

Ombudsman's Determination

Applicant	Mr N
Scheme	Esitran Personal Pension Plan (the Plan) Number 00548983
Respondent	Zurich Assurance Ltd (Zurich)

Outcome

1. Mr N's complaint against Zurich 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, Zurich should pay Mr N £500 for the significant non-financial injustice which he has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N complains that Zurich, the Plan's administrator, paid him a tax free cash lump sum in November 2016 of £6,064.52 which was considerably lower than the amount previously quoted to him in July 2016 of £14,913.52. He contends that he had relied on the incorrect higher figure to his financial detriment and should be compensated accordingly by Zurich.

Background information, including submissions from the parties

4. The Plan is a conventional with-profits section 32 buy out contract established by Mr N to secure his Guaranteed Minimum Pension (**GMP**) of £2,115.24 pa, accrued in a former occupational pension scheme, and payable from his 65th birthday on 18 October 2016. The Plan also provides Guaranteed Minimum Benefits (**GMB**). Details of these benefits can be found in the Plan policy document, the relevant sections of which have been reproduced in the attached Appendix.
5. In April 2016, Zurich informed Mr N that:
 - the fund value available from the Plan on his 65th birthday was expected to be greater than what was required to secure the GMP;
 - any excess fund could be used to purchase an annuity either with it or another pension provider;
 - he could take up to 25% of the fund value as a tax free cash lump sum;

- he should complete and return the Tax Free Cash Entitlement Form (**the Form**) if he would like Zurich to check whether he was entitled to more than this; and
 - the GMB applying to part of the excess fund could provide a better annuity than one purchased on the open market
6. After receiving the completed Form, Zurich informed Mr N in July 2016 that:
- the estimated fund value and protected tax free cash available from the Plan were £32,183.52 and £14,913.52 respectively; and
 - he could take this tax free cash and the GMP of £2,115.24 pa by completing and returning the “Retirement Options Form” (**the Options Form**).
7. Mr N completed the Options Form and Zurich confirmed to him in a letter dated 31 August 2016 that he could take the protected tax free cash of £14,913.52.
8. Zurich sent Mr N an annuity quotation in October 2016 showing that he could take the excess fund of £14,913.52:
- entirely as tax free cash;
 - as tax free cash of £6,064.52, plus a pension of £1,065.60 pa (i.e. £88.80 pm); or
 - as a pension of £1,264.92 pa
9. Mr N completed the “Retirement Claim Form” (**the Claim Form**) on 10 October 2016 to request payment of the excess fund entirely as tax free cash.
10. In November 2016, Zurich informed Mr N that it had arranged for a tax free cash sum of £6,064.52 and a gross GMP of £2,115.24 pa (i.e. £176.27 per month) to be paid to him from his 65th birthday.
11. Zurich subsequently explained to Mr N that it could not pay the balance of the excess fund of £8,849 as tax free cash because:
- following pension legislative changes which came into force on 6 April 2015 and 2016, it carried out a review of its “legacy product ranges” and established that pension plans with GMB had to be classified as defined benefit and not defined contribution;
 - this change affected how the tax free cash available to him from the Plan was calculated;
 - he was now only entitled to take tax free cash from the excess fund not required to secure GMB and as a result, no further tax free cash was payable; and
 - in any case, according to the Plan policy document, the GMB should be secured from the fund first before any tax free cash can be taken from the residual amount.

12. Zurich therefore arranged to increase Mr N's gross monthly pension from £176.27 to £265.07 (i.e. to include the additional pension of £88.80) available from the excess fund) payable from his 65th birthday.
13. Zurich has offered Mr N an increased compensation payment of £500 (originally £250) as a gesture of goodwill in recognition of the distress and inconvenience which he and his family have suffered in having to deal with this matter. Mr N has declined this offer which he considers derisory.

Adjudicator's Opinion

14. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by Zurich. The Adjudicator's findings are summarised briefly below:-
 - There is no dispute that Zurich informed Mr N incorrectly several times during 2016 that he was entitled to the higher protected tax free lump sum of £14,913.52. Mr N should have been given the correct tax free cash figure of £6,064.52 at the outset and the failure to do so is clearly maladministration on the part of the Zurich.
 - Although Mr N received incorrect details of the benefits, it does not confer on him a right to the benefits erroneously quoted. The fact that an earlier tax free cash quotation has been reduced is a loss of expectation but is not an actual loss. The basic principle is that a scheme is not bound to follow incorrect information, e.g. retirement quotes, transfer values or early retirement.
 - For there to be actual loss, Mr N must show that money has actually been lost as a result of expenditure or decisions that would not have been made if the correct figures had been quoted at the outset.
 - Furthermore the Pensions Ombudsman would expect Mr N to take all reasonable steps to mitigate his loss. He would also take into account the extent to which Mr N's expenditure can be undone.
 - Mr N has not been able to demonstrate that he suffered specific financial loss flowing from the incorrect information given by Zurich. He originally said that he had paid around £5,200 towards the costs of his son's wedding held in March 2017 based on the reasonable belief that the higher protected tax free cash figure was correct and submitted the relevant receipts for examination. However in response to further enquiries, Mr N said that he was able to mitigate his financial loss by reducing the budget for his son's wedding to take into account the actual tax free lump sum which he received of £6,064.52.
 - Mr N cannot claim for a loss that he could have mitigated, whether he in fact did so or not. He asserts that he had intended to use any remaining funds after planned expenditure to supplement his retirement income. A

consequence of Zurich's failure to notify him of his correct tax free cash figure on a timely basis, is that he has had to continue working full time to make up the shortfall in the tax free lump sum. It would appear that Mr N has therefore fortunately been able to, more or less, mitigate his financial loss and rearrange his finances to compensate for any potential difficulty that he may encounter in the future.

- The root cause of Zurich quoting the incorrect higher tax free cash lump sum to Mr N several times was chiefly its failure to interpret the legislative changes affecting the Plan on a timely basis..
- Mr N has clearly received his benefits from the Plan in a form which was different to what he was expecting. There is no doubt that this would have caused him unnecessary worry and upset and he should receive an appropriate level of compensation from Zurich in recognition of the maladministration identified attributable to it.
- Zurich should therefore pay Mr N £500 in compensation for the significant non-financial injustice which he has suffered.

15. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N 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 N for completeness.

Ombudsman's decision

16. Mr N does not consider an award of £500 is equitable for the considerable distress and inconvenience which he and his family have experienced as a consequence of Zurich's shortcomings.
17. Whilst I accept that Mr N has spent a significant amount of time sorting things out and this has been a difficult time for him and his family, a payment for distress and inconvenience is typically modest. It is not intended to be compensation in the legal sense of the term, rather it is an ex gratia payment intended as tangible recognition that mistakes and delays have been intrusive, eaten into Mr N's time, and caused upset.
18. My awards in relation to distress and inconvenience are modest (generally in the region of £500 to £1,000) and are not intended to punish the respondent. I note that following the intervention of this office Zurich has offered Mr N an improved award of £500, as a gesture of goodwill in recognition of the considerable distress and inconvenience which it has caused him in this matter. In my view, Zurich's revised offer is fair and in the broad range I would expect to see in circumstances comparable to Mr N's.

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19. I therefore consider Mr N's complaint should be partly upheld against Zurich and I make an appropriate direction below.

Directions

20. Within 21 days of the date of this Determination, Zurich shall arrange to pay Mr N compensation of £500 in recognition of the significant distress and inconvenience caused to him.

Anthony Arter

Pensions Ombudsman
19 October 2017