

Ombudsman's Determination

Applicant	Mr R
Scheme	Aviva Section 32 Buyout Plan (the Plan)
Respondent	Aviva

Outcome

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

Complaint summary

2. Mr R has complained that his pension is lower than the projections made by the original workplace pension plan with Norwich Union. Mr R has also complained that Aviva has failed to add bonuses since 2004.

Background information, including submissions from the parties

3. Mr R was a member of the Bell & Howell Pension Plan (**the original Scheme**) through his employment.
4. During Mr R's membership in the original Scheme, he was contracted out of the additional state pension, at that time called the State Earnings Related Pension Scheme (**SERPS**). This meant that Mr R would be entitled to a Guaranteed Minimum Pension (**GMP**) from the original Scheme. The GMP would have to be broadly equivalent to the benefit that would have been payable from SERPS. Mr R's normal retirement age (**NRA**) was 65.
5. In February 1989, Mr R received an illustration of his annual pension benefits from the original Scheme compared to if he transferred his benefits to the Plan. It said that at his NRA, he might receive a guaranteed £1,360.32 annually from the Plan or £2,865.60 annually from the original Scheme. It also said that this could increase to an estimated £5,690.00 annually from the Plan or £2,865.60 annually from the original Scheme.
6. The illustration included notes, which stated that:-

- The original Scheme included the provision of a GMP equal to £285.48 at the date of leaving, which would increase to a maximum of £1,360.84 at State Pension Age (SPA).
 - If Mr R left service after 1 January 1986, part of the original Scheme pension, in excess of the GMP, would increase between the date of leaving and the date of retirement. The estimated £2,865.60 annual pension included increases at an assumed rate of five percent annually.
7. Mr R has said that he opted to transfer his benefits to the Plan on 1 March 1989, which was solely invested in the with-profits fund.
8. On 23 March 1989, Norwich Union sent Mr R an illustration of his benefits in the Plan based on a retirement age of 65. It said:-
- The transfer value was £1,729.73.
 - Depending on the rate of return, he might receive £5,690.00 as an annual pension.
 - At SPA, Mr R's GMP would be at least £1,360.32 annually and £94.12 of this would increase at a rate of three percent annually (compound).
 - The illustration was for information purposes only and was not legally binding.
9. In 1989 or 1990, Norwich Union sent Mr R a policy document for the Plan which included the following information:-

Capital Sum

At his NRA, Mr R would be entitled to "...a Capital Sum of £10,322.00 (plus compound bonus declared thereon by [Norwich Union] from time to time) which shall be applied in accordance with Policy Condition 7."

GMP

The GMP would be:

"£294.84 per annum increased by whichever is the lower of 5% compound for each complete year from 6 April 1989 to 6 April immediately preceding the attainment by the Insured of the [SPA] of 65 or the Insured's death whichever is earlier and the last order made under Section 21 of the Social Security Act 1975 before such later date and increasing annually from the [SPA] in respect of that part earned from 6 April 1988 at a compound rate of 3%."

Maximum Pension

Mr R could take his benefits:

- at his NRA; or

- between his 50th birthday and his NRA (**an early substitute benefit date**); or
- between his NRA and his 70th birthday (**a late substitute benefit date**).

If Mr R took his benefits at his NRA or an early substitute benefit date, the maximum pension available to him from the Plan would be £116.85 annually. The amount would increase by the greater of five percent annually (compound) and the accumulated increase in the Retail Price Index (**RPI**). This would be measured between him leaving the Employer and his NRA or an early substitute benefit date.

If Mr R opted to take his benefits at a late substitute benefit date, he would either receive:

- £116.85 annually increased by the greater of five percent annually (compound) and the accumulated increase in the RPI during the period between leaving the Employer and the late substitute benefit date; or
- the amount set out in the point above plus an actuarial increase determined by Norwich Union in relation to the period between his NRA and the late substitute benefit date and the yield on the funds during that period; and
- in both cases, any additional increase that it was required to pay in relation to his GMP.

Policy Condition 7

“At the Benefit Date or the Substitute Benefit Date so much of the Capital Sum as shall be appropriate shall be applied using the Society’s then current annuity rates to purchase an immediate pension payable to the Insured equal to the [GMP]...”

And

“Provision may be made for all or any pensions purchased under this Condition to increase at a percentage rate not exceeding in total 8.5% compound from each anniversary of the Benefit Date of the Substitute Benefit Date provided that no pension may exceed whichever is appropriate of the Maximum Pension, Maximum Widow’s Pension or Maximum Dependant’s Pension increased by the accumulated increase in the [RPI] published in the calendar month preceding the month in which the anniversary occurs since that published in the calendar month preceding the month in which the [NRA] or Substitute Benefit Date occurred or by 3% compound per annum whichever is greater less in the case of a pension payable to the Insured the pension equivalent of any cash sum taken at the [NRA] or Substitute Benefit Date. If the value of the [RPI] is not published in any particular month the most recently published value will be applied”

And

“...A pension payable to the insured shall be payable for the lifetime of the Insured...The total amount of the Insured’s pension... shall not be less than the total amount of [GMP] respectively required by the Social Security Act 1975.”

10. On 1 January 1991, Norwich Union sent Mr R a letter about the bonuses it had added to the Plan for 1990. It said:-
 - The with-profits benefit was £10,322.00; the existing bonus was £2,285.75; and the 1990 bonus was £794.30.
 - The benefit and bonus shown would be payable when Mr R reached his NRA.
11. On 1 January 1992, Norwich Union sent Mr R a letter about the bonuses it had added to the Plan for 1991. It said:-
 - The with-profits benefit was £10,322.00; the existing bonus was £3,080.05; and the 1990 bonus was £716.35.
 - The benefit and bonus shown would be payable when Mr R reached his NRA.
12. In July 1995, following a telephone conversation with Mr R, Norwich Union wrote to him to confirm that it had updated his address. It also provided additional information about the Plan.

Plan value

Norwich Union confirmed that the Plan value was £2,729.90 as of 31 July 1995. £2,194.86 of which was in respect of the GMP liability.

Death benefit

Should Mr R die before he reached age 65, a lump sum would be payable which was currently valued at £3,080.82. His widow would also receive a pension of at least £1,432.80 payable from the first month after his death.

Retirement illustration

Depending on investment returns, at his NRA, the Plan value might be £15,400 or £40,800. His annual pension may then be £3,650.00 or £1,399.84 (GMP only) and would increase by three percent compound from February 2023.

13. In 1996, Norwich Union sent Mr R a statement for the bonuses it had added to the Plan for 1995. It said:-
 - The with-profits benefit was £10,322.00; the existing bonus was £3,259.90; and the 1990 bonus was £437.35.
 - The benefit and bonus shown would be payable when Mr R reached his NRA.
14. On 1 June 2009, Norwich Union rebranded as Aviva.

15. Mr R has said that from this point, Aviva stopped adding bonuses.
16. On 15 January 2021, Mr R contacted Aviva for an illustration of the benefits due from the Plan. Mr R has said that Aviva told him that it could not provide a forecast, but his pension was unlikely to pay more than the GMP of £1,399.84 annually.
17. In response, Mr R complained that the illustrations in 1989 forecasted higher figures.
18. On 30 April 2021, Aviva responded to Mr R's complaint. It apologised for the time it had taken to send its response and said:-
 - The Plan commenced on 13 May 1989 and was due to mature on his 65th birthday.
 - The minimum GMP Mr R would receive was £1,399.84 annually.
 - It would not know the full value of the Plan until the maturity date.
 - If the cost of providing the GMP was not met by the value of the Plan at the maturity date, Mr R would still receive the guaranteed amount because Aviva would pay the shortfall. If, however, the value of the Plan was higher than the cost of providing the GMP, Mr R would have additional options including a potential additional lump sum.
 - The Plan was invested in the with-profits fund. It was affected by economic conditions which, in turn, affected growth. There were periods where the Plan performed well and other periods where returns were very poor.
 - It understood his disappointment at the performance of the Plan but hoped it had sufficiently explained why the values had fluctuated in the way that they had.
 - It also hoped that it had explained how the value of his pension would be used to provide the GMP and how any surplus returns would be used.
19. In January 2022, Mr R reached his NRA and Aviva calculated his annual pension to be £1,400.36. Aviva has confirmed that the GMP had been met by the value of the Plan.
20. Mr R is now in receipt of his pension from the Plan.

Adjudicator's Opinion

21. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised below:-
 - Neither Norwich Union nor Aviva guaranteed any bonuses would be added to the Plan.
 - Aviva had provided a sufficient explanation for the Plan's performance.

- The Plan had not performed as well as predicted in 1989. But, in the Adjudicator's opinion, the Plan's performance, and Mr R's loss of expectation were not a result of maladministration by Aviva.
- The illustration provided in 1989 made it sufficiently clear that the figures were not guaranteed or legally binding. It was unreasonable for Mr R to base his retirement planning on the higher figures which were estimated in 1989.
- The underlying investments that generated the Plan's value had not performed sufficiently well to offer Mr R the earlier quoted figures.
- The Adjudicator was satisfied that Mr R's GMP had been met and there were no other guarantees due to Mr R. Furthermore, it was not within the Pensions Ombudsman's (TPO) remit to complete member calculations.

22. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided his further comments which do not change the outcome. Mr R submits:-

- He has provided TPO with information gradually to allow it time to process the complaint.
- There were a number of events that affected the Plan's value including:
 - the Norwich Union merger in 2000; and
 - a loss of mutuality when Norwich Union rebranded as Aviva.
- Norwich Union did not refer its decisions to affected members. This ultimately affected the value of his benefits in the Plan at the maturity date because profits were no longer solely for the benefit of policyholders.
- He has evidence to support his assertion that bonuses had a compound CGU growth factor guaranteed. So, it was not reasonable for the Adjudicator to say that they were not guaranteed.
- He expected TPO to check that his benefits had been calculated correctly.
- He was unhappy that his benefits were lower than he expected them to be.
- His pension had not increased by three percent (compound) from February 2023 as it should have.

23. I agree with the Adjudicator's Opinion and note the additional points raised by Mr R.

Ombudsman's decision

24. Mr R originally complained that his pension was lower than projected and that Aviva had failed to add bonuses to the Plan since 2004. Since Mr R submitted his complaint, he has raised additional concerns about the demutualisation process which, he says, he only recently became aware of. In particular, he refers to a loss of mutuality, when Norwich Union became Aviva, as a reason for the Plan's underperformance. However, Norwich Union demutualised in 1997, before it came Aviva.
25. I appreciate that Mr R provided information gradually to ensure that my Office understood his complaint. However, I will only address the concerns that have already been raised with Aviva and which my Office accepted for investigation. Mr R should raise any new concerns with Aviva directly so that it has the opportunity to complete an investigation and respond to his concerns.
26. When Norwich Union demutualised in 1997, it floated as a public limited company on the London Stock Exchange. This would have had an impact on members, but Norwich Union would have demutualised in accordance with the relevant requirements of the particular time. The same can be said for the Norwich Union CGU merger in 2000. Ultimately, these decisions do not constitute maladministration and, in any case, fall outside my remit. Any claim that the Plan value suffered as a consequence of demutualisation or mergers is purely speculative. It is not possible to know what the Plan's value would have been had the changes not occurred.
27. The premise behind Section 32 Buyout Plans, such as the one sold to Mr R, was that the transfer value would be invested and at retirement the total fund would be used to provide a pension to the member. There would, however, be a guarantee that the pension would not be less than the GMP that the individual would have been entitled to under the transferring scheme. The expectation promoted by insurers and their agents at the time was that there would be sufficient funds available at retirement to provide the GMP as well as additional pension benefits.
28. I appreciate that Mr R is dissatisfied with the value of his benefits compared to those he might have received from the original Scheme, or had the Plan performed as well as set out in the Illustrations that he received in 1989. However, the Plan was invested in with-profits funds and so the value was subject to market conditions. The Plan's failure to perform as well as Mr R had hoped does not constitute maladministration on the part of Aviva.
29. Norwich Union issued a policy schedule in relation to the Plan. Policy Condition 7 states that the Capital Sum would be used to purchase an immediate pension payable to Mr R equal to the GMP and Widow's pension payable, if any, equal to the Guaranteed Minimum Widow's Pension. The policy schedule therefore guaranteed to pay the GMP and any relevant increases. Similarly, the bonus letters of 1991, 1992 and 1996 that Mr R refers to stated that the benefit and bonus shown were payable to him at his NRA. None of the documents guaranteed benefits higher than his GMP.

30. Norwich Union would have been aware that the relevant legislation and contract with Mr R required it to ensure that an annuity could be purchased to cover the cost of Mr R's GMP, regardless of the investment market. It therefore only guaranteed to pay the GMP, and the relevant increases on that amount, from SPA. It has done this. It provided no guarantees of any other bonuses or benefits.
31. It is not within my remit to check that a member's benefits have been correctly calculated. Should Mr R wish to have the figures checked, he can request a copy of Aviva's calculations and obtain guidance from a suitably qualified financial adviser to verify the figures, at his own expense.
32. Mr R is concerned that Aviva had not applied the three percent increases to his pension from February 2023. Aviva has confirmed that only the post 1988 GMP increased by three percent. This was set out in the 1989 illustration, 1989 policy document and the 2022 retirement schedule that Aviva sent to Mr R. The amount that Mr R's pension increased by from April 2023 was around £0.18 so it is understandable that he might not have noticed the difference. However, I am satisfied that Aviva has increased Mr R's pension as it should have.
33. I do not uphold Mr R's complaint.

Dominic Harris

Pensions Ombudsman
31 July 2023