

Ombudsman's Determination

Applicant	Mr H
Scheme	Aviva Staff Pension Scheme (the Scheme)
Respondents	Trustees of the Aviva Staff Pension Schemes (the Trustee)

Outcome

1. I do not uphold Mr H's complaint and no further action is required by the Trustee

Complaint summary

2. Mr H has complained the Trustee has told him that information provided to him prior to him transferring benefits from the Scheme was incorrect. He says he has been financially disadvantaged as a result and that had he known the correct information he would not have transferred.

Background information, including submissions from the parties

3. Mr H was a member of the Provident Mutual Pension Scheme from 15 August 1988 to 4 August 1995. When the Provident Mutual Pension Scheme was merged with the Scheme on 1 April 1997 his accrued pension benefits were transferred and became governed by the 'Provident Mutual' section of the Scheme.
4. Mr H requested details of the transfer value of his pension benefits in an email on 17 February 2010.
5. On 31 March 2010, the Scheme provided a written transfer quotation of £216,045.45 based on a total pension of £7,190.16.
6. Following a query raised by Mr H the Scheme issued a further quotation which split the total pension between GMP and non GMP. This showed the GMP at the date of leaving as £811.72 and the non GMP element as £2,265.70. Both pensions had been revalued by 5% p.a. from the date of leaving and further enhanced by 18% as a result of the merger between Provident Mutual and General Accident.
7. The quotation also confirmed "...the scheme in fact revalues the GMP element in line with the non-GMP, i.e. at 5% per annum and the merger enhancement"

8. The revalued figures were quoted as GMP of £1,896.50 and non GMP of £5,293.58, thus giving a total pension of £7,190.08.
9. The statement further said "If you were to transfer the non-protected rights the GMP would continue to be increased as the full deferred pension at 5% per annum..."
10. On 12 June 2010, Mr H decided to transfer his non-GMP benefits to a Self Invested Personal Pension (**SIPP**) with Sippdeal.
11. On 29 June 2010, the Scheme paid a transfer value of £193,761.46 to Sippdeal.
12. The Scheme administrator wrote to Mr H on 9 December 2013, to tell him he was entitled to a pension (the remaining GMP) from his 60th birthday on 15 March 2014. The estimated value of the pension was quoted as £2,305.20 p.a. It was said to include all pension increases since the date of leaving, together with the 18% enhancement.
13. Mr H did not take his pension from his 60th birthday and on 5 December 2016, he wrote to the Scheme requesting a current valuation of his pension and confirmation of the rate of increase being applied each year. He also asked for a transfer value of the pension.
14. The Scheme administrator replied on 19 January 2017. It said the information previously given to Mr H had been incorrect. The information previously given about how the pension revalues in deferment was wrong. As the remaining pension was all GMP it should be governed by the same legislation used to treat GMPs.
15. A quotation attached to the letter showed the current value of the pension as £1,581.84 p.a. and was payable from age 65. The revaluation to age 65 would be the lower of 5% and Section 148 orders. These revalue the GMP broadly in line with National Average Earnings.
16. The Trustee has confirmed that the transfer value paid included allowance for revaluation of the total pension over and above the statutory minimum.

Adjudicator's Opinion

17. Mr H'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:-
 - Following clarification from the Trustee it is accepted the transfer value paid included allowance for revaluation of the total pension over and above the statutory minimum.
 - Mr H claims that had he been provided with the correct information he would not have elected to transfer.

- In these circumstances, the Ombudsman would consider whether it can be shown that financial loss or non-financial injustice has resulted from the incorrect information given. So did Mr H take the decision to transfer, which he would not otherwise have done, in the expectation of receiving the higher benefits?
 - Mr H initially requested a transfer value of his total pension benefits. It is, therefore, reasonable to conclude he was already giving consideration to the transfer of his pension from the Scheme.
 - He subsequently requested a split between the GMP and non-GMP elements of his pension and chose to transfer the larger non-GMP element to a SIPP, thereby foregoing that portion of his entitlement to defined benefits under the Scheme.
 - In 2016, Mr H also requested the transfer value of the GMP element of his Scheme benefits. It is reasonable to conclude he was considering the transfer of this remaining portion of his defined benefits under the Scheme. This would indicate he was happy with his decision to transfer.
 - Mr H says that had he known the correct value of the GMP element of his pension at the time he would not have opted to transfer the non-GMP element. The Adjudicator was not persuaded by this argument. The non-GMP element represented the significant majority of his entitlement under the Scheme regardless of the way in which the GMP was revalued.
 - It is not clear whether Mr H sought financial advice when establishing his SIPP and deciding to transfer his pension, but it is reasonable to conclude he was aware of the benefits he was giving up in doing so. In the Adjudicator's view it was more likely than not he would have made the same decision to transfer had he known the correct GMP figure.
 - Mr H remains entitled to the value of his benefit entitlement under the Scheme, albeit that the majority of this value is now held within his SIPP. He is in the correct position and has suffered no financial loss as a result of the incorrect information provided to him.
18. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
19. Mr H 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 main points made by Mr H for completeness.
20. In his comments Mr H says:-
- His decision to transfer only the non GMP element was based on the ratio of Transfer Value to Pension. He had decided that a Transfer Value in excess of 35 x pension represented good value, a figure below that did not represent good value. The transfer value offered to him for both elements combined did not represent

good value nor did the GMP element alone. The non GMP value did represent good value, based on the information provided at the time, hence his decision.

- To make sure that he was comparing like with like he had asked the Scheme administrators to provide specific information about the benefits that would be left within the scheme. Once he knew what would be left in the scheme, he could be sure of what he was giving up.
- The request for this specific information was so that he did not need to try and interpret or understand other information provided by the Scheme. The information supplied to him confirmed that the GMP and non GMP elements were calculated and defined in the same way which meant that a direct comparison of the Transfer Value to Pension ratio for each element was valid.
- He was now told that the GMP and non GMP elements should have been calculated and defined in different ways which means that a direct comparison of the Transfer Value to Pension ratio for each element was invalid. Misinformation was the direct and sole reason for his decision.
- The end result of the constant misinformation provided by Aviva is that the benefits left within the scheme are considerably less than he was led to believe they would be. The result of this is that the current transfer value is considerably less than it would have been. This clearly is a financial loss.
- He says there is obvious injustice in the situation in which he finds himself. Aviva contends that it is acceptable to provide incorrect information, on more than one occasion, without having to take responsibility when that information is relied upon to make decisions.
- He believes this runs contrary to all the ideals of the Financial Conduct Authority, particularly at a time when the whole matter of transfers out of Final Salary schemes is mired in controversy.

Ombudsman's decision

21. The Trustee has accepted it provided incorrect information to Mr H. So there has been maladministration committed by the Trustee.
22. The question is whether Mr H has acted to his detriment in reliance on that information. If he has, my role is to put him in the position, as far as possible, he would have been in had it not been for the maladministration.
23. Mr H initially requested a transfer value quotation on 17 February 2010. He was told his revalued pension was £7,190.16, and the transfer value of this pension was £216,045.45. Both these figures were correct.

24. Following his request for a split between GMP and non-GMP, Mr H was told the revalued GMP was £1,896.50 and the non-GMP was £5,293.58. Both these figures were correct. The transfer value relating to the GMP was shown as £20,290.97.
25. However, early in 2010 Mr H was informed that the GMP would continue to be increased by 5% per annum. This was incorrect.
26. Mr H decided to transfer the non-GMP element of his pension to a SIPP. In doing so it is reasonable to assume he would have been aware he was giving up the guarantees of a defined benefits pension in return for the possibility of investment growth resulting in a higher pension. The transfer value paid was £193,761.46.
27. In a statement issued on 17 January 2017, Mr H was told the previous quotation of his GMP had been incorrect. The correct figure was £1,581.84 and future increases would be limited to the statutory maximum.
28. Mr H says his decision, on what benefits to transfer, was based on a multiple of 35 where a Transfer Value in excess of 35 times the pension represented good value and a figure below that did not represent good value. This is not something that he has mentioned before and appears to be nothing more than a rough rule of thumb.
29. If I apply this factor, the transfer value quoted represented 36.98 times the non-GMP pension and the value paid was 36.60 times the non-GMP pension. Therefore, in Mr H's opinion, it represented good value and he decided to accept this transfer value.
30. However, the balance of the quoted transfer value relating to the GMP element represented 10.70 times the quoted revalued GMP. Mr H did not consider this good value and so decided not to transfer the GMP element.
31. But had the correct GMP been quoted to Mr H the balance of the transfer value would still have represented far less than 35 times the GMP. The transfer value was only 25 times the basic GMP alone without any revaluation being taken into account.
32. I understand Mr H's point that he would not have been comparing like for like, but I am not persuaded that, given this was only an approximate measure, had the correct figure been quoted his decision to transfer his non-GMP pension and retain his GMP in the Scheme would have been any different.
33. So, the question then becomes whether Mr H is entitled to the higher GMP quoted to him on several occasions.
34. Whilst Mr H has received incorrect benefit quotations, this does not entitle him to the higher figure. The Trustee must act in accordance with the Scheme Rules, meaning that, generally, Mr H may only claim his rightful entitlement and the Trustee is not bound to pay the overstated amount.
35. The provisions for early leavers are set out in Rule 21.

36. Rule 21.1.2 describes the basis for increases to deferred pensions. It shows that the pension will be increased on 1 April each year by a combination of 'the Special Revaluation increase' and 'the Revaluation Increase'.
37. The Special Revaluation increase and the Revaluation Increase are defined in Rule 15. This shows that both rates are calculated with reference to the Retail Prices Index with the Revaluation Increase being limited to 5% per annum compound and the Special Revaluation increase being limited to 7.5% per annum.
38. Rule 21.1.3 says:

"The Trustee will, if necessary, further increase the pension to ensure that:

 - (a) The GMP is increased as required by the Contracting-out Laws..."
39. The provisions for increasing pensions whilst in payment are set out in Rule 25.
40. Rule 25.3 says:

"Where GMP is payable...The part of the GMP that is attributable to earnings for the tax years from 1988-89 to 1996-97 will increase in each year by the percentage specified in any order made by the Secretary of State under Section 109 of the Pension Schemes Act 1993 (which as at the date of these Rules is approximately equal to the percentage rise in the cost of living in each year, with a maximum of 3% per year)."
41. However, there are special provisions for Provident Mutual members, such as Mr H, which are set out in Rule 27.
42. Rule 27.7 shows that for Provident Mutual members the total pension attributable to Provident Mutual service is increased in deferment by 5% each year if this is more favourable to the member than the basis in Rule 21.1.
43. And Rule 27.8 shows that the part of the pension attributable to Provident Mutual service is increased by 5% each year whilst in payment.
44. The scheme actuary has confirmed that the transfer value paid, included a value for the additional increases in deferment, and the increase in payment, to which Mr H was entitled over and above the statutory minimum set out in Rule 21.1.3 and Rule 25.3.
45. I am satisfied that Mr H is entitled to the GMP revalued in line with statutory increases only, as explained by the Scheme administrator, in its letter dated 19 January 2017. Overall, Mr H is in the correct financial position.
46. I have no doubt the provision of the incorrect information has caused Mr H to suffer a significant loss of expectation and caused him distress and inconvenience.

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47. However, to compensate him, I note the Scheme administrator has already paid him £500 and the Trustee has offered him a further £500, which it should now pay to him if it has not already done so. This is no less than I would award in the circumstances.

48. I do not uphold Mr H's complaint.

Anthony Arter

Pensions Ombudsman
27 March 2020