

Ombudsman's Determination

Applicant	Mr N
Scheme	GT Die Pension Plan (the Plan)
Respondent	Abbey Life

Outcome

1. Mr N's complaint is upheld and to put matters right Abbey Life should pay Mr N:
 - £1,500 in recognition of the non-financial loss that has been suffered; and
 - an amount to recognise that Mr N changed his position based on the incorrect figures he was provided with.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N's complaint is that Abbey Life provided him with misleading information over a number of years which resulted in an over estimate of benefits. He says Abbey Life led him to believe that he had benefits in two policies and he made financial decisions based on the higher figures provided.

Background information, including submissions from the parties

4. In 1981, Mr N's employer requested Abbey Life change the anniversary date on the policies associated with the Plan. Abbey Life set up new policies for all 12 members and transferred units across to the new policies. In the case of Mr N, Abbey Life transferred the units into the new policy (**Policy H**), but failed to cancel the units in the original policy (**Policy K**).
5. Abbey Life confirm incorrect annual statements and pension option letters were sent to Mr N up until they became aware of the error in 2015. Mr N has provided a retirement benefit quotation dated 28 October 2013 with a transfer value of £6,326.06 in Policy K and £13,832 in Policy H.
6. In July 2014, Mr N made the decision to commute Policy K into cash. Before making this decision, Mr N spoke to Abbey Life about taking cash from both policies. Mr N

says he was told he would have to wait a further year before he could access Policy H as cash. At this time, Abbey Life did not pick up the original error (i.e. that Mr N was not entitled to the units in Policy K) and paid out £6,447.60 from Policy K on 1 August 2014.

7. Over the next year, Mr N made three large purchases – a car, a family holiday and a new kitchen. The kitchen was purchased under a finance agreement in April 2015 for £5,037.51 with interest of £3,393.69 applying after 12 months. (If repaid by April 2016 the credit was interest free). Mr N says the decision to upgrade the kitchen was taken after a review of his (and his wife's) finances and the possibility of down-grading their house. This was discussed with an estate agent who suggested a new kitchen would help make the house more "sellable".
8. On 3 June 2015, Abbey Life provided Mr N with information showing Policy H with a unit value of £15,383.90. Based on this, Mr N says he requested payment of his benefits to be commuted as a cash lump sum.
9. On 2 July, Mr N received a retirement benefits quotation which showed the value of Policy H as £7,984.88. A separate letter was sent explaining the error and that an overpayment had occurred. Abbey Life explained that it had deducted the number of units from Policy H that were paid to Mr N the previous year under Policy K and therefore Policy H was less.
10. Mr N says that he made financial commitments based on the higher amount, and that he would not have made the decision to update his kitchen and taken out finance for the purchase of it had he been aware of the correct position.
11. Abbey Life has accepted that incorrect information was provided to Mr N and have increased its offer of £500 to £1,500 to recognise the distress and inconvenience caused to him. In relation to the argument that Mr N relied on the higher amount and made financial commitments, it says:

"I confirm that we are not prepared to pay for the kitchen as Mr ... would have had to pay for a new kitchen regardless of our error as per the recommendation from the estate agent. He will recover the cost of the new kitchen on the sale of his house."

12. In their most recent response to the complaint, Abbey Life have submitted:

"Given that we believe, it was inevitable Mr ... would have had to replace his kitchen after 30 years and that he would have had to either recover the cost by sale of the house or Equity Release, we are prepared to meet half way and pay 50% of the interest payable ($\pounds 3,393.69/2 = \pounds 1,696.85$) on the loan in addition to the £1,500."

Adjudicator's Opinion

13. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by Abbey Life. The Adjudicator's findings are summarised briefly below:
- Abbey Life's offer of £1,500 was fair and reasonable to compensate Mr N for the distress and inconvenience caused to him.
 - It was agreed that, as there was little evidence from Abbey Life as to what information would have been sent to members in 1981, it was reasonable to assume that Mr N was not aware of the error until he was informed of it by Abbey Life in 2015.
 - It was reasonable that Mr N relied on the incorrect information on the basis that:
 - he had received benefit statements and retirement option packs for more than 30 years stating he had an entitlement to a higher amount; and
 - he had been told in July 2014 that he would be able to take the higher amount as cash in 2015.
 - It was therefore considered reasonable that Mr N relied on the larger amount when making financial decisions. He says he looked at his financial position and it was only on the basis of his understanding that he was entitled to the higher amount that he made the decision to purchase a new kitchen. Given the financial details Mr N provided, it was fair to say that a new kitchen would not have been an expense Mr N could have afforded without the additional cash he was expecting from Abbey Life.
 - Based on this, the Adjudicator's view was that Abbey Life should compensate Mr N further for the cost of his new kitchen, but only for the interest payable on the loan.
14. Abbey Life did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Abbey Life provided its 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 Abbey Life for completeness.

Ombudsman's decision

15. The general position is that money paid in error is recoverable and the member should not profit from a mistake. Therefore, Abbey Life are entitled to seek recovery of the overpayment. However, it must also consider any defence Mr N has against the recovery of such an overpayment, including whether or not he made financial commitments based on the information he received. For such a defence to succeed, the member cannot have been aware of the error. In this case there is no evidence

from either party as to what was sent to members in 1981. Abbey Life have not asserted that Mr N should have been aware of the error.

16. Abbey Life's argument against the Adjudicator's Opinion is that Mr N would have purchased a kitchen regardless and that he will recoup the cost following the sale of his house.
17. In my view that argument overlooks the fact that he bought the kitchen on credit. I agree that the kitchen itself is an investment which creates some equity in the house so the cost of it is not properly a financial loss, but the interest on the loan is. The debt will have to be serviced until the equity in the house is realised. Mr N is not currently selling his property. There is no evidence that Mr N had in fact decided to sell the property when he decided to install the kitchen and it would be inequitable to force a sale to service the debt.
18. In my view, Mr N acted in good faith when he made the decision to purchase a new kitchen in reliance on his understanding of the figures provided to him and it was reasonable for him to do so. Abbey Life built up Mr N's expectations for more than 30 years. They also failed to pick up on the original error when Mr N commuted his benefits from Policy K, a policy he was not entitled to, in July 2014, while again building up his expectation that he was entitled to nearly £15,000 in the middle of 2015. It is not unreasonable that Mr N, when considering his finances, took this into account and decided to make improvements to his property on credit which was interest free in the short term, but interest bearing thereafter. Mr N is now in a position of having to service a debt as a result of Abbey Life's failures which should be recognised.
19. Therefore, I uphold Mr N's complaint.

Directions

20. Within 21 days from the date of this Determination, Abbey Life will:
 - arrange an ex-gratia payment to Mr N of £1,500 to recognise the non-financial loss he has suffered; and
 - pay further compensation to recognise the financial loss Mr N has suffered, by paying Mr N the amount of £3,393.69 which is the interest he accrued on the loan.

Karen Johnston
Deputy Pensions Ombudsman
4 November 2016