CAS-40946-Q7M9

The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr Z
Scheme	Legal & General Section 32 Buy Out Plan (**the Plan**)
Respondent	Legal & General Assurance Society (**L&G**)

Outcome

1. I do not uphold Z's complaint and no further action is required by L&G.

Complaint summary

2. Mr Z complained about the reduction in the retirement benefits quoted to him by L&G. He contended that L&G has unreasonably refused to honour the higher figures previously quoted.

Background information, including submissions from the parties

3. Mr Z held two policies in the Plan, numbered U154373 and U154371.

4. Mr Z's investments in the Plan included a Guaranteed Minimum Pension (**GMP**) element for defined benefits that became payable at age 65.

5. On 22 March 2018, L&G wrote to Mr Z and provided an annuity quotation (**the April 2018 Quotation**) for benefits at age 65 in April 2018. The options provided were:-

"Option 1

Taking an annuity with L&G

Tax-free lump sum	£30,219.37
Annuity	£5,972.28 a year

Option 2

The Open Market Option

The amount available to buy an annuity from another provider is £186,388.59"

6. The ‘Important information about your illustration’ section of the April 2018 Quotation included notes stating:-

> “The values of your pension pot shown above are not guaranteed and can go down as well as up. The actual amount available when you access your pension pot will depend on the values at that date…
>
> **Your pension annuity**
>
> The rates used to calculate your pension income are only guaranteed for 35 days from the date of this illustration.”

7. On 5 July 2019, L&G sent Mr Z a further annuity quotation (**the July 2019 Quotation**) which quoted the following options:-

> “Option 1
>
> **Taking an annuity with L&G**

Tax-free lump sum	£14,473.80
Annuity	£6,618.24 a year

> Option 2
>
> **Your selected options**

Guaranteed payment period (non-protected rights)	10 years
Guaranteed payment period (GMP)	5 years”

8. The warning messages mentioned in paragraph 6 were also repeated in the July 2019 Quotation.

9. Mr Z telephoned L&G to ask why the lump sum quoted in the July 2019 Quotation was lower than in the April 2018 Quotation.

10. On 19 July 2019, L&G wrote to Mr Z and said:-

> “The Guaranteed Minimum Pension on your policy increases at 1/7 of 1% per week (after the first seven weeks when your selected retirement date has passed). In addition to this the amount of GMP that is post 88 will also increase by 3% per year. This is why the GMP has increased and consequently the Protected tax-free cash has decreased.”

11. On 7 August 2019, the deadline for accepting the July 2019 Quotation expired.

12. On 14 August 2019, L&G received Mr Z’s completed payment instruction form in which he had chosen to take a tax-free lump sum and an annuity with L&G.

13. On 16 August 2019, L&G wrote to Mr Z and provided another annuity quotation **(the August 2019 Quotation**). In summary L&G said:-

"We are currently in the process of setting up your annuity. Once you have passed your selected retirement date the GMP gets revalued which means the cost of providing your GMP increases. Due to this and the change of annuity rates your tax-free cash has decreased."

Your new tax-free lump sum is £2,899.84
Your annuity is £6,670.20 a year"

14. On 19 August 2019, Mr Z telephoned L&G about the reduction in the tax-free lump sum quoted in the August 2019 Quotation when compared to the July 2019 Quotation.

15. On 22 August 2019, Mr Z emailed L&G to complain that:-

- The August 2019 Quotation was unacceptable, having previously received the April 2018 Quotation and the July 2019 Quotation that both quoted significantly higher benefits.

- He had telephoned L&G to query the difference in the benefits quoted in those annuity quotations and was told that they were only valid for 35 days. But that information was not included in the April 2018 Quotation and the July 2019 Quotation.

16. On the same day, L&G emailed Mr Z in response to his telephone call of 19 August 2019 and said:-

- When the July 2019 Quotation was sent, the total value of Mr Z's GMP benefits was £6,618.24 and the total cost of providing that entitlement was £173,408.41, so a tax-free lump sum of £14,473.80 was payable.

- When the August 2019 Quotation was sent, the total value of Mr Z's GMP benefits had increased to £6,670.08, and the total cost of providing that entitlement had risen to £188,376.62, meaning that a reduced tax-free lump sum of £2,889.94 was payable.

- A full response to Mr Z's complaint would be sent within two weeks.

17. On 2 September 2019, L&G wrote to Mr Z in response to his complaint . In summary L&G said:-

- Mr Z's buy-out policy had been set up to provide GMP benefits.

- When the notional value of the GMP was insufficient to make that possible before age 65, those benefits could not be paid.

- The cost of providing Mr Z's GMP had to be taken from his total pension fund before any other benefits could be paid.

- When the April 2018 Quotation and the July 2019 Quotation were sent to Mr Z, his total pension fund was sufficient to cover the GMP benefits and provide a surplus to be paid as a tax-free lump sum.

- The payment instruction form provided with the retirement quotations sent to Mr Z was valid for six months. But the 'Important information about your illustration' section stated that the rates used to calculate the benefits payable were only valid for 35 days.

- The July 2019 Quotation passed the deadline for acceptance on 7 August 2019. But the payment instruction form was not received until 14 August 2019. So, the benefits payable were recalculated.

- Mr Z reached age 65 in April 2018 and his GMP has been revaluing since then. So, the cost of providing it has increased and the annuity rates have also changed.

- Consequently, Mr Z's total fund value is no longer sufficient to cover the GMP payments that are due to him. However, the legislation covering GMPs mean that Mr Z will still receive the defined benefits that are due to him.

- The reduced tax-free lump sums that have been quoted in Mr Z's retirement quotations are for Section 9(2B) benefits in accordance with his GMP entitlements.

18. On 5 September 2019, Mr Z wrote to L&G and said:-

- He had not responded within 35 days of receiving the July 2019 Quotation, due to the significant difference in the benefits quoted in comparison to the April 2018 Quotation.

- He had contacted L&G to ask for an explanation for this and received L&G's letter of 19 July 2019.

- Both the April 2018 Quotation and the July 2019 Quotation prompted him to seek financial advice before making a decision on taking his benefits. So, he arranged an appointment with Pension Wise on 7 August 2019, which was the earliest available.

- Consequently, it would not have been possible to return his completed payment instruction form to L&G by that date and comply with the 35-day deadline for accepting the July 2019 Quotation.

- In his request for the July 2019 Quotation he had asked for figures relating to an annuity with a 10-year guarantee. Instead, he received a quotation for a guaranteed period of five years.

- So, the 35-day period before reaching the deadline for accepting the July 2019 Quotation should have started on 19 July 2019.

- He had also previously been told in a telephone call with L&G that retirement quotations were valid for six months.
- He would like the July 2019 Quotation to be honoured.

19. On 23 September 2019, L&G wrote to Mr Z and said that it was unable to honour the July 2019 Quotation.

Mr Z's position

20. Mr Z says:-

- He delayed accepting the July 2019 Quotation until 14 August 2019, due to the large reduction in the lump sum quoted when compared to the April 2018 Quotation.
- Those quotations prompted him to seek financial advice before making a decision on taking his benefits. So, he took the earliest available appointment with Pension Wise, which was not until 7 August 2019.
- The 35-day deadline for accepting the July 2019 Quotation should have been from 19 July 2019, when L&G wrote to him explaining the reason for the reduction in the lump sum figure. In any case, L&G had previously told him during a telephone call that retirement quotations are valid for six months.
- L&G should honour the July 2019 Quotation.

L&G's position

21. L&G say:-

- The July 2019 Quotation provided a tax-free lump sum figure of £14,473.80 and an annuity of £6,618.24. The 'Important information about your illustration' section stated that these benefits were guaranteed for 35 days.
- Mr Z submitted his completed payment instruction form outside of this timescale, as it was received on 14 August 2019. Consequently, Mr Z's benefits had to be recalculated.
- The cost of providing Mr Z's GMP had increased, and his total fund value no longer covered those costs. This caused a reduction in the tax-free cash that would be payable.
- Mr Z ought to have been aware of the deadline for returning his payment instruction form to accept the figures quoted in the July 2019 Quotation. L&G is not at fault for Mr Z failing to meet that requirement and the consequent reduction in the benefits payable.
- There are no records of a telephone call during which Mr Z was told that retirement quotations are valid for six months.

Adjudicator's Opinion

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

- Mr Z could have contacted L&G promptly upon receipt of the July 2019 Quotation saying that he was seeking financial advice and he would not be able to make a decision before the 35-day deadline on 7 August 2019. This would have given L&G the opportunity to clarify the implications of Mr Z delaying his decision. Instead, Mr Z sent his retirement claim form after the deadline had passed.

- There was also no requirement, as suggested by Mr Z, for L&G to extend the 35-day deadline so that it started from 19 July 2019. Further, L&G has no record of a telephone call with Mr Z during which he was told that retirement quotations are valid for six months. So, L&G cannot reasonably be held responsible for Mr Z not claiming the benefits quoted in the July 2019 Quotation before the deadline to do so expired. L&G has reasonably concluded that those benefits are no longer payable.

- Mr Z's GMP became payable when he reached age 65 in April 2018, so annual increases have been applied since then. L&G said that these increases in addition to less favourable annuity rates since the April 2018 Quotation was issued has resulted in the cost of providing Mr Z's GMP to increase, causing the lump sum figures quoted in the July 2019 Quotation, and the August 2019 Quotation, to be lower. The Adjudicator considered that this was a reasonable explanation for the reductions in the figures quoted.

- Further, a note in the July 2019 Quotation stated that, "The values of your pension…are not guaranteed and can go down as well as up. The actual amount available when you access your pension pot will depend on the values at that date." This is an inherent feature of this type of plan and Mr Z ought to have been aware that the value of his retirement benefits was not guaranteed. He could have asked L&G for further clarification on that point if he was unsure.

- It was not unreasonable for L&G to have provided the August 2019 Quotation given that the deadline for accepting the July 2019 Quotation had expired. There is no requirement for L&G to, instead, honour the figures quoted in the July 2019 Quotation.

23. L&G accepted the Adjudicator's Opinion, but Mr Z did not, and the complaint was passed to me to determine. Mr Z and L&G both have provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by both L&G and Mr Z.

Mr Z’s additional comments

24. When he eventually began receiving his retirement benefits, in January 2020, L&G paid a lump sum of approximately £5,980.98 in addition to his annual pension.

25. So, an increased lump sum was paid when compared to the figure of £2,899.84 that was offered in the August 2019 Quotation.

26. This does not make sense in view of the increasing cost of providing his GMP that L&G has previously stated as the reason for reducing his lump sum between the April 2018 Quotation and the August 2019 Quotation.

L&G’s additional comments

27. Mr Z’s two policies under the Plan were linked in order to fund his GMP entitlement.

28. Policy U154373 held some Section 9(2B) benefits that could not be used to fund the GMP, so this could be taken as part of Mr Z’s lump sum entitlement.

29. After the cost of providing the GMP was deducted from the total fund value, minus the Section 9(2B) rights, any excess could be taken as additional lump sum benefits.

30. This additional lump sum entitlement depended on the cost of providing Mr Z’s GMP based on annuity rates at the time, which are variable, causing the cost of providing the GMP to fluctuate.

Ombudsman’s decision

31. Mr Z complained about the reduction in the retirement benefits quoted to him by L&G. He contends that L&G has unreasonably refused to honour the higher figures previously quoted in the July 2019 Quotation.

32. The information provided with the July 2019 Quotation was clear that there was a 35-day deadline in which to accept the figures quoted. On 19 July 2019 L&G provided its explanation as to why the lump sum had reduced, and the annuity had increased, which left Mr Z with over two weeks in which to decide whether he wished to accept the benefits quoted. In the circumstances, I find this was a reasonable length of time for a decision to be made and L&G cannot be held responsible that Mr Z failed to respond before the deadline expired.

33. Mr Z said that it does not make sense that when he eventually claimed his retirement benefits in 2020, L&G paid a higher lump sum of £5,980.98, in addition to his annual pension, than the figure of £2,899.84 that was offered in the August 2019 Quotation. He believes that this contradicts L&G’s previously stated view that the increasing cost of providing his GMP was the reason for the reduction in the lump sums quoted in the April 2018 Quotation and the August 2019 Quotation.

34. The lump sum payable to Mr Z was dependent on the cost of providing his GMP. Annuity rates are variable and fluctuate according to market conditions. So, the cost

of providing the GMP will inevitably change over a period of time. Also, in addition to providing the GMP element, the Plan is a unit-linked investment and, as stated in the July 2019 Quotation, “The values of your pension…are not guaranteed and can go down as well as up. The actual amount available when you access your pension pot will depend on the values at that date.” Accordingly, fluctuating fund values and annuity rates have resulted in an increased lump sum for Mr Z.

35. So, the fact that L&G eventually paid a larger lump sum to Mr Z in January 2020 than had been quoted in August 2019, does not cast doubt on L&G’s previous comment that additional costs for providing the GMP was the reason for Mr Z’s lump sum value decreasing between April 2018 and August 2019.

36. I find that there has been no maladministration by L&G, and it has correctly concluded that there is no requirement to honour the July 2019 Quotation.

37. I do not uphold Mr Z’s complaint.

Anthony Arter

Pensions Ombudsman
3 November 2021