

Ombudsman's Determination

Applicant	Mr Y
Scheme	Aviva Section 32 pension plan (the Plan)
Respondent	Aviva Life & Pensions UK Limited (Aviva)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by Aviva.

Complaint summary

2. Mr Y complained that Aviva (previously Sun Life) is not allowing him to take a tax-free lump sum, or early retirement, from the Plan. He said the policy document (**the Policy**) sets out both as options.

Background information, including submissions from the parties

3. Mr Y was a member of the Diamond Shamrock UK Pension fund (**the previous Scheme**) which was wound up in 1984 and Mr Y's accrued pension benefits were transferred into the Plan with Sun Life.
4. On 7 January 1987, Sun Life sent the Policy and a statement of benefits to Mr Y. The cover letter explained that his pension would be adjusted in line with changes in the Retail Price Index (**RPI**). The statement of benefits dated 6 April 1984, confirmed Mr Y's benefits as:-
 - A personal pension of £502.92 per year at the selected retirement date of 21 June 2019.
 - A widow's pension of £251.46 per year on death after retirement.
 - A lump sum of £1,275.30 on death before the selected retirement date and a widow's pension of £251.46 per year.
 - A Guaranteed Minimum Pension (**GMP**) of £2,304.59 per annum payable from Pensionable Age (Mr Y's 65 birthday).

7. The Policy said under the following provisions:-

“1.3 SOCIAL SECURITY PENSIONS ACT 1975

The provisions of this section 1.3 of the policy shall apply if the Member was entitled to a guaranteed minimum in relation to the pension for him under the Scheme in accordance with section 35 of the Social Security Pensions Act 1975 and that guaranteed minimum is provided under this policy instead of under the Scheme and shall override any provisions of this policy which are inconsistent with them...

Apart from the provision of this policy set out in section 1.5 (b), no provision of this policy shall operate to reduce the amount of pension payable hereunder to being less than the guaranteed minimum and the Society shall be entitled to restrict the operation of any of the provisions of this policy to ensure that the said guaranteed minimum is payable in pension form...”

...

“1.4(b) Early retirement

Subject to the provisions of section 1.3, if the member so requests the personal pension may become payable from any date before the Selected Retirement Date provided...”

...

“1.5 Cash sum for the Member in lieu of part of his personal pension

On the Selected Retirement Date or any earlier date of retirement...the Member may exchange up to one quarter of the annual amount of his personal pension as a cash sum...Any such cash sum payable under this option shall be subject to the provisions of section 1.3...”

5. On 16 July 2018, Mr Y asked for a projection of his pension and the current fund value.
6. On 23 July 2018, Aviva confirmed the transfer value as £65,947 and provided a projection of Mr Y's pension benefits at his selected Plan retirement date of 21 June 2019 (Mr Y's 65 birthday).
7. On 2 August 2018, Mr Y telephoned Aviva to query the projection.
8. On 3 August 2018, Aviva emailed Mr Y saying:

“Please note that the benefits from this policy are wholly in respect of the Guaranteed Minimum Pension (GMP) and therefore no tax-free lump sum would be payable at your normal retirement date if an annuity is taken with Aviva. The GMP payable at your normal retirement was shown on the projection that was issued to you previously.

You may be able to transfer these benefits to another pension provider who may be able to provide you with a tax-free lump sum on your retirement. If you require a transfer pack please let us know.”

9. On 3 August 2018, Mr Y emailed Aviva to complain, referring it to Section 1.5 of the Policy that stated he could exchange 25% of his pension for a lump sum.
10. On 24 September 2018, Aviva sent its final response, not upholding the complaint. Aviva did not have a copy of the Policy but referred to a booklet for another plan. Aviva said, “section 1.3 states that no provision of the policy shall operate to reduce the Guaranteed Minimum Pension (GMP). The terms of the policy provide a basic pension of £502.92 per annum, which is revalued in line with the Retail Price Index (RPI) from April 1984 up until the year of retirement.” This was calculated as £1,599.14 per year by Aviva in January 2018.
11. Aviva explained:

“In some circumstances, as in this case, the pension calculated will be lower than the Guaranteed Minimum Pension (GMP) of £2,304.59 per annum that must be provided under the policy at your selected retirement date. We have therefore quoted the GMP. Due to the shortfall in providing the GMP, no tax-free lump sum would be payable.”
12. When Mr Y complained to us, Aviva confirmed that its letter of 24 September 2018 explained its final position.
13. Mr Y said Aviva had responded without having seen a copy of the Policy. He said the Policy clearly states there is a provision for early retirement (1.4 (b)) and for a tax-free lump sum (1.5) “both of which are not allowed under a GMP scheme and I believe they have failed to answer why this is contained within the policy”. Mr Y said he thought that this would suggest that the original policy was mis-sold.

Adjudicator’s Opinion

14. Mr Y’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator’s findings are summarised below:-
 - Under the previous Scheme Mr Y was contracted out of the State Earnings Related Pension Scheme (**SERPS**), and as a condition of contracting out the Scheme had to provide a GMP at State Pension Age (**SPA**). When Mr Y’s pension benefits were transferred, the replacement policy also then had to guarantee to pay the GMP as a minimum at SPA.
 - The Adjudicator agreed that the Policy provisions 1.4 (b) and 1.5 allowed for the personal pension to be taken early subject to a reduction, and for some of the pension to be commuted for commuted tax-free cash. However, both options were

subject to the Policy provision 1.3 which said the GMP must be paid as a minimum, and no other provision could reduce this amount.

- As the value of Mr Y's Plan is insufficient to cover the cost of providing the GMP at SPA, the shortfall is made up by Aviva. As it is only the GMP that is being paid this restricts Mr Y's option under the Plan and Mr Y cannot take his pension early or exchange some of his pension for tax free-cash.
 - The Plan has a shortfall because the cost of providing the GMP has increased significantly since 1984. This is due to the investment conditions being different to those in the 1980s. This is not something that the Trustees or Aviva could have predicted in 1984. The expectation at the time was for the plan to provide benefits well in excess of the GMP.
 - The widow's pension under the Policy is £251.46 per annum, but the Policy also provides a guarantee of the minimum pension on death before retirement. This is the widow's GMP. This is the second figure of £66.88 per annum which is revalued by 8.5% per annum. If this is more than the widow's pension the Policy would have paid the widow's GMP. The Policy provision 1.7 refers to the death before retirement benefit, and this is also subject to the Policy provision 1.3.
 - The Financial Assistance Scheme (**FAS**) helps members of defined benefit schemes who lost all or part of their pension following their Scheme coming to an end between 1 January 1997 and 5 April 2005. The wind up of Mr Y's scheme was before this date, but in any event would not apply as the pension benefits are now in his own name.
 - The personal pension increased by RPI, is less than the GMP, therefore Aviva is meeting the terms and conditions of the plan by paying the GMP only.
15. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
16. Mr Y 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 Y for completeness, they are set out below:-
- The Policy clearly states that there is a provision for a lump sum and early retirement. Therefore, there are two parts to the policy the personal pension and the GMP. Both parts should be paid to Mr Y.
 - The lump sum and early retirement options should not have been offered as they breach the regulations for a GMP at the time the Policy was drawn up.
 - The Policy offers options that are unobtainable without breaching the rules concerning the GMP, so the Policy was mis-sold.

Ombudsman's decision

17. Mr Y has argued that his Plan is in two parts, and he should get both the GMP and the personal pension amounts set out in the Policy. However, the Policy only provides a guarantee that the pension from the Plan will be at least equal to the GMP. Aviva, as the provider of the Plan are legally obliged to pay the GMP and must make up any shortfall. As the personal pension revalued by RPI is less than the GMP amount, then it is the GMP only that is paid, as this is the minimum pension that must be provided.
18. I do sympathise with Mr Y, as he had an expectation that he would have the option of taking his pension early and receiving a tax-free lump sum. These options are not available as the Plan is only paying the GMP.
19. I do not agree that the Policy is in breach of the GMP regulations, because the options of early retirement, and taking a tax-free lump sum were included in the Policy provisions. Mr Y could have taken either of these options had there been no shortfall under the plan.
20. Aviva is therefore proposing to put into payment the GMP which it must pay to Mr Y from SPA. Mr Y will then be in receipt of the correct benefits from the Policy.
21. I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman
20 September 2019