

Ombudsman's Determination

Applicant	Mr P
Scheme	Aviva Section 32 Buyout Plan (the Plan)
Respondents	Aviva

Outcome

1. I do not uphold Mr P'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 P has complained that Aviva has refused to honour the contract he has for pension increases at 3% a year to be applied to the pension.

Background information, including submissions from the parties

4. In 1987 Mr P transferred his pension benefits in the Morgan-Grampian plc Pension Fund to a Section 32 Transfer Plan with Norwich Union (now Aviva). The underlying premise of Section 32 policies, such as the one sold to Mr P, was that the transfer value would be invested and at retirement the total fund would be used to provide a pension. The pension provided would, however, not be less than the guaranteed minimum pension (**GMP**) that the policyholder would have received from the transferring scheme.
5. Mr P elected to receive pension increases at the rate of 3% a year on the resultant pension. However due to a number of factors the Plan did not perform as well as expected and Aviva advised Mr P that at retirement date the pension payable would only be equivalent to the GMP and that no increases would be payable on this amount.
6. Mr P did not accept Aviva's decision that no pension increases were payable and brought a complaint to this office. The basis of Mr P's complaint is similar to a number of other complaints that have been brought to this office and I have issued a determination for one of those complaints in respect of Mrs R (**PO-13991**) which is attached.

Adjudicator's Opinion

7. Mr P'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:-
 - As Mr P's complaint was the same as that of Mrs R (PO-13991) the Adjudicator was of the view that an Ombudsman would reach the same conclusion that although Aviva were required to cover the GMP, it was not required to pay increases in addition to the GMP.
8. Mr P did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr P has 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 P for completeness.
9. Mr P says that Aviva's refusal to pay the escalation of 3% is a breach of the contract. In the original illustration Norwich Union agreed to take over his pension using the Section 32 policy and illustrated that by doing so they would significantly increase the value of his pension. The illustration clearly says they will guarantee to pay any Equivalent Pension Benefits (to those promised in the original pension). This included the escalation of pension, as detailed in the Leavers Certificate. The Trustees of the transferring scheme would not have allowed him to transfer, and he would not have wanted to, if the Plan did not provide the same benefits.
10. Section 9 of the Policy Conditions says that "Pensions purchased under condition 7 shall increase at the percentage rate specified in the Second Schedule" and this is 3%. The clause which Aviva now say means they do not have to pay the escalation is difficult, if not impossible to be understood by a reasonable person. It says:

"The rate of increase in pensions shall not be such that the pension and the Widows pension which can be purchased by the Capital Sum shall be less than the Guaranteed Minimum Pension and the Guaranteed Minimum Widows Pension."

By definition the GMP is only payable in the first year of the contract, if there is an escalation rate attached to the contract, as in the second year, the pension being paid would not be the GMP.
11. Mr P also says that he complained on many occasions about the investment performance of the fund. In 2003 he received a letter from Norwich Union in relation to his complaints in which it was said "The pension(s) shown on the previous page including the Guaranteed Minimum Pension will increase by 3% compound starting 1 June 2018". A reasonable person would expect the benefits of the contract to be adhered to especially as they were confirmed in letters 16 years after the policy started. He signed up to receive the same benefits as his original pension policy and Norwich Union accepted that in providing the Section 32.

Ombudsman's decision

12. I do sympathise with the position that Mr P now finds himself in. Mr P had an expectation that the transfer he made to the Section 32 Plan would result in him receiving a larger pension than he had with his previous employer. But there was no guarantee that the Plan pension would be better, the only actual guarantee provided was that the resultant pension would not be less than the GMP.
13. The terms of the contract that Mr P had with Norwich Union are spelt out in the policy document and these have been examined carefully as part of the determination in PO-13991. The conclusion I reached in that case was that I was not satisfied that a contractual or other guarantee to provide an escalation over the GMP was made or could be inferred in Condition 9 or otherwise. Clearly, it was hoped that the policy would accrue sufficient value to meet the GMP and also the escalation rate. But neither the confirmation letter nor the policy guaranteed, without exception, that the escalation rate chosen would be met. I do not find that the arguments made by Mr P cause me to change or reconsider that decision.
14. Mr P has also mentioned the letters he received in relation to the complaints he made about Norwich Union's investment performance. The letter Mr P received in 2003 was not a guarantee of benefit, as it clearly states that it is an illustration of future benefits at the normal retirement age of 65. Mr P cannot therefore rely on the letter, and the benefits were subject to the terms of the policy, as explained above.
15. Therefore, I do not uphold Mr P's complaint.

Anthony Arter

Pensions Ombudsman
18 December 2017