.
34. I partly uphold the complaint.

Directions

35. Within 28 days of the date of this Determination, ReAssure, shall pay an additional £400 in addition to the £100 already paid to Ms T for the significant distress and inconvenience caused.

Anthony Arter

Pensions Ombudsman
11 January 2021