

Ombudsman's Determination

Applicant	Mr N
Scheme	Aviva Section 32 Policy (the Policy)
Respondent	Aviva

Outcome

1. Mr N's complaint against Aviva is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) Aviva should pay Mr N £1,000 for distress and inconvenience.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N believes that the transfer value Aviva have paid does not represent the true value of the Policy.

Background information, including submissions from the parties

4. Mr N was a member of the BMK Organisation Superannuation Fund (**the Fund**), which was an occupational pension scheme. Mr N left the Fund in 1981. In 1983, his benefits within the Fund were bought out and secured within the Policy, a Section 32 Buyout Policy, with Aviva. The terms and conditions of the Policy provided Mr N with a guaranteed pension when he reached his nominated retirement age amounting to £498.56 per annum increasing annually at 7.5% compound.
5. On 1 June 2015, Aviva sent Mr N's independent financial adviser (**IFA**) a transfer value quotation which stated the value of the Policy was £28,761. Mr N's IFA began corresponding with Aviva to find out more information about how the transfer value was being calculated.
6. Mr N was due to start receiving his benefits from the Policy on 29 September 2015. However, due to the new pension freedoms he decided that it may be more beneficial for him to transfer his benefits to another provider where a drawdown option may be available. As a consequence Mr N's IFA requested a new transfer value from Aviva.

7. Aviva explained that the type of Policy Mr N held did not hold a transfer value, but did entitle him to a guaranteed pension amount. However, it said it would ask its actuaries to provide some transfer values if it was possible. On 30 November 2015, Aviva provided a transfer value of £9,035.25, and a further one on 1 December 2015, of £30,152.32. Mr N's IFA queried which transfer value was correct because of the difference in value. Aviva said the 1 December 2015, quotation was correct and explained that when calculating the first incorrect quotation it had not applied the Guaranteed Minimum Pension (**GMP**) correctly. It offered Mr N £200 for the distress and inconvenience this would have caused.
8. Mr N's IFA continued to raise concerns about the difference in the transfer values, as he was not convinced that the higher value was correct. In particular he queried that there was a GMP element under the Policy. On 16 January 2016, Aviva sent a letter to Mr N's IFA and confirmed the higher transfer value was correct.
9. Mr N's IFA raised a complaint against Aviva on 19 January 2016. It said the Policy document said that the annual pension of £498.58 should be increased at 7.5% compound per annum. The IFA queried the transfer value, and said if the benefits were meant to increase with inflation with a cap of 7.5% then Aviva were due to pay approximately £1,669 per annum when Mr N reached age 65, and so the transfer value should be considerably higher. The IFA said that an annuity on a single life basis for a 65 year old male, with a five year guarantee, providing an income of £1,669 with Retail Price Index increase would need a fund value of £59,437. Therefore, the transfer value Aviva were offering was too low.
10. Aviva said it had a liability to pay Mr N the annuity as set out in the Policy document. There was no transfer value attached to the annuity and if Mr N chose to transfer away then he would lose any guarantees. Furthermore, it explained it was a business decision for Aviva to make in relation to the transfer value offered.
11. Mr N brought his complaint to the Pensions Ombudsman for an independent review. During the investigation Aviva acknowledged that Mr N had gone through a lengthy process to obtain the answers relating to the transfer value and agreed to pay £500 to compensate the distress and inconvenience he had suffered.
12. The Adjudicator issued an opinion on 15 August 2017. Mr N's IFA raised further queries directly with Aviva, due to the information contained in the Opinion. The IFA said it felt Aviva had been providing incorrect information, the Plan did not hold a GMP and maintained that the transfer value quoted was incorrect.
13. Aviva agreed that it had provided incorrect information relating to the GMP and the value of the annuity.
14. Since the Opinion Mr N has received a transfer value of £40,144.44 and has transferred his benefits from the Policy to a plan he holds with Standard Life.

Adjudicator's Opinion

15. Mr N's complaint was considered by one of our Adjudicators who concluded that Aviva should award Mr N £1,000 for distress and inconvenience. The Adjudicator's findings are summarised briefly below:-
 - Aviva were liable to pay the amount set out in the Policy document. This stated that Mr N was entitled to an annuity of £498.58 per annum, with a 7.5% compound increase.
 - There was no transfer value stated on the Policy document. Therefore, Aviva could make a business decision as to whether to pay a transfer value and also of the amount that it felt was reasonable.
 - Aviva took a significant amount of time in dealing with the complaint and provided misleading information on numerous occasions. This would have caused Mr N significant distress and inconvenience and he should be awarded £1,000 for distress and inconvenience.
16. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
17. Mr N remains dissatisfied with the transfer value Aviva have paid, he believes it should have been significantly higher.
18. Aviva accepted the Adjudicator's Opinion and paid the suggested award of £1,000, to Mr N.
19. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

20. Mr N believes that the transfer value does not represent the benefits due to him under the Policy. He says the transfer value would not cover the guaranteed annuity offered in the Policy on the open market.
21. The Policy Mr N holds is an established Section 32 deferred annuity contract, and was set up with Aviva in 1983. Section 32 of the Finance Act 1981, relates to occupational pensions that are bought out by insurance companies. The insurance company takes on any liabilities held under the occupational pension. The benefits purchased for Mr N were held within the Policy, in the form of a guaranteed annuity to be paid when he reached age 65.
22. Mr N's entitlement as set out in the Policy document was an annuity of £498.58 per annum with increases. Aviva was liable to pay these benefits. However, when Mr N made the decision to transfer his benefits out of the Policy that liability no longer remained.

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23. Aviva paid a transfer value of £40,144.40, which Mr N accepted. However, he wanted to continue with his complaint as he did not consider it was a fair amount. As there was no surrender value set in the Policy documents, Aviva could calculate what it considered was a fair transfer value. This is what Aviva has done and I can see no basis on which to interfere with the way in which that value has been calculated. . It was Mr N's choice to accept that offer even though it would not purchase an annuity equivalent to that which he would have received from the policy.
24. However that before providing the transfer value which was accepted, Aviva admitted that it provided inconsistent and incorrect information on multiple occasions. . I believe this would have caused Mr N significant distress and inconvenience.
25. I therefore uphold this part of Mr N's complaint. I agree with the Adjudicator's opinion that a total amount of £1,000 should be awarded to Mr N. Aviva have confirmed it paid £200 on 3 September 2015, £300 on 16 August 2017 and the remaining £500 was sent on 21 September 2017. Therefore, no further action is required by Aviva.

Karen Johnston

Deputy Pensions Ombudsman
19 October 2017