

Ombudsman's Determination

Applicant	Mr Y
Scheme	Friends Life Section 32 Buyout Policy - Plan Number E7830160 (284/399) (the Plan)
Respondent	Friends Life

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by Friends Life.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y complains that Friends Life has:
 - improperly used that part of the Plan fund value not attributable to his Guaranteed Minimum Pension (**GMP**) to partially cover the shortfall in the amount required to provide the GMP on his retirement: and
 - therefore, prevented him from exercising the "new pension freedoms" introduced in April 2015, enabling him to receive part of the Plan fund as tax free cash and invest the residual in an income drawdown account.

Background information, including submissions from the parties

4. Mr Y received a letter in July 1983 from United Biscuits (Pension Trustees) Limited (**the UB Trustees**) showing that:
 - his pensionable service in the United Biscuits Pension Plan (**the UB Plan**) was from 1 June 1974 until 10 June 1983;
 - his deferred pension payable at age 65 in the UB Plan would be £1,053.84 pa;
 - the cash equivalent transfer value (**CETV**) of his deferred annual pension was £2,981.52 including his contributions into the UB Plan of £2,026.10; and
 - the CETV also included a GMP "at the time of termination" of "£342.16 pa"

5. Mr Y sought independent financial advice from Edwards & Pringle before deciding to transfer his pension rights from the UB Plan to the Plan, a conventional with-profits Section 32 buyout policy, in 1985.
6. Mr Y received a quotation dated 23 April 1985 from Sun Life showing that a transfer value of £4,448.25 could secure a pension of £19,798 pa in the Plan at his Normal Retirement Date (**NRD**), 28 July 2017, i.e. his 65th birthday, with an attaching 50% spouse's pension on death after retirement. The quotation also stated that under no circumstances would the Plan pension at NRD be less than £4,713.53 pa, i.e. his GMP of £346.42 pa revalued annually at 8.5% up to age 65.
7. In accordance with HM Revenue and Customs (**HMRC**) records, Mr Y's revalued GMP at age 65 was £90.64 per week, i.e. £4,713.28 pa which was 25 pence less than the corresponding GMP shown on the 1985 quotation of £4,713.53 pa.
8. In April 2017, Friends Life sent Mr K a letter which showed the current transfer and projected values in the Plan at 28 July 2017 were £93,206.13 and £94,621.77 respectively. As his NRD was now approaching, Friends Life suggested that Mr K started thinking about the retirement options available to him from the Plan.
9. In its letter dated 5 August 2017 to Mr K, Friends Life said that:

"This policy was sold to you in February 1985 by Edwards & Pringle who were Independent Financial Advisers (**IFAs**)...and were responsible for providing you with financial advice at that time. As such we would not have been involved in the discussions that took place between you and your adviser over the basis and reason for recommendation of this policy...

Your original scheme was a defined benefit scheme which means you were guaranteed a set amount of pension that was based upon your period of service and final salary from the employment to which the pension scheme related. I note your concerns about the non-GMP pension you accrued in respect of your pensionable service from 1 June 1974 to 1 June 1978. On transfer out of the defined benefit scheme, the actuary of the original scheme would have calculated a transfer amount due in respect of the total period of service.

As this is a money purchase plan, all the rights to the previously guaranteed levels of pensions, including non-GMP pensions accrued were unfortunately lost. However, as we took on the GMP liability, your plan does have an underlying guarantee to at least provide this level of pension. It is standard across the industry that under plans of this nature...often the whole fund on retirement has to be used to provide the GMP...

As you have reached your selected retirement date the final value has now been secured at £93,316.03...We use the value of your fund to cover the cost of providing the GMP (currently this fund is insufficient by approximately 15%

but we cover this shortfall). You can shop around as another provider may be able to provide the GMP at a lower cost than we can...

From April 2015, legislation introduced a radical overhaul of pensions that enabled some policyholders to flexibly access their pension savings and removed the requirement to purchase a retirement income product such as an annuity.

However, the new regulations do not apply to a plan such as yours with a GMP liability. Under current legislation it is not permissible to commute your GMP and therefore your full fund cannot be paid as a cash lump sum under your current policy.

...I am afraid we cannot increase the fund value of your policy as requested. To do so would be unfair to other policyholders who have also been restricted in this way and would also not be equitable to other policyholders remaining in the with profits fund. I appreciate that this is not the response you hoped for, however, we are meeting our obligation to provide the GMP you are due."

10. In January 2018, the Financial Ombudsman Service (**FOS**) informed Mr Y it could not investigate his complaint that Edwards & Pringle had improperly sold the Plan to him in February 1985, because the IFA was not regulated at the time and did not in fact fall within its jurisdiction until much later.
11. In June 2018, Mr Y complained to the UB Trustees that they had calculated the deferred pension available to him from the UB Plan at age 65 of £1,053.84 pa incorrectly (and consequently also the CETV), because they had failed to allow for the fact that the GMP revalued at 8.5% pa during deferment up to age 65 in their calculations. The UB Trustees replied in July 2018 that:
 - they would be happy to try resolve his complaint informally;
 - the UB Scheme's Internal Dispute Resolution Procedure (**IDRP**) only applied to current members, or those who left during the previous six months before making their complaint; and
 - as his pension liabilities in the UB Plan were discharged 35 years ago, there was no case to be considered under IDRP
12. During the course of our investigation, Mr Y said that:

"I agree with you that neither Sun Life, Friends Life or any other of the fund managers that my pensions have passed through could be considered liable other than if their fees could be claimed to be overly excessive or their funds have been mismanaged. They had no reason to question the accuracy or lawfulness of any funds offered to them..."

"The trustee made his understated pension offer to encourage me to transfer because he only needed to offer a transfer sum sufficient to guarantee the

GMP on my contracted-out pension for Sun Life to accept them both as one and then use my non-contracted out subscription money and its growth to fund the guarantee on the other. By making a maximum pension offer four and a half times less than Sun Life's minimum, the trustee has ensured that I would have no reasonable option but to transfer thereby also relinquishing the trustee of his obligation to pay me the other half. The UB trustee's offer was not only made to encourage me to transfer at a knock down transfer offer; it was unjust, unlawful and untruthful and left me no plausible alternative but to transfer.

My claim is that the UB trustee wrongly produced misinformation that left me no reasonable option but to transfer my pensions and he failed to differentiate between my protected and unprotected pensions for the benefit of the trust and offer separate quotations for each. That was wrong and it has led to my transfer and the subsequent loss of the total of my pensions. This happened before the trustee relinquished liability for them."

Adjudicator's Opinion

13. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Friends Life. The Adjudicator's findings are summarised briefly below:

- A pension scheme is contracted out where it provides benefits in place of the State Earnings Related Pension (**SERPS**)/ State Second Pension (**S2P**) which replaced SERPS from 6 April 2002.
- One of the conditions of contracting out of SERPS before 6 April 1997, meant the UB Plan had to provide Mr Y with a GMP.
- Section 32 buyout policies such as the Plan are special schemes because they could receive transfers which included GMP benefits.
- The Plan had to guarantee to pay at least the GMP from Mr Y's previous scheme at State Pension Age (**SPA**), age 65 for Mr Y.
- Consequently, a requirement was placed upon the Plan to pay out at least Mr Y's revalued GMP at retirement and, if necessary, Friends Life must make up any shortfall in fund value to provide the GMP.
- Whatever fund is available in the Plan must therefore, in the first instance, be used to provide Mr Y with his GMP. Anything else left in the Plan after securing his GMP can be used for a tax-free cash lump sum or more pension (or both).
- In recent years, investment returns on some buyout policies have generally not been sufficient to meet GMP liabilities.
- As the Plan funds are insufficient to cover the cost of securing Mr Y's GMP, Friends Life had to use its own reserves to make up the shortfall. Under these

circumstances, there was no available funds to enable Mr Y to take a tax-free cash lump sum.

- Mr Y can use the Plan funds to shop around for a lifetime annuity on the open market, but there is no guarantee another pension provider can offer him an annuity greater than his GMP with those funds. If he can transfer his Plan funds to another registered pension scheme and the GMP liability is sufficiently covered then he may be able to take that part of the fund not required to secure the GMP as tax-free cash or income via drawdown.
 - GMP benefits are very valuable and one should not consider transferring them without taking suitable financial advice first. In Mr Y's case, he did seek independent financial advice from Edwards & Pringle before deciding to transfer the deferred pension benefits available to him in the UB Plan to the Plan.
 - In the Adjudicator's view, Mr Y's complaint should therefore be against Edwards & Pringle as it appeared the Plan had been mis-sold after providing financial advice. Unfortunately, FOS has informed him that it cannot investigate his complaint against the IFA and the Pensions Ombudsman cannot insist that FOS re-opens its investigation because Edwards & Pringle were unregulated at the time.
 - Mr Y could consider approaching Edwards & Pringle directly, but as he took unregulated advice in the mid 80's, it was unlikely this route would help him.
 - The Financial Services Compensation Scheme (**FSCS**) can pay compensation if an authorised financial services firm is unable, or unlikely to be able, to pay valid claims against it. As Edwards & Pringle is a going concern, any application to the FSCS by Mr Y will most likely be unfruitful however.
 - As the GMP figure held by HMRC for Mr Y's revalued GMP at age 65 of £4,713.28 pa is comparable to the figure shown on the Plan quotation of £4,713.53 pa, it was reasonable for Friends Life to assume that his correct revalued GMP at age 65 to be the higher figure of £4,713.53 pa. and this was the pension which it had to secure for him in the Plan.
 - Friends Life have therefore complied with the Plan's terms and conditions and current legislative requirements when paying the benefits available to Mr Y from the Plan. There has been no maladministration in its part.
14. Mr Y did not fully accept the Adjudicator's Opinion and the complaint was passed to me to consider. 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.

Ombudsman's decision

15. Mr Y provided his additional comments as follows:

- Our investigation into his complaint has revealed that it was the UB Trustees and not Friends Life who are mainly responsible for the unfortunate circumstances which he now finds himself.
- The UB Trustees provided him with incorrect understated figures for the deferred pension benefits available to him at NRA from the UB Plan. They also failed to provide separate quotations for his “protected and unprotected pensions”. In his view, these mistakes by the UB Trustees left him with little choice but to transfer his pension rights from the UB Plan into the Plan and the “subsequent loss of the total of his pension”.
- The errors occurred before his pension liabilities in the UB Plan had been discharged.
- He therefore now wants his complaint to me extended to include the UB Trustees without having to go through IDRP.

16. A Section 32 buyout policy such as the Plan is a defined contribution scheme with a GMP underpin which guarantees that a member's pension will be at least equal the GMP available to him/her from the transferring scheme regardless of whether or not there are sufficient funds in it to secure the GMP on SPA. In Mr Y's case, the Plan funds were inadequate to cover the cost of securing Mr Y's GMP so Friends Life had to make up the shortfall.
17. Friends Life has therefore correctly put into payment the revalued GMP which it must pay Mr Y from SPA, which is also age 65 from the Plan. This revalued GMP has been confirmed to Mr Y as correct by HMRC.
18. In my view, Mr Y is in receipt of the correct benefit available to him from the Plan. If Mr Y is unhappy about the level of investment growth under the Plan then this is a separate issue which he should refer to Friends Life because it is not a matter which I can determine.
19. His complaint that the UB Trustees failed to provide him with accurate/adequate information of his deferred pension at date of leaving, and its CETV, including how the GMP and excess over GMP components of his deferred pension revalue during deferment is a new complaint, which must be raised formally with the UB Trustees under and IDRP process before I can investigate it.
20. If the UB Trustees refuse to deal with his new complaint, Mr Y may subsequently make a fresh application to this organisation subject to our usual jurisdiction checks to ensure his complaint can be investigated.
21. However, on the matter of the complaint against Friends Life, I can see no evidence of maladministration and it has correctly put Mr Y's revalued GMP into payment at age 65.

PO-18510

22. Therefore, I do not uphold Mr Y's complaint against Friends Life.

Karen Johnston

Deputy Pensions Ombudsman

18 September 2018