PO-15070

Ombudsman's Determination

Applicant	Mr D
Scheme	NPI Section 32 Buy Out Policy (**the Policy**)
Respondents	The Trustees of the Midlands Import-Export Services Retirement Benefits Scheme (**the Trustees**)
	Phoenix Life (**Phoenix**)

Outcome

1. Mr D's complaint is upheld against Phoenix only and to put matters right, Phoenix shall carry out a loss calculation to ascertain whether the transfer value of £65,815.74 paid from the Policy to AVIVA would have been adequate to secure the GMP of £4,157.17 per annum at Mr D's Normal Retirement Date (**NRD**) on 19 February 2013. If the transfer value was insufficient to cover the cost of this GMP then the shortfall amount should be used to secure an additional annuity with AVIVA from Mr D's NRD, on the same basis as Mr D's existing AVIVA annuity.

Complaint summary

2. Mr D has complained that mistakes made by either the Trustees or Phoenix during the transfer of his pension rights from the Midlands Import-Export Services Retirement Benefits Scheme (**the Scheme**) to the Policy in 1998 resulted in Phoenix incorrectly recording a lower Guaranteed Minimum Pension (**GMP**) figure for the Policy. He says that this error led Phoenix to subsequently permit a transfer of his pension rights in the Policy to AVIVA. As a result, Mr D contends that he is now receiving benefits from AVIVA which are significantly lower than those which would have been available from the Scheme had he not transferred out.

Background information, including submissions from the parties

3. Mr D transferred his deferred pension benefits, which included GMP rights, from the Speedo (Europe) Ltd Pension Scheme (**the Speedo Scheme**) to the Scheme in November 1992.

4. The transfer value available from the Speedo Scheme of £5,759.84 included £644.37 which was allocated to an individual account. This amount, with any investment

growth, would be used to purchase additional pension benefits for Mr D on his NRD of his 65th birthday. The remaining transfer value provided a pension of £2,399.57 per annum in the Scheme for Mr D which represented the GMP transferred in from the Speedo Scheme revalued to NRD.

5. On 31 March 1998, London & Manchester Pensions Ltd (**London & Manchester**) sent, on behalf of the Trustees, a transfer value quotation to Mr D's Independent Financial Adviser (**IFA**) at the time showing that:

- the current transfer value available to Mr D from the Scheme was £29,890 including £17,635 for GMP rights;
- his deferred pension at date of leaving (**DOL**) the Scheme, 31 October 1996, was £3,225.41 per annum which included £1,467.81 per annum representing the excess pension over GMP subject to revaluation at 5% per annum or RPI, if less, during deferment to NRD;
- the GMP included in the deferred pension at DOL of £637.00 per annum included £619.32 per annum which was accrued after 6 April 1988;
- this GMP revalued to State Pension Age (**SPA**) 65 was £1,757.60 per annum of which £1,708.72 per annum was accrued after 6 April 1988;
- the value of Mr D's personal account as at 24 March 1998 was £19,927.19;
- his benefits at retirement would be the greater of the revalued pension and the pension purchased from his personal account;
- the maximum tax-free cash available from the Scheme was £4,735.83 subject to the residual pension being greater than the GMP;
- there was also a transferred in paid-up pension at NRD of £2,399.57 per annum which represented the transferred in GMP of £244.40 per annum revalued at 8.5% per annum during deferment to SPA;
- the value of the transferred in fund, as at 24 March 1998 was £1,111.84; and
- the additional benefits at retirement would be the greater of the transferred in pension and the pension purchased by the transfer in fund.

6. In July 1998, Mr D and London & Manchester, on behalf of the Trustees, completed a "Trustees' application form" (**the Form**) in order to transfer the benefits available to him from the Scheme to the Policy.

7. Part B of the Form showed that the total transfer value was £31,032.24 and the response to the question, "Does the transfer payment represent all the Member's benefits under the scheme" was "Yes". It also showed that Mr D joined the Scheme on 1 February 1988 and left it on 31 October 1996.

8. Part C showed that a GMP at DOL of £637 per annum including a post 6 April 1988 GMP of £619.32 per annum which had been accrued during a period of contracted out service from 1 February 1988 to 31 October 1996.

9. According to Part D of the Form entitled "Transfer-in details", the total transfer value of £31,032.24, included £10,341.24 for pension rights transferred into the Scheme of which £9,199 was for contracted out service. It also showed that the transferred in benefits had not been in the form of "added years" but a "Fixed PUP of GMP + MP A/C".

10. By signing part E of the Form on 13 July 1998, the Trustees declared to Phoenix that:

    - to the best of their knowledge, all information supplied was "true and complete"; and
    - "the benefits proposed" in the Policy should comply with "all relevant statutory provisions, the Rules of the Scheme and any requirements imposed by the Inland Revenue"

11. According to the schedule dated 15 July 1998 issued to Mr D by Phoenix, the Policy:

    - received a premium of £31,032.24 from the Scheme on 14 July 1998; and
    - guaranteed that a GMP of £1,757.52 per annum would be paid from Mr D's SPA of which £1,708.80 per annum would increase at 3% per annum compound during payment

12. In September 2012, the former IFA, who had by then retired, sent Phoenix a transfer value quotation which he had received from London & Manchester in May 1997 showing a transfer value £24,857.82 including £13,817 for GMP rights. This quotation also included the same GMP information as shown in the March 1998 transfer value quotation described in paragraph 5 above. He queried the transferred in GMP liability held in the Policy with Phoenix because he was unsure if it had been accounted for on the Form.

13. On 11 January 2013, Phoenix wrote to HMRC to enquire about this transferred in GMP and notified both Mr D and the former IFA of what it had done.

14. Mr D had been considering a transfer of his pension rights in the Policy and in December 2012, AVIVA sent Mr D a form for completion and return. He notified Phoenix of his intention and it informed him that a transfer could proceed only if the current transfer value covered the value of his GMP liability held in the Policy.

15. Phoenix sent the former IFA a letter on 11 January 2013 which said that:

    "We set up the Policy to provide Mr D with a GMP of at least £1,757.52 per annum, on retirement at 65. This is the guaranteed pension which comes from Mr D's contracted out employment with the Scheme. Mr D's Policy funds goes directly towards the cost of the GMP, however once this has been covered, any available excess funds can be used to purchase tax free cash and an

> additional annuity. In the event…Mr D's Policy funds are insufficient in covering the cost of the GMP, NPI guarantees to cover the shortfall amount…"

16. In its letter dated 29 January 2013, HMRC informed Phoenix its records showed that Mr D's GMP in the Scheme did not include any GMP transferred in from his previous pension arrangements. This response was consistent with all other official notification of Mr D's GMP previously received from HMRC by Phoenix. On 12 February 2013, HMRC verbally informed Phoenix that Mr D also had an accrued GMP in the Speedo Scheme.

17. Having received confirmation from HMRC that the GMP figures held on its records for Mr D were the same, Phoenix informed Mr D accordingly and transferred his pension rights in the Policy to AVIVA on 19 February 2013. The transfer value available of £65,815.74 was used to purchase a level single life annuity of £2,850 per annum for Mr D.

18. After receiving Phoenix's response, Mr D's former IFA replied, in his letter dated 11 February 2013, as follows:

> "I should like to point out that I have already fully responded to [Mr D] and his adviser regarding their complaint which I did towards the end of last year as I felt that I could not wait any longer for NPI on this matter...
>
> The information provided by London & Manchester on this "inward transfer" is to put it mildly – ambiguous. My thoughts are that NPI did receive it as part of the overall transfer, but I think the (current) adviser may have mis-read what London & Manchester were…intending to say, i.e. may have misunderstood the figures involved.
>
> So far, I am pleased to say that I have not received any challenge to my response from the adviser and so on this basis, the expression "let sleeping dogs lie" springs to mind."

19. Phoenix informed Mr D in August 2014 that HMRC had confirmed it was not liable for his GMP accrued in the Speedo Scheme. Mr D, however, replied that HMRC had told him that there had been an error during the transfer of his pension rights from the Speedo Scheme and it had not been notified of the transfer of his GMP into the Scheme by the Speedo Scheme administrators.

20. After amending its records, HMRC provided Phoenix with revised GMP details for Mr D in November 2014 showing that it was still responsible for paying the GMP which Mr D had transferred from the Speedo Scheme into the Policy.

Mr D's position

21. The Scheme provided a total GMP at NRD of £4,157.17 per annum of which £2,399.57 per annum represented GMP transferred in from the Speedo Scheme and the remainder of £1,757.60 had been accrued in the Scheme.

22. If his transfer application from the Scheme had been handled correctly, Phoenix should have provided him with a Policy which guaranteed to pay, as a minimum, a GMP in the Scheme at NRD of £4,157.17 per annum and not £1,757.60 per annum or declined the transfer from the Scheme.

23. If the CETV available to him from the Policy had been higher, he would not have purchased an annuity using the basis which he did with AVIVA. He would therefore prefer that any shortfall amount from the Policy to be paid by Phoenix into to his Standard Life personal pension instead which will enable him to secure additional benefits on a basis of his choosing.

Phoenix's position

24. London & Manchester, on behalf of the Trustees, completed part C of the Form to show Mr D's GMP at DOL in the Scheme to be £637 per annum which had been accrued during a period of contracted out service from 1 February 1988 to 31 October 1996.

25. London & Manchester did not make it clear on the Form that this GMP did not include the transferred in GMP from the Speedo Scheme. It failed to provide, on the Form, explicit figures for this transferred in GMP, which was misleading and resulted in it providing Mr D with the Policy that only guaranteed payment of the GMP which he accrued in the Scheme.

26. Neither Mr D nor his former IFA noticed at the time the Policy schedule was issued that the GMP figures shown excluded the transferred in GMP from the Speedo Scheme.

27. It had accepted the transfer payment from the Scheme and established the Policy in good faith based on the GMP details shown on the Form, which were the same as those shown on HMRC's records for Mr D at the time.

28. It had also checked with HMRC that its records for the Policy held the same GMP for Mr D shortly before allowing the transfer to AVIVA.

29. It would be harsh to now make it responsible for paying the transferred in GMP because of mistakes made by the administrators of the Speedo Scheme or the Trustees via London & Manchester. It no longer had any funds in the Policy to cover this GMP liability and there is no open-ended commitment for it to take on such liabilities for Mr D.

30. Phoenix says:

> "Our letter of 12 February 2013 to Mr D confirmed that HMRC had informed us that we were not liable for the GMP contracted out period of 1978/1979 to 1983/1984 (the **"Speedo GMP"**). This was understood to be held with Speedo Europe Limited (**"Speedo"**).

This was sent prior to the transfer, thereby giving Mr D an opportunity to attempt to resolve/raise the issue with HMRC, as to whether their records were incorrect, before the transfer was made 7 days later. Mr D could and should have taken such an opportunity...

It should also be noted that Mr D was at the time pressing for the transfer to proceed by complaining about any delays which resulted from us having to seek confirmation from HMRC that their records were correct. This was because he was concerned about annuity rates, and we did subsequently compensate Mr D for the delays.

However, had Mr D not pressed for the transfer at the time, and used our letter as an opportunity to take up the issue with HMRC and Speedo/the Trustees, an appropriate remedy could and should have then been agreed/sought with them…

If the form provided by us (NPI) was the actual issue, the additional information could have been provided by the Trustees in a covering letter.

In addition, the following should be noted:

Part D of the application form asked for the number of years added relating to the previous transfer, to which the Trustees responded “None”.

The Trustees’ application for the Policy gave the period of his contracted-out employment in Part C of the form as 1 February 1988 to 31 October 1996. Part D of the form asked for the number of added years relating to the supposed previous transfer, to which the Trustees responded ‘None’. They identified no period of contracted-out employment prior to 1 February 1988. So, the application did not cover the Speedo GMP.

We have also provided the form CA1610 dated 3 August 1998 along with documents showing the basis on which we/NPI accepted the application. At the time, this was the official form for notifying the Contracted-out Employments Group (‘COEG’) of the buy-out of GMP.

The Trustees declared to COEG in section 4 that GMP had been bought out for Mr D for the period shown in section 6, with the insurance company whose Scheme Contracted-Out Number (‘SCON’) was shown in section 6.

The period shown in section 6 was 1 February 1988 to 31 October 1996. The SCON shown in section 6 was NPI’s buy-out SCON at that time.

At no time did the Trustees make any mention of a period of contracted-out employment, prior to 1 February 1988. They supplied what now appears to be misleading information to COEG in the form CA1610. In fact, they specifically identified the period of contracted-out employment for which they were buying out Mr D’s GMP with NPI as 1 February 1988 to 31 October 1996.

The HMRC GMP Liability Buy Out Statement dated 17 November 2014 identifying the Speedo GMP showed the SCON of the scheme from which it was supposedly bought out with NPI as S4005532K. The earlier HMRC GMP Liability Buy Out Statements, for example the one dated 27 September 1999, did not identify the Speedo GMP. They showed liability for only the period from 1 February 1988 to 31 October 1996, also showed the SCON of the scheme from which it was bought out with NPI as S4005532K. That SCON, as confirmed in Part E of the Trustees' application for Mr D's Policy was the SCON of the Scheme, not the Speedo scheme.

Therefore, the Trustees told both NPI and COEG in 1998 that the only period of contracted out employment for which they were buying out GMP for Mr D was from 1 February 1988 to 31 October 1996. Accordingly, we feel that any administrative error in setting up the Policy was made by the Trustees, not by NPI.

…the years and financial information on the form did not indicate an inconsistency, since the Speedo GMP was pre 1988. Therefore, there was no information to make it reasonable for Phoenix to have deduced the truth from the information available…In addition, NPI gave no financial advice, we merely acted as product provider.

Mention has been made of the London & Manchester transfer value illustration dated 28 May 1997, which referred to an additional transferred-in GMP liability not accounted for in the figures in the Policy application. However, it must be remembered that we/NPI did not receive this until late in 2012, whereupon we specifically queried the discrepancy with HMRC on 11 January 2013...we asked them if Mr D had been in contracted-out employment before 1 February 1988 and, if so, who held the liability for it. We told them obtaining this information was "crucial", as Mr D was 'due to transfer his benefits shortly'. Yet again, though, in a letter dated 29 January 2013, HMRC said that the GMP liability NPI held related only to the period from 1 February 1988 to 31 October 1996; and the amount of the GMP was as stated in the 1998 Trustees' application for the Policy.

Realistically, NPI did as much as it reasonably could to verify the GMP dates and figures before paying the transfer to AVIVA. As has been mentioned previously, HMRC did not issue NPI with a GMP Liability Buy Out Statement, which included the earlier period of contracted-out employment until after the transfer to AVIVA had taken place...

HMRC are the final arbiters of GMP. Technically, it may have been open to Phoenix to contact the Trustees, but there would have been no reason to suspect that the Trustees would have information which was somehow more correct than HMRC…

> In relation to funding the liability, NPI had no opportunity to check that the transfer value was sufficient to cover the increased GMP liability before accepting the application…"

The Trustees' Position

31. The Policy schedule issued by Phoenix showed an incorrect GMP of £1,757.52 per annum at SPA. Mr D and his former IFA should reasonably have checked that the information shown on the Policy was correct and queried the wrong figure with Phoenix at the time.

32. The transfer quotation sent by London & Manchester on 31 March 1998, to the former IFA, showed explicit figures for Mr D's accrued and transferred in GMPs in the Scheme.

33. The transfer value paid from the Scheme for Mr D of £31,032.24 was correct and included the value of the GMP transferred in from the Speedo Scheme.

34. The Form did not show Mr D's transferred in GMP numerically because its format made it difficult to do so. There was no space on the Form allocated for supplying this information. Despite this, there was a clear reference to this additional GMP liability in part D of the Form where it was described as a "fixed PUP".

35. The former IFA could have provided Phoenix with a copy of the transfer quotation for its information during the transfer process.

36. It had been open to Phoenix to have asked them in addition to HMRC about Mr D's transferred in GMP benefits in the Scheme before proceeding with the transfer from the Policy to AVIVA. If Phoenix had done so, they could have contacted the administrators of the Speedo Scheme in order to resolve the problems caused by its failure to notify HMRC that Mr D's GMP liability in the Speedo Scheme had originally been transferred to the Scheme.

37. Mr D should have been aware from his current IFA that there was concern whether the correct GMP was being covered by the Policy. Despite the ongoing investigation at the time, he decided to proceed with the transfer to AVIVA.

Adjudicator's Opinion

38. Mr D's complaint was considered by one of our Adjudicators who concluded that further action was required by Phoenix. The Adjudicator's findings are summarised below.

39. The Trustees say that the transfer value of £31,032.24 included the value of the GMP transferred in from the Speedo Scheme. This was substantiated by the information in part D of the Form which clearly showed that it included £9,199 for the value of contracted out benefits transferred into the Scheme.

40. The format of the Form made it difficult for London & Manchester to provide full details of Mr D's GMP in the Scheme. Section C asked for details of his GMP at DOL including any accrued post 6 April 1988 but did not specifically request for information about transferred in GMPs. London & Manchester therefore only provided details of the GMP which Mr D accrued in the Scheme on the Form. It did, however, also clearly specify in Section C that the period of contracted out service to which this GMP related was 1 February 1988 to 31 October 1996. As these dates corresponded to the dates shown on the Form on which Mr D joined and left the Scheme respectively, it was reasonable to expect that Phoenix should have deduced this from the information available.

41. According to Part D of the Form, the total transfer value of £31,032.24 included £10,341.24 for pension rights transferred into the Scheme of which £9,199 was for contracted out service. It is unfortunate that this section of the Form did not explicitly ask for details of the transferred in GMP in addition to its cash equivalent included in the total transfer value. London & Manchester annotated this section of the form to show that the transferred in benefits had not been in the form of "added years" but a "Fixed PUP of GMP + MP A/C". With the benefit of hindsight, it would clearly have been helpful to Phoenix if London & Manchester had automatically provided a numerical value for this "Fixed PUP" on the Form or alternatively, by enclosing a copy of its transfer quotation with the Form when returning it duly completed to Phoenix.

42. The unfortunate situation in which Mr D now finds himself, primarily stems from the format of the Form, which did not allow London & Manchester to easily provide values for both the GMP accrued in the Scheme and the GMP transferred in from the Speedo Scheme.

43. The information supplied on the Form, however, was correct and adequate for Phoenix to make further enquiries about the transferred in GMP with the Trustees through London & Manchester before setting up the Policy for Mr D. Its failure to do so represented maladministration on the part of Phoenix.

44. Had Phoenix conducted such an investigation with the assistance of the Trustees, if necessary, it would have discovered much earlier that HMRC's record for Mr D's GMP in the Scheme was wrong and did not include his transferred in GMP from the Speedo Scheme.

45. It is most regrettable that Mr D and his former IFA did not notice that the GMP figure shown in the Policy Schedule had been understated by Phoenix when checking the information provided. Another opportunity to rectify the GMP error had consequently been lost at this point.

46. During 2012, Mr D's current IFA, complained to the former IFA that the transferred in GMP from the Speedo Scheme did not appear to have been allowed for in the Policy Schedule and the former IFA originally contacted Phoenix in September 2012 for information to conduct his investigation. By this time, Mr D would most likely have been aware from his current IFA that there were ongoing enquiries being made on

whether the correct GMP was being covered by the Policy. Mr D decided, however, to proceed with the transfer despite knowing this when it had been open to him to have waited until the issue had been resolved before doing so.

47. In the Adjudicator's opinion, Mr D would only therefore have suffered an actual financial loss because of the maladministration identified if the transfer value in February 2013, of £65,815.74, was insufficient to cover the value of the correct GMP of £4,157.17 per annum. If this was the case, it was unlikely that the transfer to AVIVA would have taken place. However, given that it would be a complex process to now unravel the transfer the suggested redress assumes the transfer would have taken place even had the higher GMP figure been known at the time of the transfer.

48. Phoenix did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Phoenix provided its further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Phoenix for completeness.

Ombudsman's decision

49. According to the Form completed in July 1998 by London & Manchester on behalf of the Trustees, the total transfer value available to Mr D was £31,032.24 and it represented all his benefits in the Scheme. I am satisfied that this payment therefore did include the cash equivalent of Mr D's pension rights transferred into the Scheme from the Speedo Scheme. These pension rights were not in the form of added years but a paid-up pension (PUP) of GMP and a money purchase account (MP A/C). Scheme.

50. I agree with the Adjudicator that the design of the Form made it difficult for London & Manchester to provide details of Mr D's transferred in benefits including the additional GMP in a transparent way. In my view, the questions asked on the Form by Phoenix (NPI), should also have been clearer. Crucially, the section which asked for details of Mr D's GMP at DOL did not explicitly request information about transferred in GMPs. London & Manchester therefore only provided details of the GMP which Mr D accrued in the Scheme, but it did, however, specify that the period of contracted out service to which this GMP related was 1 February 1988 to 31 October 1996.

51. As these dates corresponded to those shown on the Form when Mr D joined and left the Scheme respectively, I consider that Phoenix should reasonably have deduced, from the information supplied, that the GMP details did not include the additional GMP available from the transferred in benefits mentioned in Section D. If the GMP figures shown in Section C included the Speedo GMP then, I would expect the commencement date of contracted out employment shown to be the later of the commencement date of the earlier contracted out employment and 6 April 1978.

52. In my view, the information supplied on the Form was enough for Phoenix to make further enquiries about the transferred in GMP with the Trustees via London &

Manchester, if necessary, and its failure to do so represented maladministration on the part of Phoenix.

53. Had Phoenix conducted an investigation, it would have obtained figures for the transferred in GMP before deciding whether to set up the Policy for Mr D, with the correct higher GMP figures shown in the Policy documents. Phoenix would also not subsequently have had to liaise with HMRC during 2012/13, to verify Mr D's GMP figure before allowing the subsequent transfer from the Policy to AVIVA, and Mr D would not now be in the unfortunate situation in which he finds himself.

54. I concur with Phoenix that mistakes were made by both London & Manchester and the Speedo Scheme administrators in notifying HMRC of the transfer of Mr D's GMP rights to other schemes which made its subsequent investigation of these GMP rights with HMRC worthless.

55. London & Manchester should have included in section 6 of the form CA1610, dated 3 August 1998, details of each period of contracted out employment for which a buy-out of a GMP was being secured with Phoenix. It is unclear why London & Manchester did not inform Phoenix that the Trustees were also effecting a buyout of Mr D's GMP liability for his contracted out service in the Speedo Scheme on the CA1610, when it had a clear opportunity and the space to do so, particularly given the insufficient space on the Form.

56. Furthermore, Mr D and his former IFA regrettably did not spot the GMP error on the Policy schedule on receipt of it and thus missed an opportunity to notify Phoenix accordingly, so that it could rectify the mistake as soon as possible.

57. It would also perhaps have been wise for Mr D, not to have insisted on the transfer to AVIVA proceeding as quickly as possible while there were ongoing enquiries on whether the correct GMP was covered by the Policy.

58. I cannot, however, disregard the fact that the Trustees did pay the cash equivalent of Mr D's transferred in benefits from the Speedo Scheme including the GMP to Phoenix.

59. Although, it is regrettable that Phoenix were not given the opportunity to calculate whether this cash equivalent sum was in fact sufficient to also cover the Speedo GMP liability, I consider that it would have been reasonable for Phoenix to have queried what the transferred-in benefits listed in section D of the Form related to.

60. The main thrust of Phoenix's argument is that it could only know in hindsight that the Trustees had transferred the Speedo GMP liability to the Policy.

61. However, Regulation 5(1)(c) of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997 (**the Regulations**) states that:

> "…if any guaranteed minimum pension is due or prospectively due to the earner in question, the policy or contract contains, or is endorsed with, terms so as to provide—

> that the annuity to be paid thereunder to or for his benefit will be at least equal to the guaranteed minimum pension due to him, or, as the case may be, prospectively due to him, at pensionable age, subject to section 15 (increase of guaranteed minimum pension) or section 16 (revaluation of earnings factors) of the 1993 Act…"

62. In my view, the effect of Regulation 5(1)(c) is that the Policy was established on terms which stipulated Phoenix would have to provide a minimum of the revalued GMP and, although not explicitly stated, also make good any shortfall, regardless of when it became aware of Mr D's full GMP liability. This is confirmed in HMRC's letter dated 17 November 2014 which states that a GMP liability of £23.37 per week was transferred to Phoenix for Mr D.

63. I do have some sympathy with Phoenix's argument that the earlier HMRC GMP Liability Buy Out Statement, dated 27 September 1999, did not include the Speedo GMP liability and despite seeking confirmation on several occasions from HMRC, was consistently informed that its liability would only be Mr D's contracted out service in the Scheme. However, I disagree with its statement that HMRC is the "arbiter" of GMP. HMRC's ability to provide accurate information is dictated by the information given to it. Although, it was highly regrettable that neither the Trustees nor London & Manchester provided HMRC with accurate information in a timely manner, by 2014, HMRC's records had been updated and Phoenix were belatedly identified as having liability for also providing Mr D's Speedo GMP.

64. The evidence is clear that the transfer value available from the Scheme included the cash equivalent of Mr D's transferred in GMP from the Speedo Scheme and it had been open to Phoenix to obtain explicit details of this GMP from London & Manchester before establishing the Policy, if it accepted the transfer payment.

65. Phoenix should have set up the Policy with the correct higher GMP of £4,157.17 per annum and because of the maladministration identified, Mr D will now suffer an actual loss if the transfer value of £65,815.74 is insufficient to cover the value of this GMP liability held in the Policy. If this is the case, Mr D states that the transfer to AVIVA would not have taken place and if it had not taken place, Phoenix would have had to guarantee to cover the shortfall amount.

66. I have considered Mr D's request for any redress to be paid into his Standard Life personal pension plan but have seen no concrete evidence to substantiate his assertion that he would have transferred to this plan rather than purchasing an annuity with AVIVA at the time.

67. Therefore, I uphold Mr D's complaint against Phoenix only and make the appropriate directions below.

Directions

68. Phoenix shall within 28 days of the date of this determination carry out a loss calculation to ascertain whether the transfer value of £65,815.74, paid from the Policy to AVIVA on 19 February 2013, would have been adequate to secure the GMP of £4,157.17 per annum at NRD.

69. If the transfer value was insufficient to cover the cost of this GMP then Phoenix shall pay the shortfall amount and secure an additional annuity with AVIVA, effective from 19 February 2013, on the same basis as Mr D's existing AVIVA annuity.

70. If the transfer value was insufficient to cover the GMP of £4,157.17 per annum Phoenix should also pay to Mr D a lump sum, plus simple interest, equal to the outstanding instalments of his pension. The interest referred to above shall be calculated at the base rate for the time being quoted by the Bank of England.

Anthony Arter

Pensions Ombudsman
25 June 2020