

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE PENSIONS OMBUDSMAN

Applicant	Mr Lyndon John Shepherd
Scheme	Guardian Financial Services Retirement Annuity Pension Scheme (the Scheme) Policy No: P2508947733
Respondent	Guardian Financial Services

Subject

Mr Shepherd complains that Guardian Financial Services (**GFS**) provided him with incorrect information (both oral and written) about the benefits available to him from the Scheme which he relied upon to his financial detriment.

The Pensions Ombudsman's determination and short reasons

The complaint should not be upheld against GFS. Mr Shepherd is clearly no longer entitled to any retirement benefits from the Scheme. Although GFS provided him with contrary information several times during 2013 he did not reasonably act to his detriment relying on a belief that he was entitled to benefits.

DETAILED DETERMINATION

Material Facts

1. Mr Shepherd's date of birth is 12 March 1944.
2. In July 2001, he instructed GFS (via his Independent Financial Adviser) to pay the current transfer value available to him from the Scheme to G E Life Ltd. By completing the discharge form, he declared to GFS that he understood payment of the transfer value would extinguish all his benefits and entitlements under the Scheme.
3. GFS informed Mr Shepherd in August 2001 that they had sent a transfer cheque for £6,391 to G E Life Ltd. This money was used to purchase an immediate vesting personal pension annuity for him. (According to a P60 certificate for the 2012/13 tax year prepared by Re-Assure Ltd (formerly G E Life Ltd), the value of this annuity was £515 pa).
4. In May 2013, GFS sent Mr Shepherd a letter informing him that the Scheme policy would be administered by Guardian Assurance Ltd rather than by Guardian Pensions Management Ltd from 30 September 2013.
5. In response to this letter, Mr Shepherd notified GFS on 26 June by telephone that he was unaware that he had a policy with them. GFS replied that they would send him details of the benefits available to him from the Scheme in the post.
6. GFS sent Mr Shepherd on 2 July details of the current transfer value available to him from the Scheme, i.e. £10,310, together with:
 - their "It's time to choose your retirement options" factsheet;
 - their guide to "Shopping around for an annuity";
 - a personal illustration showing the estimated benefits available to him on retirement from the Scheme;
 - their "Key Features of the Lifetime Annuity Plan" factsheet; and
 - their "Converting your pension savings into cash factsheet".
7. The retirement options factsheet showed the following condition:

"You may be able to take all of your pension savings in cash if the value of this plan is less than £2,000 or if the total of all your pension savings is £18,000 or less."

8. On 5 July, Mr Shepherd telephoned GFS to inform them that he wished to take all the benefits available to him from the Scheme as cash on the grounds of triviality. GFS stressed that in order for him to do this, the total value of all his pensions had to be no more than £18,000. Mr Shepherd replied that, in his view, he met this criterion because he was entitled to an additional pension of £250 per month from Lloyds TSB (excluding state pension benefits). Although Mr Shepherd did not explicitly mention to GFS that he was also in receipt of a small pension from Re-Assure Ltd during this call, he says that the £250 figure also included this.
9. GFS sent Mr Shepherd the following documents on 11 July:
- their “Triviality a guide to converting your pension fund into a cash amount” factsheet;
 - a triviality quotation; and
 - a triviality claim form.
10. The factsheet stated that:

“You need to check very carefully if your pension savings can be converted into cash. If you need any advice, please speak to your financial adviser.

If you take the cash payment and discover later you weren’t eligible, then you’ll be liable for an additional tax charge and possible fine from HM Revenue & Customs (**HMRC**).

How do you decide if you qualify?

You may be able to convert your pension savings into a cash amount instead of taking an income. This is commonly known as a “triviality payment”. 25% of this payment is tax free and the rest is taxed as earned income.

The main criteria are that the total value of all your pension savings (not just this plan) must be £18,000 or less. You must also be at least 60.

As the value of your plan is £18,000 or less, we’ve given you a quotation to convert it to a cash sum. This doesn’t necessarily mean that you qualify.

If you have any other pension savings, either in payment, not yet in payment, or previously paid out as triviality, please follow the chart overleaf carefully. It will help you decide if you can take the whole of your pension as cash.

...

You'll need to ask each of your pension providers to value your pension rights, for triviality purposes, at the date you nominated...

You must value all your pension rights, those already in payment and those not yet in payment. Be careful valuing any pensions in payment. Their value isn't the amount that you paid each year. Your provider will be able to work it out the value for you."

11. The covering letter said that Mr Shepherd should complete the triviality claim form and return it to GFS with a copy of his passport if he was eligible to take the trivial commutation lump sum and wished to pursue this option.
12. Mr Shepherd did this on 14 July. By completing the form with an assumed nominated date of 11 July 2013, Mr Shepherd declared to GFS:
 - that the total value of all his pension savings did not exceed £18,000;
 - to ensure that this was true, he had obtained details of all the values from his other schemes on the nominated date;
 - he understood that payment of the triviality amount extinguished his entitlement to any other payment from the Scheme; and
 - this declaration was true and complete in every particular.
13. On 19 July, GFS informed Mr Shepherd that, after checking their records, they discovered that they had already paid out the benefits available to him from the Scheme to G E Life Ltd in 2001 and could not therefore pay him the trivial commutation lump sum. GFS apologised to Mr Shepherd and in recognition of the distress and inconvenience which they caused by their mistakes, offered him a goodwill compensation payment of £300.
14. Mr Shepherd informed GFS that he was unhappy with their decision. He said that he had arranged for improvements to be made in his garden costing £3,595 and agreed to pay off the (reduced) debt on a number of his credit cards totalling £1,855 only after GFS had reassured him several times both verbally and in writing that he was entitled to receive a trivial commutation lump sum from the Scheme.
15. He also said that during one telephone call GFS had informed him that a copy of his driving licence would suffice (since his passport had expired) in order for them to process his claim.

16. When GFS subsequently told him that he was, in fact, not entitled to receive a trivial commutation lump sum from the Scheme, he had to borrow money from his family to pay for the work carried out in his garden and also allow the special offer to settle his credit card debt on a reduced basis to lapse.
17. His complaint was not upheld by GFS because in their opinion, he had only suffered a loss of expectation and some inconvenience because of their mistakes.

Summary of Mr Shepherd's position

18. He has submitted as evidence in support of his application:
 - copies of two invoices for the work undertaken in his garden, one from R D Landscapes dated 15 July 2013 for £1,700 and the other from P.B.S. (South Wales) Ltd for £1,895 (which is undated); and
 - a copy of the letter dated 12 July 2013 from Mackenzie Hall, a specialist debt recovery company, showing that Vanquis Bank was prepared to reduce the amount which he owed it from £3,711 to £1,855 if payment was made before 22 July 2013.
19. He has endured serious financial hardship during the past few years and had to rely on heavy use of his credit cards to survive. He would not have embarked on any garden improvements in July 2013 if GFS had not led him to believe that he was entitled to benefits from the Scheme.
20. At the time of signing the triviality claim form, he genuinely believed that the value of his pension benefits from all sources was less than £18,000. If it transpired that this was not the case, he understood that HMRC could apply tax penalties to his benefits.
21. He wrongly but understandably thought that G E Life Ltd was part of Guardian Royal Exchange (now GFS).
22. It is unfair to expect that he should have been able to connect the transfer value of £6,391 paid by GFS to G E Life Ltd with the transfer value of £10,310 quoted by GFS in July 2013 for the benefits available to him from the Scheme.
23. He telephoned GFS to check that he had completed the triviality claim form correctly and to also seek confirmation that he was entitled to the benefits quoted. He says that GFS had reassured him that he was eligible to receive the benefits from the Scheme during this call.

24. A company the size and background of GFS could reasonably be expected to provide him with accurate information about the benefits available to him from the Scheme.
25. He did not spend any money or give instructions for work to be carried out on his home until he was repeatedly reassured by GFS that he was entitled to benefits from the Scheme.
26. He did not understand the meaning of “the total value of his pension savings” at the time he signed the triviality claim form.

Summary of the position of Guardian Financial Services

27. They informed Mr Shepherd several times in 2013 that he was still entitled to benefits from the Scheme by mistake because they had failed to update their records for him correctly following the transfer of his pension rights in 2001 to G E Life Ltd.
28. It is reasonable to expect that Mr Shepherd would have asked them why he still had benefits in the Scheme when he had already transferred them away to G E Life Ltd.
29. Mr Shepherd should be receiving regular statements from Re-Assure Ltd detailing his annuity payments.
30. They are finding it difficult to understand why Mr Shepherd would have spent money on carrying out improvements to his garden when he says that he was struggling financially.
31. They asked Mr Shepherd during a telephone call if he was receiving benefits from Re-Assure Ltd. Mr Shepherd replied that he was not and would contact them to find out if “there was money waiting to be paid to him.”
32. They would have relied on Mr Shepherd to perform the requisite calculations properly (after contacting his other pension providers) in order to check that the total value of all his pension savings did not exceed £18,000 before signing the triviality claim form and therefore state that “the declaration was true and complete in every particular”.

Conclusions

33. By signing the transfer discharge form in July 2001, Mr Shepherd authorised GFS to pay the current transfer value available to him from the Scheme to G E Life Ltd and also acknowledged that once payment was made, he would have no future claim on the Scheme. Consequently when he was informed in August 2001 by GFS that the transfer had been completed, it is clear that he no longer had any entitlement to benefits from the Scheme.
34. GFS have admitted that they failed to update their records to show that Mr Shepherd had no further benefits in the Scheme following the transfer. I consider this failure to be clear maladministration on their part.
35. This error was compounded by GFS when they sent Mr Shepherd by post incorrect information about the benefits available to him from the Scheme on three occasions, i.e. in May 2013, on 2 July 2013 and again on 11 July 2013. They also reassured him during many telephone calls in June/July 2013 that he was entitled to benefits from the Scheme. In my judgement, these errors constitute further maladministration on the part of GFS.
36. However, this in itself is not enough to enable the complaint to be upheld. Mr Shepherd must also have incurred actual financial loss as a direct consequence of the maladministration identified above. Although Mr Shepherd received incorrect details of his benefits, it does not, however, confer on him a right to the benefits erroneously quoted.
37. It is not straightforward, however, to prove a change of position relying on money which has yet to be paid and spent. It may occur in some circumstances such as when an applicant enters into an ongoing financial commitment which he would not otherwise have done and now cannot get out of in the belief that his benefits were more than he is actually entitled to.
38. Mr Shepherd says that he relied upon the incorrect information to his financial detriment but in my view, he ought reasonably to have recalled that he was not entitled to any further benefits from the Scheme having discharged the Scheme from all liability to provide any pension benefits for him by signing the transfer discharge form in 2001. He was perhaps falsely reassured; by GFS that he was wrong to think that he no longer had any benefits. However, there were a number of reasonable steps that he failed to take that would otherwise have

resulted in the mistake coming to light, or would at the least have meant that he would not have thought that he could receive the whole value of the Scheme in cash.

39. The factsheets sent to Mr Shepherd on 2 and 11 July by GFS clearly stipulated that he had to very carefully check that he met the criteria to convert the whole of his pension on the grounds of triviality into cash before applying. In particular, the factsheets said that:
 - the onus was on Mr Shepherd to value all his pension rights (i.e. those in payment and also those not yet in payment);
 - the values of his pensions in payment/in deferment were not simply the annual amounts he was being paid/will be paid; and
 - he should contact his pension providers to help him work out these values
40. The evidence suggests to me however that Mr Shepherd did not ask his pension providers to calculate the values of his pensions in payment before completing the triviality claim form on 14 July.
41. During the telephone conversation on 5 July with GFS, he said that he was receiving a pension of £250 per month from Lloyds TSB i.e. £3,000 pa but failed to mention explicitly the small pension which he was also receiving from Re-Assure Ltd was included in the figure. He was also confident that the total value of all his pension savings (excluding the state pension) was less than £18,000.
42. The value of the benefits available to him from the Scheme was £10,310. This meant that the total value of his other pension savings could only be £7,690 or less in order for Mr Shepherd to receive a trivial commutation lump sum from the Scheme.
43. It seems to me that Mr Shepherd had therefore merely compared the pension of £3,000 pa from Lloyds TSB with the £7,690 threshold figure and concluded that he met the above criterion.
44. If he had asked Lloyds TSB and Re-Assure Ltd to value the pensions for him, I consider it safe to conclude that he would then have found out that the total value would have been significant greater than £7,690.

45. In my opinion, if Mr Shepherd had performed the check properly, he would then not have incorrectly concluded that he could convert the whole pension available to him from the Scheme into cash and had the funds available to pay for his home improvements.
46. Furthermore, if he had contacted Re-Assure Ltd to value his pension with them, it would probably have acted as a trigger to recalling the transfer of pension rights from the Scheme which he had authorised back in 2001 to G E Life Ltd (if he had forgotten about it).
47. As the home improvements were carried out before Mr Shepherd had received the money, this makes it very difficult for him to claim reliance on what he was told because it was his choice to “jump the gun” – that is, to spend money before he had received it, however strongly he had been reassured that it was rightly his. The same would apply to the debt settlement, but more importantly, it would have been repayable at some time even if he had not been told that he had benefits with GFS. He did not change his overall net financial position to his disadvantage by agreeing to settle it in part.
48. I am therefore not satisfied that the Mr Shepherd has suffered any loss due to errors made by GFS.
49. Although the maladministration identified has not, in my view, caused Mr Shepherd any injustice in the form of actual financial loss, it is clear that he has suffered some distress and inconvenience as a result.
50. GFS has already sent Mr Shepherd a compensation cheque for £300 which he considers derisory. In my view, the amount offered is sufficient given that Mr Shepherd was in a position to have known, from the start that he had transferred the benefits to G E Life and that he plainly did know, but for whatever reason omitted to say, that he was receiving a pension from them.
51. I do not uphold the complaint.

Tony King
Pensions Ombudsman

2 October 2014