

Ombudsman's Determination

Applicant	Mr E
Scheme	Aviva Section 32 policy (the Plan)
Respondents	Aviva

Outcome

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

Complaint summary

3. Mr E has complained that Aviva have refused to honour the contract he has for pension increases at 5% a year to be applied to the pension.

Background information, including submissions from the parties

4. In 1989 Mr E transferred his pension benefits in the DHSS Health Services Superannuation Fund to a Section 32 Transfer Plan with Norwich Union (now Aviva). The underlying premise of Section 32 policies such as the one sold to Mr E was that the transfer value would be invested and at retirement the total fund would be used to provide a pension. The pension provided would, however, not be less than the guaranteed minimum pension (**GMP**) that the policyholder would have received from the transferring scheme.
5. Mr E elected to receive pension increases at the rate of 5% a year on the resultant pension. However due to a number of factors the Plan did not perform as well as expected and Aviva advised Mr E that at retirement date the pension payable would only be equivalent to the GMP and that no increases would be payable on this amount.
6. Mr E did not accept Aviva's decision that no pension increases were payable and brought a complaint to this office. The basis of Mr E's complaint is similar to a number of other complaints that have been brought to this office and I have issued a determination for one of those complaints in respect of Mrs R (**PO-13991**) which is attached.

Adjudicator's Opinion

7. Mr E'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:-
 - As Mr E's complaint was the same as that of Mrs R (PO-13991) the Adjudicator was of the view that an Ombudsman would reach the same conclusion that although Aviva were required to cover the GMP, it was not required to pay increases on the GMP.
8. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr E for completeness.
9. Mr E says that when he signed the policy he did so in good faith and on the understanding that he would receive the 5% a year escalation. He does not see why the onus of any ambiguity should fall on him and all the other policyholders because Aviva say that they cannot afford to pay out on these policies when the wording quite categorically states that the escalation will and shall be paid.
10. It does not make sense that the same clauses in Conditions 7, 8, and 9 have been used as get out clauses in this complaint to refuse or have no obligation to pay out on these policies, when those same "clauses" have been used in the Harris determination as a reason for not paying out at age 60.
11. The Aviva With Profits Pension Fund stands at a massive £44 billion as at 30th September 2017. Surely Aviva can afford to pay all the policyholders who took out these policies the escalation rate that they chose. If not where does the monies accrued in such a massive fund actually go to?

Ombudsman's decision

12. I do sympathise with the position that Mr E now finds himself in. Mr E had an expectation that the transfer he made to the Section 32 Plan would result in him receiving a larger pension than he had with his previous employer. But there was no guarantee that the Plan pension would be better, the only guarantee provided was that the resultant pension would not be less than the GMP.
13. The Harris determination (PO-2269) was a separate dispute over whether Aviva had an obligation to pay the GMP at the Benefit Date of the policy which was age 60 or when the GMP becomes payable at age 65. My predecessor determined in PO-2269 that the terms of the policy were such that Aviva did have an obligation to pay a benefit from age 60, even though the policy proceeds would only provide a GMP.

14. The complaint here is whether Aviva also has an obligation to pay increases on the GMP. The conclusion I reached in PO-13991 was that I was not satisfied that a contractual or other guarantee to provide an escalation over the GMP was made or could be inferred in Condition 9 or otherwise. Clearly, it was hoped that the policy would accrue sufficient value to meet the GMP and also the escalation rate. But the policy did not guarantee in that case, without exception, that the escalation rate chosen would be met. I do not find that the arguments made by Mr E cause me to change or reconsider that decision.
15. Mr E has also asked why Aviva is unable to pay the escalation on his policy when there is a large With Profit Fund worth £44billion and if not where does this money go. The size of Aviva's With Profit Fund is not a factor in my decision. Although the size of the With Profit fund may be large this covers a number of policyholders and it is not my role to comment on the uses of that fund. If the decision had gone against Aviva then they would have had to find additional funds from their reserves to pay the escalation, and not simply pay this from the With Profit Fund.
16. Therefore, I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
20 December 2017