

Ombudsman's Determination

Applicant	Mrs R
Scheme	Aviva Staff Pension Scheme (the Scheme)
Respondent	Trustees of the Aviva Staff Pension Schemes (the Trustees)

Outcome

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

Complaint summary

3. Mrs R is complaining that she was incorrectly transferred out of the Scheme to a Section 32 Buy Out Policy (**the Policy**). She had originally assumed that the transfer was a compulsory buy out, but recently discovered that the original transfer form is missing the signature page.

Background information, including submissions from the parties

4. Mrs R was a member of the Scheme (formally known as the Norwich Union Staff Pension Plan) between 1 July 1985 and 29 December 1989.
5. Sometime in 1990, Aviva, who are the administrators of the Policy but are not a party to this complaint, received a transfer form in relation to Mrs R. The form states at the top:

"The information requested will enable Norwich Union to issue a detailed policy document enabling benefits to be paid promptly when they become due. If any problems occur during completion of this Proposal, advice can be obtained from the Trustees of the transferring scheme, your financial advisor or local Norwich Union branch."
6. The last page of this document is now missing. This would have contained the member's signature, the signature of the person authorised by the Trustees to act on their behalf and the date of each signature.

7. An internal memo provided by Aviva to the Trustees and Mrs R shows that on 4 July 1990 it received a transfer form in relation to a transfer out of the Scheme to the Policy. The Trustees have submitted that the date the money was transferred is most likely to be 12 July 1990 (an amount of £1,367).
8. Mrs R was sent a letter and a copy of the Policy schedule on 27 July 1990. It said:

“The Policy for which you have proposed is a Norwich Union Transfer Plan.

You have entered into an agreement with the Norwich Union Life Insurance Society under the terms of which one or more payments will be made in return for certain rights and benefits. Certain information about the transaction and what it means for you is set out below. The intention of this is to give you an overall picture of the product which has been recommended as being suitable for your circumstances.”
9. It also stated that the proposal and declaration date is 4 July 1990 and the “currency date” as 12 July 1990.
10. In 1999, the Policy underwent a review to ascertain if the Policy had been miss-sold. This resulted in the issue of a separate policy in November 1999 with compensation awarded to Mrs R (£5,932.10).
11. Due to her personal circumstances, Mrs R contacted Aviva in 2017 regarding accessing her benefits (using the new flexible retirement options). However, she was informed that the Policy was not able to meet the guaranteed minimum pension and therefore she could not access her benefits until state retirement age.
12. On 17 November 2017 Mrs R telephoned Aviva to complain. Aviva replied on 14 December 2017 to explain how the Policy was established and how it had performed over the years. Mrs R was unhappy with the response and asked for specific information in relation to the documents relating to the Policy and Aviva’s internal systems at the time of the transfer.
13. Aviva wrote to Mrs R on 18 January 2018 and said that it was unable, despite an extensive search, to find a copy of the last page of the transfer documents. In relation to the transfer, Aviva said:

“I have also investigated whether there would have been circumstances, at that time, when there would have been no need for a fully completed proposal form. It appears that there were instances where staff completed the options pack issued by Staff Pensions, together with a partially completed proposal, and based on those instructions, a suitable discharge/choice was deemed to have been made.

There were therefore two ways the transfer may have occurred. I asked whether the information on your policy schedule showing the date of the proposal and declaration would indicate whether it was more or less likely that you fully completed a proposal form. I was told that those areas on the policy schedule were likely to be mandatory fields, and therefore either relate to the actual date of the

proposal, or the date Staff Pensions signed the forms based on the instructions contained within the option pack. I therefore contacted Staff Pensions in Perth, to see if they had any further information. Unfortunately, they have no scanned or paper documents, or notes on the system to show which method of transfer was used.

I am therefore unable to provide evidence as to whether you did, or did not, sign the proposal form. It does though, appear likely, that you exiting the Staff Scheme was as a result of the information you provided by completion of the pensions option pack.”

14. The letter went on to say that it was Aviva’s view that Mrs R could have raised a complaint about the transfer at the time she received the letter and policy schedule in 1990 or during the pensions review in 1999.
15. Mrs R raised a complaint with this office. As part of this, she was advised to undertake the internal dispute resolution procedure (**IDRP**) with the Trustees. She therefore raised her complaint under this process on 23 August 2018. In her letter, Mrs R explained her interaction with Aviva in relation to her complaint, the background to why she was complaining and her financial losses. She also said that part of the transfer form setting out her personal details appeared to be in her handwriting. However, she claimed that the lack of a signature was proof that she had never opted to leave the Scheme.
16. The Trustees responded under the IDRP on 28 September 2018. It did not uphold the complaint on the basis that it was more likely than not that Mrs R had signed the transfer form, especially as she had stated she had completed part of the form herself. It highlighted that the transfer could not have taken place without the member and the Trustees completing the transfer form. It also raised the possibility that, if Mrs R was concerned about the transfer, she could have raised the matter in 1990 or 1999.
17. On 5 November 2018 Mrs R complained to the Trustees, via email. She mentions that the Trustees may have made an “executive decision” to transfer her out in 1990. Mrs R received a reply the same day reiterating that a transfer would only have occurred if the member had made the request.
18. Mrs R asked this office to proceed with an investigation. As part of this, the Trustees submitted further information which is set out in summary below:-
 - They highlighted that the Scheme and the Trustees are a separate entity from Aviva and therefore they do not have access to Aviva’s systems.
 - When members left service, the practice at the time was to send a deferred pension statement, a transfer value, a partially completed Section 32 Buy Out Policy form and an illustration of the benefits available under such a policy. To proceed with a transfer, members needed to return the application to the Trustees for signing.

- There is an agency number on internal memo provided by Aviva. This relates to Mr R (Mrs R's ex-husband). This would have allowed for enhanced terms to be applied to the transfer. In this case, it was noted that Mr R was an employee at the time of the transfer and, as such, no commission was applied to the transfer. However, as the agency number related to Aviva and not the Scheme, the Trustees were unable to provide any further details. At no time have they suggested that Mr R exited Mrs R from the Scheme. In any case, the only person that could have done this was the member.
- They believe that it was likely that Mrs R requested the transfer.

Adjudicator's opinion

19. Mrs R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised below:-
 - She agreed that it was unfortunate that the Trustees or Aviva were unable to locate a copy of the signature page of the transfer form. However, as the form was partially completed by her and contained information relating to Mr R's agency number, it would be unlikely that the form was not submitted by her. It was also unusual that the Trustees or Aviva would have a document with her handwriting on it, unless it had been submitted by her.
 - However, given the passage of time, it is difficult to come to a definitive conclusion. But, on the balance of probabilities, it was more likely than not that the transfer form had been submitted by Mrs R.
20. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. In summary, Mrs R has submitted:-
 - She does not remember completing the transfer form.
 - She is upset that Mr R's integrity had been questioned and the accusation that he was responsible for exiting her from the Scheme.
 - She felt that the Trustees had misled the Pensions Ombudsman and questioned the accuracy of information provided by the person replying on behalf of the Trustees. In particular, that that person worked for Aviva and therefore had access to Aviva's internal systems.
 - For personal reasons, she never would have signed something on 4 July, or that she would have taken the forms to a branch or Scotland on 4 July 1990. She questions that she would have signed and returned a document on the same day.
 - She questioned the agency number and codes referenced on the Aviva internal note.

- She complained that the complaint process had been ongoing for 18 months and this was causing her considerable distress.

21. Mrs R has provided her 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 Mrs R for completeness.

Ombudsman's decision

22. On reading the responses by Mrs R, I believe that she has become somewhat confused about the difference between Aviva, as the administrators of the Policy, and the Trustees of the Scheme. While they may both be related to the Aviva employer, the Trustees are a separate entity from Aviva, their role is to administer the occupational pension scheme and they have no connection to Aviva's business or the other policies for which it is responsible. While Mrs R claims that the Trustees will have access to Aviva's systems and therefore have more information than they have given to this service, I would be concerned if this was the case. Under data protection laws, organisations should only have access to personal information on a "need to know" basis. Carte blanche access to Aviva's systems and the personal information of policy holders not related to the Scheme would be in breach of these laws. I am therefore not convinced by Mrs R's arguments that the Trustees are withholding information that it may have on Aviva's systems or processes.
23. Mrs R has also raised arguments in relation to the agency number and Mr R's role in the transfer. Looking at the information provided by the Trustees, I cannot see that it questioned Mr R's integrity or made any allegations that Mr R is responsible for the transfer. All that they have said is that the internal memo from Aviva shows that Mr R was a member of staff and because of this, Mrs R's transfer was commission free. This does not imply any wrong doing on the behalf of Mr R. Nor is this information in the control of the Trustees, as the internal memo is one issued by Aviva and is an element it took into account when accepting the transfer. Should Mrs R have any further issues in relation to the agency number, or Aviva's internal processes, then this is a matter for her to take forward with Aviva.
24. Mrs R has submitted that she never would have signed or submitted a document on 4 July 1990 and, that if she had, for personal reasons, she would have remembered doing so. It is hard for anyone to remember what may or may not have happened on a specific date nearly 30 years ago. However, I believe that Mrs R is missing a further element. In the letter she received from Aviva dated 18 January 2018, they mention that the date of 4 July 1990 could have been the date that the Trustees signed the transfer form. While I do not doubt Mrs R's assertion that she would not have signed a document on this date, it cannot be ruled out that 4 July 1990 is the date that the Trustees signed the transfer form. I therefore cannot agree with her argument that, merely because she would not have signed anything on this date, is enough to convince me that the document was not signed by the Trustees on this date.

25. I note that while Mrs R did originally complain to Aviva in November 2017, her complaint was only made to the Trustees in August 2018. I therefore cannot agree that there has been any undue delay on behalf of the Trustees in considering her complaint, or in the responses it has given to this service. I can understand Mrs R's frustration with the process, however, as I have said, Aviva and the Trustees are separate entities and my investigation is only in relation to a complaint brought against the Trustees.
26. While I empathise with the situation Mrs R currently finds herself in, I cannot agree that there is enough evidence to show that Mrs R did not complete and return the transfer form sometime in 1990. I agree with the Adjudicator that it is unfortunate that neither the Trustees or Aviva have been able to locate the last page of the transfer form in order to put Mrs R's mind at rest. However, as the Trustees are in possession of a document with Mrs R's handwriting on it (even if it is only a small part of the form); that it could only have done the transfer with the consent of the member; and the wording on the letter she received in July 1990 refers to the policy holder entering into an agreement with Norwich Union and makes no mention of a compulsory buy out, on the balance of probabilities, I conclude that Mrs R requested the transfer.
27. Therefore, I do not uphold Mrs R's complaint.

Anthony Arter

Pensions Ombudsman
20 February 2019