

Ombudsman's Determination

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| Applicant | Mr S |
| Scheme | Aviva Staff Pension Scheme (Scheme) |
| Respondents | Aviva Staff Trustee Limited (Aviva) |

Outcome

1. Mr S' complaint is upheld to the extent that he has suffered distress and inconvenience and, to put matters right, Aviva should pay him an additional £300, bringing the total compensation to £500.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S' complaint against Aviva is that it misled him into believing his partner would be entitled to a spouse's pension based on 50% of his entitlement and that he had made a valid nomination. As a result of the incorrect information provided to Mr S, he says he and his partner have not been able to make alternative provision for her pension. Further, it is now too late to do so and his partner will lose approximately £6,000 every year.

Background information, including submissions from the parties

4. Mr S was a member of the Norwich Union Group Pensions and Life Insurance Non-Contributory Plan, a precursor to the Scheme before it merged. He became a deferred member in May 1997 and was issued with a Certificate of Pension Rights on 20 June 1997. Under the heading 'Widow's pension', the document said: "in the event of your death a pension will be payable to your widow". Mr S was married at the time and information was provided on the benefits that would be payable to his wife if he died. The document then said the following:

"If when you die you are no longer married to [his then wife] and you have re-married, a pension will be payable to your widow of 50% of the benefits in respect of your contracted out entitlement revalued to the date of your death or age 65 if earlier."

5. On 5 February 2001, Mr S was sent a transfer value and benefit statement for the purposes of divorce proceedings. In a section headed "Death Benefits", the following information was provided:

"Before NRD: Leavers before 1/7/98 – pension payable to spouse, 50% member's GMP, if member was redundant 50% members pension

After NRD: leavers after 1/7/98 pension payable to spouse or nominated partner, 50% members pension payable to a named spouse only for leavers before 1/7/98; payable to a spouse or nominated partner for leavers after 1/7/98."
6. On 8 January 2002, Mr S was issued with a benefit statement. The statement had been prepared on the basis that Mr S left service after 1 July 1998, so it said, on death before or after the normal retirement date, a pension would be paid to "spouse or partner nominated in accordance with the Plan rules, of 50% of the member's pension on death". This is the statement that Mr S says he relied on in believing that his partner would be entitled to 50% of his pension.
7. In January 2005, Aviva wrote to Mr S informing him about changes to the Scheme rules. The letter said:

"The new position is that a spouse's pension will continue to be paid to a member's legal spouse upon death. However, a member can now request that the Trustee gives consideration to paying all or part of the spouse's pension to a dependant(s)...It should be noted that the Trustee, with the agreement of the Company, will have discretion as to whether a pension will be paid to a dependant in addition to, or instead of, the member's spouse."
8. Mr S completed a nomination form in February 2005. The first section was an expression of wish which asked the Trustee to "consider" paying any lump sum benefit to his partner. The notes below this section said the choice of beneficiary is at the Trustee's discretion but that wishes would be taken into account. The second section was for unmarried members to nominate a qualifying partner to receive a pension. The notes below the section said:

"If you are not married at the date of death, the Scheme will pay a pension equal to the spouse's pension to your partner if certain conditions are met...To be eligible for a pension, your partner must at your death be: financially dependent on you...; living with you on an established basis; and nominated by you in writing. The Trustee will decide on your death whether any person nominated by you meets the criteria at that time..."
9. Mr S says he did not receive an acknowledgement for his completed nomination form, or any other correspondence in relation to it.
10. In November 2005, a deferred pension statement was issued in respect of Mr S. It was not sent directly to Mr S' home address or addressed to him. It was sent to the

Staff Pensions Manager of another organisation for their records. The statement contained the correct information in respect of the death benefits payable. It said on death before and after retirement, a pension is payable to the spouse of 50% of the member's deferred pension.

11. Mr S was sent a letter the following month in December 2005, clarifying a mistake that had been contained in a previous letter from September 2002, in relation to a pension debit following his divorce. This letter did not say there had been a mistake in the January 2002 letter.
12. Mr S was issued with a normal retirement quotation in May 2015. This showed the correct spouse's entitlement on death in retirement, namely, payable only to a spouse and not an unmarried partner. Mr S queried this and said he had nominated his partner some time ago and that he had been under the impression that she would receive 50% of his pension in the event of his death.
13. Aviva wrote to Mr S on 1 June 2015. It referred to the certificate of benefits issued to Mr S in 1997 which confirms that the death benefit is only payable to a widow. It said the Scheme rules allowed discretionary benefits to be made with the consent of the company and that an application could be made to pay a pension to his partner at that time. Aviva informed Mr S that he had the option of transferring his benefits to another provider who could provide a partner's benefit to his partner.
14. In a further letter to Mr S dated 24 June 2015, Aviva informed him that the statement issued in January 2002 was incorrect. It confirmed that if he died within five years of retirement and was not married, a lump sum was payable at the discretion of the Trustees; if he married at any point after his retirement, his spouse would automatically receive a pension. Mr S was awarded a maladministration compensation payment of £200.
15. Mr S complained under the Scheme's internal dispute resolution procedure. He said he had been with his partner since 1993 and had nominated her in accordance with the Scheme rules. He said the January 2002 statement had been the basis of their financial plans since and that it is not possible to make alternative plans. He asked that the January 2002 statement be honoured and that his partner be granted 50% of his pension should he pre-decease her.
16. Aviva issued its decision on 20 August 2015. It did not consider that it was reasonable for Mr S to have relied on the information in the January 2002 statement as he had received contradictory information from various other sources about the spouse's pension. It would have been reasonable for Mr S to have checked the correct position before placing reliance on it. Further, had reliance been reasonable, there was no evidence of the actions he took as a result and, consequently, it was not possible to establish the extent of his financial loss.
17. In his complaint to The Pensions Ombudsman, Mr S says when he joined the Scheme and when he left in 1997, the question of dependent benefits was not

relevant to him. The January 2002 statement is the first document he had in his pensions file which explained the benefits that would be paid on death. He maintains that he was positively misled by it and that he did not receive any contrary information after it was issued. He asserts that the January 2005 letter was the catalyst for him completing the nomination form and that he did not receive any notification from Aviva, after he submitted his form, that there were no partner benefits in the Scheme.

18. Aviva's position is that Mr S is only entitled to benefits in accordance with the Scheme rules. The January statement did not confer a right to a higher benefit and the January 2005 letter simply set out an option that is available to a member who has a spouse at the date of death. The offer of compensation made to Mr S is sufficient for the errors that occurred.

Adjudicator's Opinion

19. Mr S' complaint was considered by one of our Adjudicators who concluded that further action was required by Aviva. The Adjudicator's findings are summarised briefly below:
 - The Scheme is governed by rules which set out when benefits are payable, how much should be paid, and in the event of a member's death, who is entitled to receive benefits following the death. In Mr S's case, the rules only make provision for the payment of spouse's pension; it does not extend to an unmarried partner.
 - It is evident that over time, Mr S has been provided with information which outlined the correct position. However, he has also been provided with incorrect information. This amounts to maladministration.
 - Essentially, Mr S's complaint is that he relied on the incorrect information he received to his detriment and that as a result, he has suffered a loss. A finding of maladministration is not sufficient to establish detrimental reliance. To succeed, it would be necessary to establish that it was reasonable for Mr S to have relied on the incorrect information and that he has suffered loss as a result.
 - Mr S received the January 2002 statement less than a year after the previous statement that was issued in February 2001 with the transfer value information. The earlier document contained the correct information in relation to death benefits. Given the relatively short time that elapsed between the two statements, it would have been reasonable for Mr S to have queried the contrary information contained in the January 2002 statement. There is no record that he did so, consequently, it was not reasonable for Mr S to have relied on the statement alone.
 - The January 2005 letter provided information concerning the flexibility that would be granted in relation to a spouse's pension. It was not about a partner's pension. Following receipt of the letter Mr S requested a nomination form shortly afterwards. When Mr S returned his completed nomination form, Aviva had an

opportunity to inform Mr S that as he had left service prior to July 1998, his partner was not entitled to a partner's pension; this did not happen. There is no evidence that Mr S received the November 2005 letter, and the December 2005 letter did not expressly correct the mistake contained in the January 2002 statement. As Mr S did not receive any clarifying information following completion of the nomination form, it created an expectation for him, based on his previous incorrect belief, that his partner would be entitled to a partner's person.

- It is an established legal principle that the provision of incorrect information does not, in itself, create a legal entitlement for the recipient to receive those incorrect benefits. On the basis of this principle, the rules of the Scheme do not provide for the payment a partner's pension to those who left service before 1 July 1998. As Mr S became a deferred member in 1997, his partner was never entitled to a pension and the January 2002 statement did not change her entitlement in the Scheme.
- Given the number of years that Mr S' nomination remained on his record without being clarified; it compounded the initial error made on the 2002 statement. Although, it cannot be said that Mr S has suffered an actual loss, he has suffered a loss of expectation and it is my view that he should be compensated for this.
- Mr S was offered £200 in recognition of the maladministration that occurred. In the circumstances, this should be increased to £500 in recognition of the significant distress and inconvenience caused to Mr S.

20. Aviva accepted the Adjudicator's Opinion but Mr S did not and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and therefore, I will only respond to the key points made by Mr S for completeness.

Ombudsman's decision

21. Mr S does not accept that the potential financial loss is adequately compensated by the revised compensation sum of £500. He asserts that his partner is statistically likely to survive him by five years and is three years younger than him. Mr S believes the financial loss at 50% of his pension is more likely to be in the region of £50,000 and as such, the compensation amount is completely inadequate. Mr S says that due to Aviva's serious failings on several points, a more reasonable offer would be £6,000 representing one year of potential benefit.
22. Aviva provided the incorrect information to Mr S in 2002, of the benefits payable in the event of his death; this amounted to maladministration on the part of Aviva. The rules governing the Scheme override any other contrary information. In Mr S' case, only a spouse at the time of death is entitled to 50% of a member's pension. There is no provision for an unmarried partner. Accordingly, Mr S' partner has never been entitled to 50% of his pension and as such, she has not lost this entitlement.

23. The potential loss that Mr S has identified is a speculative loss and is not an actual loss. Consequently, I cannot direct compensation for this.
24. Although Mr S completed a nomination form in 2005, doing so did not change the fact that his partner was never entitled to a survivor's pension and the completed form did not override the Scheme rules and create an entitlement for her. Whilst I agree that it would have been helpful for Aviva to have informed Mr S following receipt of his nomination form that he was not eligible to nominate a partner, I do not find that this amounts to maladministration. It is not unusual for administrators to receive nomination forms and note them on the member's record without making further checks as to validity of that nomination. Further, it is at the point when the member's benefits become payable that the complete pension record is checked in totality. It is not within my jurisdiction to change the internal practices of an organisation.
25. I agree with the Adjudicator's recommendation that Mr S should be compensated for the maladministration that occurred as his expectations had been raised.. My compensatory awards for losses of this nature, a non-financial loss, are not designed to be penal. It is clear that Mr S has suffered significant distress and inconvenience and Aviva should compensate him for this.
26. Therefore, I uphold Mr S' complaint to this extent.

Directions

27. Within 28 days of the date of this determination, Aviva must pay Mr S an additional £300 in compensation.

Anthony Arter

Pensions Ombudsman
27 September 2016