

Ombudsman's Determination

Applicant	Mr R
Scheme	Phoenix Life Personal Pension (the Plan)
Respondent	Phoenix Life Limited (the Administrator)

Outcome

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

Complaint summary

1. Mr R complained that he wanted to set up an annuity payable monthly in advance with the Plan funds. The Administrator said that as the Plan included a Guaranteed Annuity Rate (**GAR**) the annuity payment must be taken annually in arrears.

Background information, including submissions from the parties

2. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
3. In 1988, Mr R set up the Plan and began making contributions. The Plan contained a GAR as one of its features.
4. On 4 December 1997, Royal & Sun Alliance, who was the administrator of the Plan at that time, provided an illustration (**the 1997 Illustration**). The 1997 illustration set out the estimated growth of Mr R's Plan funds under two bases using different future economic conditions. It was prepared using the rules in force at that time which were set by the Life Assurance and Unit Trust Regulatory Organisation (**LAUTRO**) and then adopted by the Personal Investment Authority (**PIA**).
5. The two bases provided an estimated retirement fund which would produce an annual pension. The accompanying wording said that the figures were only examples and were not guaranteed and that the pension per annum would be used to provide a pension paid monthly in advance throughout the lifetime of Mr R.

6. On 25 February 2013, the Administrator sent Mr R an illustration based on a single life annuity and a five-year guaranteed period payable monthly in advance (**the 2013 Illustration**).
7. Between December 2019 and May 2020, Mr R requested further annuity illustrations. As he was unhappy with the information provided, he made a complaint to the Administrator. He said there had been delays in receiving requested information, the information had then been incorrect, and he had had to make numerous phone calls to resolve the issues.
8. On 11 June 2020, Mr R telephoned the Administrator to query which rate would be used when the annuity was paid. The call handler explained the basis of the annuity claim and how it worked and that it would be at the rate at the time of the claim not at the payment date. She offered to send quotes setting out the different annuity bases. The call handler also apologised for the previous service provided and offered £170.00 for any distress and inconvenience the issues had caused and £20.00 for the cost of Mr R's calls.
9. On 29 June 2020, Mr R telephoned the Administrator regarding the annuity options available to him. The call handler explained that the Plan had a valuable GAR. The GAR was for a single life, level annuity, payable annually in arrears with no guarantee period. The amount paid would vary if a different type of annuity was selected. The Administrator also sent an example policy schedule (**the Example Policy**) for Mr R's type of Plan. This confirmed the basis of the GAR and provided the amounts that would be payable.
10. The Example Policy contained the terms and conditions. Condition 9 set out how the method of payment of the annuity could be varied:

“9. On the written request of the purchaser within 30 days preceding the date when the retirement benefits become payable, the annuity payable (after allowing for any lump sum payable) may be altered as follows:

...

(ii) the method of payment of the annuity may be altered to half yearly, quarterly or monthly or to payment in advance and the **annuity shall be reduced accordingly.**”

[my emphasis]
11. On 19 October 2020, Mr R wrote to the Administrator and said in summary:-
 - He had been given inaccurate information regarding his pension benefits and there had been delays in actually providing the information.
 - He had been told that the payment of an annuity could only be annually in arrears. The misinformation regarding this meant he was not able to make a decision regarding his annuity.

- He was not satisfied with previous responses on this matter and so he had to call the customer contact centre on several occasions.
12. On 5 November 2020, the Administrator wrote to Mr R and said, in summary:-
- If he wished to take his pension now, the GAR of £104.05 per £1,000 of Plan funds would apply if he took a single life, level annuity payable annually in arrears. The GAR was only guaranteed on this basis.
 - If he wished to take his annuity on any other basis the annuity rate provided could be lower than £104.05 per £1,000.
 - If he selected an annual payment in arrears, then he would receive an income payment each year, but the payment would not be due until a year after the start date. If he chose monthly in advance the income payment would be paid from the start date.
 - It believed it could have been clearer in previous communications and in view of this offered, £20 to cover additional phone calls made and £250 for the distress and inconvenience caused which included the £170 previously offered.
13. Mr R accepted the payments of £250.00 and £20.00, however he remained unhappy. He asked for his complaint to be escalated and said in summary:
- He was unhappy with the Administrator's explanation about the GAR as the Example Policy provided was not applicable to the Plan. He had not seen an actual document which stated that he would be paid the GAR annually in arrears.
 - The 1997 Illustration clearly stated that the pension would be paid monthly in advance with a five-year guarantee period, and he believed this was the correct means of payment.
14. On 1 December 2020, the Administrator sent a letter to Mr R and said in summary:-
- The Plan was taken out in 1988 so it did not have a copy of the original documentation which was issued to Mr R. It was not required to keep documents for more than six years. The Example Policy contained the terms and conditions applicable to the Plan.
 - The 1997 and 2013 Illustrations showed some of the ways he could claim his pension benefits. In line with the terms and conditions in the Example Policy the full GAR would only be paid if he took his pension benefits on a single life basis, annually in arrears with no guarantee period as in the policy contract. The GAR would be adjusted if he took the pension benefits on any other basis.

15. Following the complaint being referred to The Pensions Ombudsman the following submissions were made.

The Administrator's comments

16. The Example Policy was a true example copy of the Schedule Mr R would have been sent and was applicable to the Plan and it detailed the terms and conditions of his contract. The terms and conditions stated that the GARs for men or women at each specified age were payable annually in arrears. Condition 9(ii) states that the annuity would be lower if paid by another frequency and/or in advance.
17. Mr R has provided copies of the 1997 and 2013 Illustrations which he felt provided evidence of the basis under which he could take his pension benefits. It confirmed that these were illustrations of some of the ways he may be able to claim his pension benefits.
18. The 1997 Illustration was a standard retirement projection from that time. Monthly in advance and guaranteed for five years was and remained the default approach to quoting and projecting benefits. At that time, the rules did not allow it to include the GAR in projections. It was a basic actuarial principle that an annuity payable monthly in advance was lower than an annuity payable annually in arrears. Paying annually at the end of each year meant the funds remained invested with the company for longer and the additional growth could be passed on to the customer in the form of a higher annuity payment.

Mr R's comments

19. The reason for his complaint has always been based on the payment terms of the GAR. The Administrator maintained that the GAR should be paid on an annual in arrears basis. It could only validate this assertion with the Example Policy. He had provided the Administrator with the 1997 Illustration which was an actual document from the original provider, which stated categorically that the pension would be paid monthly in advance and was guaranteed for a five-year period from retirement. He had always understood that this was the correct terms and conditions of the Plan, and he did not see how the Administrator could adjust this at will.

Adjudicator's Opinion

20. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Administrator. The Adjudicator's findings are summarised below:-
 - Mr R provided the 1997 Illustration and has asserted that this sets out the basis under which his annuity should be paid. The Adjudicator reviewed the document, and it provided an example of one of the ways that Mr R could take his pension benefits but did not state anywhere that it was showing the basis under which the annuity should be paid. The Administrator had explained that

the 1997 Illustration was based on standard projections for the growth of Mr R's fund and the purchase of an annuity that was monthly in advance and guaranteed for five years. The projections used were following the LAUTRO and PIA rules at the time.

- The 2013 Illustration also provided an example of how Mr R could take his benefits and was based on an annuity that was monthly in advance and guaranteed for five years. This again was a standard illustration and not an indication that this was the way that an annuity with the GAR should be payable to Mr R.
- Mr R was provided with the Example Policy that was applicable to the Plan. The Example policy contained the GAR for men and women at different ages and set out that the amount the annuity would vary if it was not taken annually in arrears. In the Adjudicator's view the Example Policy was part of the Administrator's record keeping as it did not need to retain Mr R's original Plan documents. There was no reason to believe that these were not the correct terms and conditions for the Plan and that the Administrator should not pay an annuity annually in arrears if the GAR was applied as specified in the Example Policy.
- Mr R had been provided with a number of illustrations that set out how he could take his pension benefits and how the amount he would receive varied depending on how he set up his annuity. Mr R had now put an annuity in place.

21. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr R:-

- He received numerous estimates in various formats from the Administrator. These estimates did not contain a clear statement that the GAR was only available on an "annually in arrears" basis. He requested that the Administrator provides any indication or acknowledgement of the "in Arrears" notification that he had been provided with prior to his request to take out the pension.
- When requesting details of what percentages his estimates had been adjusted by if the annuity was not taken annually in arrears, he was told that this information could not be provided for commercially sensitive reasons. Had these details been provided the adjustment to the GAR would have been more obvious.
- The definite statement of provision of the pension was included in the 1997 illustration from the original provider. This clearly stated:

"The pension per annum will be used to provide a pension paid monthly in advance throughout the lifetime of Mr R "

- There was also a statement that the pension would continue to be provided for five years in the event of death. The Adjudicator implied that this was an estimate of how the Plan benefits would be paid. His understanding was that the estimate only applied to the possible payments achievable and not to the monthly in advance and guarantee period statement. As this information had been provided by the original provider, he has always understood that this was the true and correct method for payment of the GAR.
- The pension was originally taken out as a fixed commercial agreement and should be considered as a contract. As such this should be held by the provider to avoid such confusion or alteration.
- The Adjudicator's findings referred to the LAUTRO rules and at no point was this brought to his attention so he could not act on them. The Adjudicator had also used the terms "example and Illustration" in their opinion. These terms were not statements of fact.
- The Administrator paid compensation for the confusion caused and he believed that this should be considered as further evidence of the inaccuracy of their dealings in this matter.

Ombudsman's decision

22. Mr R has complained that in order to benefit from the GAR he needed to take his annuity payment annually in arrears.
23. The Plan contains an option to purchase an annuity with a GAR as one of its features. This means that at the point that Mr R uses the retirement fund to purchase an annuity from the Administrator he could receive a guaranteed amount of annuity subject to certain conditions. This is not unusual and is the way in which most plans with a GAR are operated. The amount was specified at the time he took the Plan out in 1988.
24. A GAR is a valuable benefit as it will usually provide an amount of annuity far in excess of that available using current annuity rates, particularly in recent years when annuity rates have dropped significantly. But, as I have said in paragraph 23 above, a GAR will usually come with restrictions on the type of annuity that can be purchased and when it is payable. If Mr R decides that these restrictions do not meet his requirements, then it is open to him to select an annuity on another basis using current annuity rates.
25. I have reviewed the 1997 Illustration, and it clearly states that it is an illustration of Mr R's estimated retirement benefits. Illustration and estimated are the usual terms to apply here and have a clearly understood meaning. The following information was also provided:-

- The retirement age chosen would affect the level of benefits received.
 - In order to provide an indication of the possible benefits that might be paid, the regulatory authority for the marketing of life assurance and unit trusts has rules which laid down two bases on which future benefits must be illustrated which are Basis A and Basis B. A description of the growth rates relating to each of these is shown in the illustration.
 - It is also stated that the pension at retirement was based on current annuity rates.
26. Mr R was explicitly told that the 1997 Illustration was based on rules laid down by the regulatory authority and the basis for the projection of his future benefits. Mr R was also told that the pension he could receive was based on current annuity rates available in 1997. This was a standard basis to allow the member to compare prospective benefits from different providers if they wished. The GAR was not relevant in the 1997 Illustration.
27. I find that the illustration provided clear information regarding the basis for the projected figures and the fact that it referred to a pension paid monthly in advance and guaranteed for five years does not impact on how the GAR is paid.
28. The terms and conditions of how the GAR is applied are provided in the Example Policy. Mr R would have received a copy of the Policy when he took it out and he should then have been aware of the basis of the payment of the GAR. There is no reason to believe that the Example Policy terms and conditions do not apply to Mr R's policy or that there has been any alteration or changes by the Administrator. To achieve the full GAR an annuity must be paid annually in arrears on a single life basis and with no guaranteed period. The fact that Mr R has received illustrations on different bases does not change this.
29. There have been some administrative failings by the Administrator, but these were remedied and have no impact on how the GAR is actually applied. Mr R was provided with correct information about the GAR, so he was able to make an informed decision regarding which annuity to purchase. In addition, there was no need for the Administrator to supply Mr R with all the information it used to price its annuities.
30. I do not uphold Mr R's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman

20 August 2024