

Ombudsman's Determination

Applicant	Mr Y
Scheme	Addis Ltd & Associated Companies 1972 Staff Pension and Assurance Scheme (the Scheme)
Respondent	Legal & General

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by Legal & General
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y's complaint is that his pension with Legal & General is less than the Trustees of the Scheme said had been secured for him in its letter of 16 April 2003. Mr Y says his 'loss' remained unknown to him until his normal retirement date (**NRD**). He is of the opinion that Legal & General is liable to cover his loss and that it should additionally compensate him for its participation in the 'deception'.

Background information, including submissions from the parties

4. The Scheme was a final salary arrangement. It was contracted-out of the State Earnings Related Pension Scheme (**SERPS**), now called the Additional State Pension. As a consequence Mr Y built up a guaranteed minimum pension (**GMP**). The GMP is broadly equivalent to the SERPS benefit for the period a member is contracted-out.
5. Mr Y left the Scheme in 1982 and became a deferred member. Later the Scheme commenced winding-up.
6. In December 2001 the Scheme Trustees issued a progress update on the wind-up to all pensioners and deferred pensioners. The Trustees advised that Legal & General had been chosen to take over the obligation for the payment of pensions and said:

"We have paid funds over to them, to remove any subsequent investment risk, and remain confident that all obligations for future payments of pensions can be met.

In due course the responsibility for paying pensions will pass to L&G. We will write to you further when we have a clearer idea of when this will happen.”

7. In April 2003 Mr Y received two letters from the Trustees, both dated 16 April 2003.
8. The first letter, addressed to Mr Bailey, advised that Legal & General would become responsible for paying his pension in excess of his GMP, when it became payable. The Trustees said it was delighted to confirm that the Scheme was well funded and that the benefits to which Mr Y was entitled were fully secure and reported that there was a small surplus “and some modest benefit improvements can be made for everyone.”
9. The letter quoted Mr Y’s pension at his NRD, 18 May 2015. It quoted the yearly pension Mr Y would have received from his NRD as £3,790.32, which included a GMP of £3,685.75. It said his pension excluding GMP was £104.57, but that the yearly pension he would receive from Legal & General was £189.85.
10. The letter went on to say that Legal & General would be writing to Mr Y to introduce itself and provide a contact person, probably by the end of July 2003, and that sometime after that Legal & General would issue to Mr Y his individual benefit statement.
11. The second letter, addressed to all deferred pensioners, advised that, where it could, a State Scheme Premium had been paid to buy back into SERPS a deferred pensioner’s GMP. The Trustees said buying the GMPs back into SERPS was the most cost effective option and meant that it was able to secure “your other benefits in full with Legal & General”. It said the option had left money over for some modest benefit improvements, which would not have been the case if it had had to buy out the GMPs with Legal & General or another insurance company. It went on to say:

“Being contracted back into SERPS means that the State will pay you the SERPS pension ...and L&G will pay you your Scheme pension reduced by the amount of GMP. As mentioned above, the two amounts (SERPS and GMP) are broadly equivalent but not identical. In most cases the total combined pension receivable from the State and the Addis Scheme should stay much the same.”
12. The Trustees then said that it had sought to identify any differences and where practical it had adjusted pensions or arranged extra insurance cover from Legal & General to mitigate these. It went on to summarise the main areas of difference and what it had done about them. In respect of the method of calculation, it said:

“There are differences in the method of calculating GMPs and SERPS. Whether this means that not all the reduction to your Addis Scheme pension is offset by the increase in your SERPS pension will depend on individual circumstances. The Trustees have no way of determining the precise effect (if any) of these differences and so are unable to take any action to address them.”

13. The Trustees advised that there were differences in the method of calculating GMPs and SERPS and whether the reduction in the Scheme pension was offset by the increase in SERPS entitlement would depend on individual circumstances.
14. In January 2007 the Trustees wrote further to Mr Y about this matter. It said it remained unable to take any action to address the difference, but as there remained some assets in the Scheme they had decided to use these to secure an additional benefit for those who the Scheme Actuary had identified as most likely to be affected by the difference in the calculation of GMPs and SERPS pension. As an affected member the Trustees secured for Mr Y, with Legal & General, an additional yearly pension of £952.08, payable at his NRD. The letter provided contact details for Legal & General (a name, address and telephone number).
15. At the end of March 2015 Legal & General issued to Mr Y a quotation of his benefits payable from his NRD with options. One option was a total yearly pension of £1,141.92 (that is £189.84 + £952.08).
16. In April 2015 the Department for Work & Pensions (DWP) informed Mr Y that his weekly Additional State Pension was £24.63 (yearly that is £1,280.76).
17. Mr Y complained to Legal & General about the £2,404.09 shortfall between his GMP quoted at NRD (£3,685.75) and actual Additional State Pension entitlement (£1,280.76) and, following the Trustees letter of April 2003, that Legal & General had failed to contact him for nearly 12 years. He said with his retirement imminent he was now facing a large shortfall to the benefits which the Trustees had assured were fully secured.
18. Pertaining to this matter various correspondence then passed between the parties, culminating with Legal & General's letter to Mr Y of 25 September 2015:-
 - The decision to buy back the GMP was taken by the Trustees and it had no involvement in that decision. It was simply providing Mr Y with the benefits the Trustees had secured
 - It apologised for not sending a benefit statement in 2003, but noted that the Trustees had confirmed the benefit due at his NRD in its letter of 16 April 2003 and the Trustees had provided him with its (Legal & General's) contact details in January 2007.
 - It was not responsible for Mr Y not knowing of the GMP shortfall and it was noted that the Trustees' January 2007 letter mentioned that it was unable to take any action to address the method of calculating GMP and SERPS.
 - Buying back GMP into SERPS was an option that the Trustees could take and allowed the Trustees to secure in full all excess benefits with Legal & General.

- Taking into account its delay in responding to a letter from Mr Y dated 7 August 2015 (pertaining to his complaint) and for not sending him a benefit statement in 2003, Legal & General paid Mr Y £250.

19. Mr Y says:-

- The Trustees 2001 letter gives a clear indication that Legal & General was actively involved in all aspects of the Scheme from 2001. It was selected as a partner to deliver pensions after the Trustees had asked insurance companies to submit a “full quote”. Logically this would have included buying out GMPs. Later, for some reason, there was a change of policy and the Trustees informed deferred pensioners that GMPs had been bought back into SERPS. But this occurred after the Trustees had accepted Legal & General’s quotation and when it was fully involved.
- The Trustees 2001 letter casts doubt on Legal & General’s claim that it provided no advice and had no involvement in the decision to buy back GMPs in SERPS. It is questionable that the Trustees placed funds with Legal & General in 2001 for the pensions of members without full discussions with and advice from Legal & General.
- In its letter of January 2007 the Trustees had an opportunity to be honest about SERPS being revalued at less than half of GMP, but did not. Instead it wrote about his share of “an extra pension” and did not tell him he was in an affected “minority”.
- Legal & General failed to notify members of the reason it had accepted this money. Instead it allowed itself to be complicit in the Trustees deceit and avoided any contact with him until his NRD.
- The pension amount that Legal & General are paying him does not cover the shortfall (between his quoted GMP at NRD and Additional State Pension entitlement). It has not applied bonuses or growth to the original amount of £19,215 despite holding this investment during years of favourable market conditions.
- He accepted Legal & General’s payment of £250 with the strict proviso “without prejudice to my right to further pursue the complaints I have against L&G”. The sum does not cover the 150 plus hours that he has spent trying to get redress for its and the Trustees “wilful incompetence, the resulting loss of pension, or any other associated issue”.
- He did not think about contacting the Trustees or Legal & General. The Trustees April 2003 letter confirmed that the Scheme was well funded and that benefits were fully secure. While its January 2007 letter spoke of the final distribution of remaining assets and his share a lump sum placed with Legal & General. This

implied that his pension had been increased for a second time from surplus assets in a closing scheme.

- Legal & General failed to send him a statement in 2003. Likewise in 2007, or communicate that it was holding funds for the purpose of SERPS/GMP differences, along with a forecast of what pension this was likely to provide. Instead it ensured nothing was sent out, and with no suspicion aroused, he was unable to challenge either party over its dubious actions.

20. Legal & General says:-

- It did not advise the Trustees on any aspect of the Scheme's winding-up, including the decision to pay State Scheme Premiums to buy-back deferred pensioners GMPs in SERPS.
- The buy-out process began in December 2000 and was completed in 2005 (2007 for the top-up). But the Trustees retained responsibility and ownership until the legal agreement was signed (2005 or 2007 for the top-up).
- The Trustees would have had its own independent advisors and would have made any decisions in regard to the GMP itself.
- While it would happily share information Legal & General would not advise or make recommendations on such matters as GMP buy-back, but simply focus on the benefits that the Trustees had chosen to secure with it.
- In regard to Mr Y, its liability was always limited to the provision of the deferred excess pension that the Trustees chose to secure with it. Clearly some money was leftover and the Trustees chose to secure a top up with it for Mr Y.

Adjudicator's Opinion

21. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Legal & General. The Adjudicator's findings are summarised briefly below:-

- Increases to SERPS/the Additional State Pension (in line with national average earnings) have not kept pace with the yearly 8.5 per cent fixed rate revaluation that would have applied to Mr Y's GMP had he remained a deferred member of the Scheme until his NRD.
- Nevertheless, Mr Y's perceived loss is one of expectation, rather than an actual financial loss because his GMP was bought back into SERPS via the payment of a State Scheme Premium in 2003. The payment extinguished Mr Y's right to a GMP from the Scheme. The decision to buy-back GMPs in SERPS for deferred members of the Scheme appears to have been taken by the Trustees in consultation with the Scheme Actuary / its financial adviser.

- The Trustees letter of December 2001 is not evidence of Legal & General's involvement in this matter. It simply shows that Legal & General had been chosen by the Trustees to take over the obligation for the payment of pensions at some future date that was to be advised.
 - Legal & General's liability is limited to the provision of Mr Y's excess pension plus the additional pension (secured by the lump sum paid in 2007).
 - Mr Y comments that Legal & General added no bonuses or investment growth to the 2007 payment. But the sum paid to Legal & General was a fixed cash benefit payable at Mr Y's NRD. Subsequently Legal & General provided Mr Y with options for taking this sum. Mr Y chose a fixed yearly cash fund pension of £1,141.92
 - Legal & General concede that it should have issued a benefit statement to Mr Y in 2003 and had paid him £250 for failing to do this and for the time it took to reply to his August 2015 letter pertaining to his ongoing complaint. That amount was reasonable.
22. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr Y against Legal & General for completeness.

Mr Y's further comments

23. Mr Y says Legal & General has provided no proof of its claim that it took part in no decision with and gave no advice to the Trustees. He contends that Legal & General and the Trustees are inextricably linked from December 2000 when the buy-out process began.
24. Mr Y has submitted a copy of the 2001 Trustee's Report for the Legal & General Pension Trust (a centralised scheme containing provisions enabling a number of employers to participate in) (**the LGPT**), which a pensioner colleague says he received from the Addis Scheme Trustees around the time that his pension payment was moving from Eagle Star to Legal & General. Mr Bailey has highlighted that the report says, "Your pension is one of the sub-schemes" and the Trust "is to provide suitable company pension schemes with a facility for managing and overseeing their operations..." He says this casts doubt on Legal & General's claim of not giving advice and having no involvement in decisions with the Addis Scheme Trustees.
25. Mr Y says it appears the Scheme joined the LGPT in 2001 and that the Trustees subsequent decision to reinstate deferred members in SERPS must have followed consultation with Legal & General. He says both the Trustees and Legal & General would have been aware that the decision would reduce members' benefits because of the vast difference between SERPS and GMP annual revaluations.

26. Mr Y says Legal & General's comment that it would happily share information constitutes giving advice and is further proof that it and the Trustees were inextricably linked "as full partners in pension delivery".
27. Mr Y says Legal & General had a 'no contact' policy towards deferred pensioners which ensured that the real reason for the 2007 'top-up' remained buried until his NRD. Only in 2015 did Legal & General tell him it was an attempt to cover for the SERPS losses.

Legal & General's further comments

28. Legal & General has informed the Adjudicator that the Scheme was never a party of the LGPT.

Ombudsman's decision

29. Firstly, as the complaint accepted for investigation is against Legal & General I have not given further consideration to Mr Y's comments against the Trustees and its advisers.
30. Mr Y says Legal & General has provided no proof that it did not take part in the Trustees' decision and did not give them advice. But the onus is on Mr Y to provide such evidence that it did.
31. The Trustees' decisions to secure pensions in payment and deferred pensioners excess benefits with Legal & General, and subsequently pay an additional lump sum to Legal & General to provide additional pension benefits for certain deferred members, does not amount to evidence that Legal & General colluded in some way with the Trustees or was involved in the decision to buy back deferred members GMPs in SERPS.
32. Mr Y says it appears the Scheme joined the LGPT in 2001. Legal & General has advised that the Scheme was never under the Trust. But, in any case, the 2001 Trustees Report is not evidence that Legal & General provided advice to the Scheme Trustees or was involved in the decision to pay State Scheme Premiums to extinguish the Scheme's GMP liability.
33. Mr Y has attached weight to Legal & General's comment that it would happily share information. He says provision of information amounts to advice and is further proof that Legal & General was inextricably linked with the Trustees. I do not agree. Mr Y has made an unsubstantiated inference from Legal & General's generalised comment.
34. I agree with the Adjudicator that Legal & General's liability to Mr Y is limited to the provision of his excess pension plus the additional pension (secured by the lump sum paid in 2007).

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35. Legal & General's failure to issue a benefit statement to Mr Y in 2003 constitutes maladministration. For the resulting non-financial loss, from this and delaying its reply to Mr Y's August 2015 letter, it has paid Mr Y £250. As the matter does not amount to significant distress and inconvenience I do not consider a higher payment is merited.
36. Therefore, I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman
6 September 2017