

Ombudsman's Determination

Applicant	Mr L
Scheme	Aviva Section 32 (the Policy)
Respondent	Aviva UK & Ireland Life (Aviva)

Outcome

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

Complaint summary

3. Mr L has complained that Aviva would not allow him to make further contributions to the Policy in order to enable him to transfer it to his Self-Invested Personal Pension (**SIPP**) and take advantage of pension flexibilities.

Background information, including submissions from the parties

4. The Policy, administered by Aviva, is a Section 32 buy-out single premium policy designed to accept a single transfer value that contains a Guaranteed Minimum Pension (**GMP**). The Policy terms state that it is payable from age 60, and Mr L turned 60 in October 2015. However, Aviva refused payment at age 60 as the fund value did not cover the GMP. GMP is payable to men from the age of 65.
5. Mr L had also requested a number of transfer quotations however, as the fund value is lower than the cost of providing the GMP, Mr L was aware that he is only able to transfer to a scheme willing to accept liability for the GMP.
6. On 22 September 2015, Mr L raised a complaint with Aviva. He complained that the Policy terms state his pension was payable at age 60, but that payment had been refused. Mr L referred to the Pension Ombudsman's Determination, PO-2269 dated 11 December 2014. This Determination addressed a similar situation in which the complainant held a policy, also with Aviva, which included GMP payable at age 65 but the policy terms stated the policy was payable at age 60. In that case, the complainant was over age 60, but the fund value did not cover the cost of providing the GMP so payment had been refused. The Ombudsman directed that Aviva put this policy into payment, backdated to the complainant's 60th birthday and pay

interest on the arrears due. Mr L also enquired if he could pay additional contributions into the Policy in order to increase the fund value above the cost of the GMP to allow a transfer out to his SIPP.

7. On 5 May 2016, Aviva wrote to Mr L's representative stating that it had reviewed its position across all of its policies following the Pension Ombudsman's Determination. It offered Mr L payment of his pension, backdated to age 60, with interest to be paid on the arrears. Aviva also confirmed that, as it now has to pay the cost of the backdated annuity, the cost of the GMP has increased, meaning there is a greater difference between the cost of the GMP and the fund value, and as such it is not possible to transfer the Policy to a new provider.
8. Mr L's representative requested that Mr L be allowed to make further payments to the Policy to increase his fund value above the cost of the GMP to enable him to transfer. He said that, while the Policy was set up as a Section 32 single premium policy, since 6 April 2006, such policies have been treated as registered pension schemes under Paragraph 1 Schedule 36 of the Finance Act 2004. This means that there is now no legislative reason why the Policy cannot accept further contributions. Mr L's representative supplied a copy of correspondence with HMRC confirming the current position in order to support his request.
9. Aviva has said that, while current legislation may allow for further contributions to be made, the Policy terms do not. It also directed Mr L's representative to a section of the correspondence he had supplied from HMRC which states, "a buy-out contract/policy will be governed by the terms of that contract/policy which may reflect the pre 6 April 2006 requirement for it to be a single premium policy and the terms of the policy may not have been amended to take advantage of the current tax rules." Aviva said that it has no intention of amending the terms of the Policy as a business decision.
10. Aviva confirmed that Mr L is able to transfer the Policy if he is able to find a provider willing to accept liability for the GMP. It said it is unlikely that a SIPP provider will be willing to accept the GMP liability, but that Mr L is free to explore this possibility.
11. Subsequently, Mr L brought his complaint to this office.

Adjudicator's Opinion

12. Mr L's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised briefly below:-
 - The issue of Mr L being able to access his benefits from age 60 has been addressed by Aviva in line with the Determination on a similar case. The Adjudicator agreed that this is reasonable and Mr L has not brought that complaint to this office. The outstanding issue is whether Mr L should be able to make further contributions to the Policy to enable him to transfer it to his SIPP.

- As confirmed by HMRC, the changes made by the Finance Act 2004 removed the legislative barrier previously in place that prevented further contributions being made to single premium contracts. This means that there is no legislation preventing the Policy from accepting further contributions now.
 - Nevertheless, the Policy must be administered in line with the Policy terms. The Policy terms set out that it is a single premium policy, therefore no further contributions can be made. The legislation enabling further contributions does not override the Policy terms. In the Adjudicators opinion, Aviva has correctly administered the Policy in accordance with the Policy terms and the Adjudicator did not find any maladministration.
 - Mr L and his representative have suggested that Aviva's refusal to amend the Policy terms is unfair and based on making profit. However, there is no requirement for Aviva to make amendments to the Policy to enable Mr L to make further contributions. Aviva is able to refuse to do so for commercial business reasons.
 - As confirmed by Aviva, Mr L is free to transfer the value of the Policy to another provider, if that provider is willing to accept liability for the GMP.
 - The Adjudicator understood that it will be disappointing for Mr L, but concluded that this complaint should not be upheld.
13. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L's representative provided his further comments which are summarised below:-
- The representative said it is accepted that the terms of the policy prevent additional contributions unless changed. However, it is a weak argument when all Section 32's contracts had this limitation which was enshrined by law.
 - Mr L is a few thousand pounds short of being able to transfer the pension and access his benefits flexibly thus avoiding having to have an annuity that he does not want.
 - Aviva has a conflict of interest which it has not addressed. There is no reason other than profit for Aviva to choose to leave such barriers in place. This forces clients to keep the funds with it or force them into Aviva annuities which offer poor value to clients and presumably are profitable for Aviva. Unfortunately, there are no providers that will now accept the GMP.
14. The additional comments 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 L's representative for completeness.

Ombudsman's decision

15. My role is to consider whether legislation and terms and conditions have been correctly followed and applied. Where an error has occurred as a result of maladministration, incorrect application of legislation, or terms and conditions, I am able to direct redress to correct that error. The redress is intended to have the effect of putting the individual back in to the position they would have been in had that error not occurred, without providing unjust enrichment.
16. In Mr L's case Aviva incorrectly interpreted the Policy terms when it refused payment of Mr L's benefits at age 60. Aviva has sought to correct this error by offering Mr L payment of his benefits backdated to age 60, together with interest. Similar redress was directed by the previous Ombudsman in his Determination of 11 December 2014, and, I consider this to be reasonable.
17. The outstanding issue of additional contributions is different, Aviva have correctly applied the Policy terms in refusing to accept further contributions. This point is not disputed. Conversely, Mr L and his representative have suggested that the terms should be amended to bring them in line with current legislation and allow further contributions to be made.
18. The representative has said that Mr L is a few thousand pounds short of his fund covering the cost of the GMP which would allow him to transfer to his chosen scheme. Yet the latest valuation I have seen on, 8 March 2017, shows that the transfer value was £92,885.39 while the cost of the GMP was £108,851.36. This is a difference of £15,965.97 which I consider to be more than just a few thousand pounds. Nevertheless the cost difference is irrelevant.
19. There is no requirement for Aviva to amend the Policy terms to take account of the change in the legislative requirements allowing further contributions to be made. Equally there is nothing to prevent Aviva from making this amendment. However, when considering making alterations to the Policy terms Aviva is able to take its own commercial interests into account.
20. Similarly, while Aviva has said Mr L is able to transfer to a provider willing to accept the GMP liability, Mr L's representative's comments are noted that there are very few, if any, providers that would be willing to do so. Nevertheless, it is not Aviva's responsibility to ensure that there is a scheme available to accept a transfer with GMP liability.
21. Therefore, I do not uphold Mr L's complaint.

Anthony Arter

Pensions Ombudsman
26 October 2017