

Ombudsman's Determination

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

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Aviva.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N is unhappy because Aviva will not currently pay him benefits from the Buyout plan. This is despite the fact he has reached age 60, and the Normal Retirement Date (**NRD**), under the Buyout plan.

Background information, including submissions from the parties

4. The Buyout Plan, like any section 32 buyout plan, was a specific type of pension plan which could receive benefits from occupational schemes that collected contracted-out benefits. Contracted-out benefits accumulate from contributions made in lieu of National Insurance contributions towards the historic State-Earnings Related Pension Scheme (**SERPs**). An occupational scheme receiving contracted-out contributions had to offer a Guaranteed Minimum Pension (**GMP**) broadly equivalent to what the member would have received from SERPs had they paid SERPs contributions instead. The Buyout Plan included provision for this GMP to still be paid from State Pension Age (**SPA**), but also offered the opportunity for Mr N to receive a higher pension income from NRD.
5. Mr N transferred the value of his deferred benefits from the Coats Viyella Pension Plan to the Buyout Plan in November 1998. At the time, the Buyout Plan was issued by CGU, but CGU has now been taken over by Aviva and Aviva is therefore the respondent in this matter.
6. On 20 December 2012, Aviva wrote to Mr N to confirm he was due to start receiving benefits from the Plan in June 2013. However, this letter also stated that he would not receive anything if his fund value was not sufficient to cover the cost of paying the

GMP. When Mr N reached his NRD, the value of his fund was not sufficient to pay the GMP, and as such Aviva said he could not receive any benefits.

7. Aviva has argued that its position is in line with the policy conditions of the Buyout Plan, and it has highlighted a number of specific sections to support this.
8. In particular, Aviva has referred to section 16 (Appendix 1) and stated that this confirms the NRD does not imply a binding Pension Date. Subsection (d) adds that Aviva can refuse a policyholder's request to change their NRD if the value of their plan will not be sufficient to secure their GMP.
9. It is important at this point to highlight that NRD is defined under the Buyout Plan as the date at which the policyholder reaches normal retirement age (**NRA**). Under his policy schedule, Mr N's NRA is age 60. However, Pension Date is defined under the Buyout Plan as the date on which retirement benefits are taken in accordance with section 16.
10. Mr N has argued that section 16 deals with instances where a policyholder has requested a different NRD than the one under their policy schedule. He does not agree that this section applies to instances where, such as in his case, the NRD has never changed. He therefore does not believe Aviva can use this section to support its position.
11. Aviva has also referred to sections 18 (Appendix 2) and 20 (Appendix 3) to argue that any policyholder's plan must be first used to cover the cost of their GMP and that the Buyout Plan will not pay out until this can happen.
12. Mr N escalated the complaint to our Office. He highlighted that a previous Ombudsman's Determination (reference PO-2269) (**the previous Determination**) had upheld a complaint similar to his. He believes his complaint ought to be upheld in the same way as this complaint.
13. In particular, the complainant in the previous Determination had a Section 32 buyout-policy with Aviva, which was originally issued by Norwich Union. The NRD of the complainant was also 60, but when he reached 60 years Aviva said the value of his fund was not sufficient to pay his GMP. As such, Aviva said he was not entitled to any benefits at age 60. The Ombudsman determined that the policy conditions required a pension to be paid from age 60. The Ombudsman therefore determined that a pension equivalent to the GMP revalue to age 60 should be paid.

Adjudicator's Opinion

14. Mr N'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 briefly below:-

- The policy conditions indicate that the GMP must be paid before any other benefits.
 - Section 20 (k) states that Aviva guarantees to pay the GMP from SPA. This indicates that the GMP is not guaranteed before SPA, and therefore no other benefits are either.
 - The wording of the policy conditions are different to those from the previous Determination. This is because the underlying product was originally sold by another company. Mr N's policy is less ambiguous and as such it is reasonable to reach a different outcome than the Ombudsman did in the previous Determination.
15. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

16. Similarly to the previous Ombudsman's comments in the earlier Determination, I believe the policy conditions of the Buyout Plan were drafted without contemplation of what should happen if a policyholder's funds were insufficient to secure the GMP at NRD. If this had been considered, I believe the Buyout Plan would have explicitly stated what ought to happen in this circumstance.
17. However, whilst I agree the policy conditions of the Buyout Plan could be more explicit, I also agree that they are not as ambiguous as those referred to in the previous Determination and can be used here to determine when the benefits are payable.
18. Section 16 of the Buyout Plan Conditions sets out the NRD conditions. Section 16 (a) says "the related Normal Retirement Date does not imply a binding Pension Date". Section 16(d) then goes on to say that "[Aviva] reserves the right not to allow the Policyholder to choose a particular Pension Date if [Aviva] in its absolute discretion determines that the total value of the Retirement Benefit Values under such policies at that Pension Date would not be sufficient to ensure payment of the Guaranteed Minimum Pensions."
19. I therefore find that Mr N does not have an automatic right for benefits to be paid from NRD particularly if there are insufficient funds to cover the GMP.
20. Mr N has said that the provisions under section 16 largely refer to what happens when a policyholder wishes to change their NRD. It is possible to interpret the conditions that way but nevertheless the underlying principle is that NRD may not be the same as the Pension Date. It was never guaranteed that benefits could be taken at NRD.

21. The only guarantee provided by the Buyout Plan as a whole is that the GMP will be paid from SPA. In particular, section 20 (k) says that Aviva “guarantees the Total Retirement Benefit Value at State Pension Age...will be sufficient to secure payment of Guaranteed Minimum Pension”. I do not find that Aviva makes any other guarantee in relation to when benefits will be paid.
22. As the policy makes it clear that Mr N’s GMP must be secured before any other benefits can be paid, it therefore follows that he is not guaranteed to receive any benefits until SPA. If no other benefits can be paid before SPA, then the earliest that Aviva must pay any benefits to Mr N is when he reaches SPA.
23. Therefore I do not uphold Mr N’s complaint.

Anthony Arter

Pensions Ombudsman
28 April 2017

Appendix 1

Policy conditions, section 16:

“(a) A Normal Retirement Age is specified in the Schedule. The related Normal Retirement Date does not imply a binding Pension Date.”

....

(d) Where the Policy...provides for the payment of the Guaranteed Minimum Pensions in respect of the policyholder, [Aviva] reserves the right not to allow the Policyholder to choose a particular Pension Date if [Aviva] in its absolute discretion determines that the total value of the Retirement Benefit Values under such policies at that Pension Date would not be sufficient to ensure payment of the Guaranteed Minimum Pensions.”

Appendix 2

Policy conditions, section 18:

“(a) In the first instance, the Retirement Benefit Value will be applied to provide such amounts of the Planholder’s Pension...as are necessary to secure payment of the Guaranteed Minimum Pensions”.

Appendix 3

Policy conditions, section 20:

“(a) similarly confirms that:

“Where the Pension Date is on or before State Pension Age and provided the Policyholder is still alive at State Pension Age, the Policyholder’s Pension then payable must not be less than the Guaranteed Minimum Pension.”

...

(k) then states Aviva:

“guarantees the Total Retirement Benefit Value at State Pension Age or the Total Retirement Benefit Value on the Planholder’s prior death will be sufficient to secure payment of Guaranteed Minimum Pension”.