Ombudsman's Determination

Applicant	Mrs S
Scheme	ReAssure Section 32 Buy Out Policy (**the Policy**)
Respondent	ReAssure Ltd (**ReAssure**)

Outcome

1. I do not uphold Mrs S' complaint and no further action is required by ReAssure.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs S disagrees with the level of annual pension she is receiving from ReAssure. She is claiming that the figures provided on the original illustration dated 29 December 1987 do not match the annual pension figure she is currently receiving.

Background information, including submissions from the parties

4. On 3 October 1978, Mrs S joined the original scheme, The Stewart Wrightson Pension Fund, a contracted-out occupational scheme. Mrs S left employment on 7 June 1985 and became a deferred member.

5. On 29 December 1987, Guardian Assurance plc (**Guardian**) (the then pension provider) provided an illustration (**the Illustration**) for the Policy. Mrs S says this was not provided to her by Guardian or her former employer at the time. The Illustration stated that if a transfer value of £5,629.20 is paid by 4 January 1988 then the Policy at retirement could provide a fund value of £158,250.42. It also stated "The above cash could, for example, buy an enhanced pension of £13678.99p.a. (including the GMP of £3630.12p.a.) plus a widower's pension of £6839.49p.a.…The policy will guarantee that, whatever happens, a pension of £3,630.12 p.a. plus a widower's pension of £1,081.32 p.a. can be obtained. This ignores bonuses completely." It also said that the pension would be paid monthly and increase by 3% per annum.

6. Attached to the Illustration were additional notes. In this it stated:

   - Future rates of bonuses are dependent on the level of future profits and therefore cannot be guaranteed;

- The Illustration could not be guaranteed; and
- It explained the Guaranteed Minimum Pension (**GMP**): "If the policy includes a guaranteed minimum pension (GMP), it will show the amount when contracted-out service ended. This amount will be revalued as time goes on. The illustration shows the maximum figure to which it will have grown by the time the member reaches state pensionable age."

7. Guardian then issued a Proposal document (**the Proposal**) on 7 January 1988. It confirms receipt of the transfer value of £5,629. In relation to the GMP, it confirmed that Mrs S' contracted out service ended on 7 June 1985 and therefore the amount of GMP per week at this date was £7.11, revalued at a rate of 8.5%. This equates to a GMP of £369.72 per annum and is revalued for each complete tax year between the date Mrs S left employment and the date of her retirement.

8. Finally, Guardian issued the Policy documents on 18 February 1988. It confirmed that the policy would provide the benefits agreed in the Proposal and a declaration was signed by the trustees and Mrs S. The Schedule of Benefits attached stated that at normal retirement date, the Policy would provide a guaranteed pension of £2,162.76 per annum. It again confirmed that the pension would increase by 3% per annum following retirement. The option to convert some of the guaranteed pension to tax free cash or increased pension (and the rate that would apply) was also detailed, as well as details in relation to bonuses.

9. Mrs S retired from her 60th birthday in 2015. Her annual pension was calculated as £3,630.00, with increases applied each year of 3%. Mrs S subsequently raised a complaint to Guardian on 22 January 2016. In this she highlighted that the Illustration stated she had a guaranteed annual pension of £3,630.12, excluding bonuses, but the policy document stated an incorrect annual figure of £2,162.76. Mrs S had therefore estimated that the pension in payment had not been calculated correctly and that she was entitled to an annual pension of £6,116.93. She asked that this amount be paid from her 60th birthday.

10. Guardian replied on 23 February 2016. In summary, it explained the background to the policy and:

    - Mrs S' previous scheme included GMP benefits which meant that the Policy had to provide a minimum pension that was at least equal to that of the benefits given up in the State Scheme (SERPS) The policy document quoted the guaranteed pension at retirement as £2,162.76 per annum. It confirmed that the annual GMP of £369.72 was revalued at the rate of 8.5% up to her retirement date, which coincided with her attaining state pension age. This calculation was £3,630 per annum on the date of her retirement; and
    - It explained that bonuses depend on investment returns and the value of the benefits already attached to the policy. Due to the fact that conditions had

changed since the Policy was set up, the assets underpinning the Policy are worth less than the guaranteed benefits attached to the Policy, thus making benefits more expensive to provide. The fund value at the date Mrs S retired was £57,861.72 and this included bonuses paid, but bonuses do not apply to the GMP.

11. Mrs S proceeded with a complaint to the Financial Ombudsman Service (**FOS**). FOS did not uphold the complaint. Its view was that:

> "The Schedule of Benefits explained that a guaranteed pension of £2,162.76 per year would be payable to you and I appreciate that this is quite different from the value of the proposed illustrations. The rate at which your pension is calculated is guaranteed. That is, using the method from the Proposal Form. But, what the Schedule of Benefits explains is that £2,162.73 is the very minimum your plan could provide you with.
>
> Your plan was designed to perform in such a way that the value of your pension fund should be sufficient to cover the cost of ReAssure providing you with a GMP of £3,620.12. At your retirement date, you were provided with a final value of £3,644.40 which escalates each year at 3% (inclusive of bonuses).
>
> This is above the guaranteed minimum pension but ever so slightly. This shows that the plan didn't actually provide the returns that were expected, and so as the costs of meeting the GMP remains high, more of the fund was required to meet the payment, subsequently leaving you with very little additional income."

12. Mrs S was unhappy with the FOS investigation and asked this office to investigate. As a FOS Ombudsman had not issued a final decision in relation to her complaint, it was decided this office would investigate. Part of Mrs S' argument was that her complaint was not about the GMP but the guaranteed value of the benefits payable.

Adjudicator's opinion and further submissions

13. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by ReAssure. The Adjudicator's findings are summarised briefly below:-

- Mrs S had placed greater emphasis on the Illustration, rather than the Policy documents which set out what ReAssure had to legally pay to her. The Illustration showed an estimate of what it considered the GMP to be worth at retirement, but the Schedule of Benefits and the Proposal would override any illustration.

- The actuarial rates that are used to calculate pensions have changed over the lifetime of the Policy and it is now more costly to provide GMPs than it would have been in the late 1980s. ReAssure explained that bonuses had been applied, but this would still only provide an annual pension of £3,644.40 (with the annual increase of 3%). Therefore, it was the Adjudicator's view that there was no maladministration in the way in which ReAssure had calculated Mrs S' benefits.

- The Adjudicator also felt that the calculations Mrs S had provided were inaccurate, as she had based these on applying bonuses to the annual payment she believed she was entitled to. However, bonuses are not applied in that way and instead would have been calculated and added to the value of the fund, and then taken into account various actuarial calculations (such as life expectancy) to reach the annual pension being provided to her.

14. Mrs S did not accept the Adjudicator's view and asked that her case be placed on hold while she asked ReAssure to answer her complaint made on 22 January 2016 (as she did not feel that the responses to date were sufficient). She also submitted, in summary:

    - That her complaint is not about the GMP, but the guaranteed pension ReAssure should provide. This guarantee attracts bonuses and those bonuses are then guaranteed;
    - The Illustration forms part of the Proposal;
    - ReAssure must take the figure shown as the guaranteed pension and insert this into the Schedule of Benefits and that ReAssure failed to do this; and
    - The Adjudicator's view regarding the way in which bonuses are applied is incorrect. The method ReAssure are required to use is to add bonuses on the annual pension each year.

15. As a result, the Adjudicator requested further information from ReAssure. In particular, it was asked to provide a very detailed explanation as to how the minimum pension is calculated, along with the formula used, that resulted in the £2,162.73 per annum being added to the Policy in the first instance.

16. After further investigation, which involved discussions with actuaries and a member of staff who formerly worked on these types of policies for Guardian, ReAssure provided the following (in summary) on 18 May 2018:

    - That the Policy was not set up to replace Mrs S' GMP entitlement. Instead, it was to provide a guaranteed pension increasing at 3% each year with a 50% spousal benefit. The amount of the basic guaranteed pension, before any bonuses, was based on the transfer value amount paid into the Policy.
    - The formula for calculating the guaranteed pension was: "Our actuaries confirmed that the rate for £100 of annuity, escalating at 3% with a 50% spousal benefit, was 256.58. The premium paid was £5,629.20 and there was an initial charge of £80. So the basic guaranteed pension was calculated as: £5,629.20 - £80 x £100/256.58 = £2,162.76. Bonuses to be added to this amount."

- The Policy promised that it would pay either the guaranteed pension, or the GMP, whichever was the higher. An additional illustration dated 19 November 1987 quoted the GMP as £854.88 per annum. As the GMP was lower than the guaranteed pension of £2,162.76, the guarantee was that, no matter what, this would be paid (along with the spousal benefit).

- The illustration issued in December 1987 had a GMP of £3,630.12, which was higher than the guaranteed pension. The guarantee then became that and ReAssure would pay the higher of the two (in this case the GMP) and the spousal benefit.

- All that changed between the two illustrations was the guaranteed figure, so the policy document is correct that the guaranteed pension is £2,162.76 and all of the annual bonuses are applied to this amount.

- As to why Guardian did not quote for a basic guaranteed pension of £3,630.12 instead of the basic guaranteed pension of £2,162.73; That is because the transfer value was not enough for it do so – “The promise was to pay at least £3,630.12, plus a spouse’s pension of £1,081.32, and Guardian assumed that future bonuses would be sufficient to allow this to happen. As it turns out, this is exactly what occurred.” i.e. that Mrs S is receiving an annual pension that is approximate to the amount quoted in the Illustration.

17. This further information was provided to Mrs S, who still disagreed with the explanation of how the Policy functions. In summary, she argues:

    - ReAssure’s response is open to interpretation as the language used was imprecise. Mrs S states that the amount of the GMP was always known from the outset, but the GMP Leaflet supports her view that “whatever the amount of pension (including bonuses) to be provided to me by ReAssure as a result of its investment over time of the transfer value, it will not be less than the revalued GMP of £3,630.12p.a.” She does not believe that ReAssure understand what the guarantee in the policy was.

    - That nowhere in the Illustration was the annual amount of £2,162.76 mentioned and that each illustration issued by ReAssure is a stand alone document. She maintains her position that the amount that should be on the Schedule of Benefits, and thus the amount that bonuses should be applied to, is £3,630.12 per annum.

    - She continues to question that ReAssure understand the unconditional guarantee that was provided to her at the onset of the Policy and that the response from ReAssure on 18 May 2018 is nonsense. She highlights that “It is clearly the case that the guaranteed amount of pension to which bonuses would be added has changed between the illustration of 19 November 1987 and the illustration of 29 December 1987. ReAssure issued the illustration of 29 December 1987 because – they had admitted – the illustration of 19 November

1987 was incorrect which is why the Trustees of Stewart Wrightson Pension Fund submitted the illustration of 29 December 1987 to ReAssure as the basis of the proposal."

- Mrs S claims there was a breach of section 75 of the Insurance Companies Act 1982 in that she was not provided with a "cooling off notice" at the time the Policy was set up. She says ReAssure informed her that there was no regulatory requirement at the time to issue cancellation notices for buy-out policies.

18. As Mrs S had made specific comments on the explanation given by ReAssure on 18 May 2018, ReAssure were asked for any further submissions. It stated that the crux of the matter is that Mrs S believes ReAssure has misinterpreted the Policy's guarantee in that the Schedule of Benefits should have stated the guaranteed pension payable at retirement (with bonuses) as £3,630.12 per annum, rather than £2,162.76 per annum. It was ReAssure's view that its interpretation is correct and that, no matter what has happened, the minimum guaranteed pension, ignoring bonuses, would be £3,630.12 per annum. It also highlighted that the benefits Mrs S is currently in receipt of (£3,644.40 per annum, with a spousal benefit, escalating each year by 3% and with a five year guarantee) is more valuable than the GMP payment with no escalation, spousal benefit or guarantee period.

19. As Mrs S does not accept the Adjudicator's view or the additional explanation provided by ReAssure, the complaint was passed to me to consider.

Ombudsman's decision

20. My role is to determine whether there has been maladministration and, if so, to put the matter right. In this case, the matter at hand is whether Mrs S interpretation, or ReAssure's, is correct and Mrs S is receiving her correct benefits. Mrs S raised a number of points and I have addressed these below before turning to the interpretation of the Policy's intention.

21. Mrs S is right that, at outset, ReAssure were aware of the value of the GMP at retirement, but this is only dependent on the information that would have been provided by the trustees when the Policy was set up. What was unknown was what the policy would be worth with bonuses. Hence, the Illustration states the GMP amount which is guaranteed regardless of the performance of the Policy.

22. The rest of the Illustration estimates what ReAssure believed the Policy could provide, based on the current market and actuarial assumptions. However, it is the Schedule of Benefits that provides the amount of pension the transfer value of £5,629.20 bought (i.e. £2,162.76 per annum). The policy was set up on the basis of the amount which was available for transfer without the knowledge of what any bonuses might be at retirement. I cannot see any representation or promise in the illustration which is inconsistent with the practice used to set it up.

23. The Illustration is merely an estimate of benefits which could be payable at normal retirement. What the Illustration says is that it will pay a guaranteed annual amount of £3,630.12, without bonuses, and this is the only guarantee in the document.

24. In her response to ReAssure's further investigation, Mrs S made reference on a number of occasions to the early November 1987 illustration. However, this is irrelevant. I agree that ReAssure originally issued a quotation with a smaller GMP amount. However, this had been corrected at Proposal stage, so did not affect the way that the policy was set up and has no impact on the calculation of Mrs S' benefits.

25. Mrs S has also raised an issue of what she considers to be a breach of the Insurance Companies Act 1982. However, ReAssure's response was correct. While the Policy is set up in the name of the member and for the benefit of the member, it is not an arrangement set up by the member. Section 32 buy-out polices are usually set up at the behest of the trustees of an occupational scheme, either because the original scheme is winding-up or because the member has left employment. The member has no choice in the pension product being chosen for them. Therefore, there is no requirement for ReAssure to have provided a "cooling off" notice to Mrs S.

26. Moving to the way in which ReAssure have interpreted the scheme documents, I can see nothing wrong with its interpretation, even if Mrs S disagrees. What I can see is that ReAssure have thoroughly considered how the Policy was set up and its original intention. While the wording on the Illustration could be clearer, this does not mean that there has been maladministration in the amounts that Mrs S is now receiving.

27. As ReAssure have explained, the transfer into the Policy of £5,629.20 (minus the initial fee of £80) only bought Mrs S an annual minimum pension of £2,162.76. This is the minimum pension Mrs S is entitled to, based on the transfer value. However, as her original plan had a GMP, ReAssure legally had to provide an amount equal to that provided by the GMP. This was what was quoted in the Illustration, which was greater than the guaranteed pension in the Schedule of Benefits (£3,630.12). Mrs S is only entitled to whatever is greater – the guaranteed benefits provided in the Schedule of Benefits (including bonuses) or the GMP provided in the Illustration (excluding bonuses).

28. In Mrs S's case, the guaranteed benefits provided in the Schedule of Benefits (the minimum pension plus bonuses) was greater than the GMP quoted in the Illustration. While Mrs S might be disappointed that her Policy has not provided an amount that she expected, it does not mean that an error has occurred. ReAssure are correct that much has changed in the calculation of pensions since 1987 and the actuarial rates (which are commercially sensitive) have to take account of such changes. As a result, it now costs significantly more to provide the pension to Mrs S with a guaranteed 3% per annum increase, a spousal benefit and a five year guarantee than it did 30 years ago. In summary, I am satisfied that the guarantees of the policy have been honoured.

29. Therefore, I do not uphold Mrs S' complaint.

Karen Johnston

Deputy Pensions Ombudsman
31 July 2018