

Ombudsman's Determination

Applicant	Mr N
Scheme	Aviva Section 32 Buyout Bond (the Plan)
Respondents	Aviva UK Life (Aviva)

Outcome

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

Complaint summary

3. Mr N has complained that Aviva have not provided a full and proper pension at the Plan's maturity date. Mr N believes that Aviva should pay the full value of the guaranteed minimum pension (**the GMP**) from the Plan's Benefit Date of 12 July 2013 (his 60th birthday).

Background information, including submissions from the parties

4. Prior to Mr N reaching the Plan's Benefit Date in July 2013 he was informed by Aviva that as there were insufficient funds in the Plan, it would not be possible to pay any benefit to him until 2018 when the GMP became payable. Aviva also paid Mr N £300 in compensation for the stress and inconvenience of not receiving any pension at age 60.
5. Mr N did not accept Aviva's decision and complained to the Financial Ombudsman Service (**FOS**) in 2013. FOS reviewed Mr N's complaint and agreed with Aviva that no benefit should be paid until the GMP became payable in 2018.
6. In December 2014 the Pensions Ombudsman made a determination in the Harris case (**PO-2269**) and directed Aviva to secure an annuity, backdated to Mr Harris' 60th birthday, equal to the GMP calculated from time to time, in accordance with the Policy definition and including a contingent 50% widow's pension, if relevant.
7. In June 2016 Aviva contacted Mr N and said in light of the Harris case Aviva would put into payment an annuity for Mr N from his 60th birthday equivalent to the GMP at that time and increasing at 8.5% a year until age 65 when the full GMP of £7,603.44

would be payable. Mr N would also receive interest on the backdated payments to July 2013.

8. Mr N did not accept Aviva's interpretation of the Harris decision and brought a complaint to this office. He says that Aviva should pay the full GMP from his 60th birthday. Mr N also says that although the Harris decision was made in December 2014 it took Aviva 17 months to contact him regarding this. Aviva's excuse was that the delay was due to the calculations being held up. But the calculation is relatively simple, taking the GMP at age 65 and reducing it by 8.5% a year – a calculation that would take a matter of minutes.

Adjudicator's Opinion

9. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. He referred Mr N to an opinion that had been issued on a similar case and accepted by the applicant. The Adjudicator's findings, as applicable to Mr N, are summarised briefly below.
10. The main question to consider is whether it is right for Aviva to calculate the pension as being equivalent to the accrued GMP at Mr N's Benefit Date when he reached age 60 or whether it should be the full GMP payable at age 65, and what increase should be applied to this.
11. It is important to summarise the Pension Ombudsman's conclusions in the Harris case as they have a bearing on this complaint. The main points using the Ombudsman's own words are:

"The "Benefit Date" is fundamental to the policy. The policy proceeds are to be applied in accordance with Condition 7. Condition 7 provides that "so much as is appropriate" is to be used to provide an immediate annuity equal to the GMP.

"Guaranteed Minimum Pension" under the Policy is not defined by reference to the guaranteed minimum pension under the legislation (the reference to the legislation in Condition 7 does not limit the definition; it adds to it in the one context that it is mentioned). As defined in the Policy the GMP is, a stated amount in pounds and pence. That amount was no doubt originally calculated in accordance with the legislation and carries increases that are also consistent with legislation, but one does not have to look to the legislation to find out how much it is at any moment in time.

I find that Condition 7 can be given effect to by the policy proceeds being used to provide an immediate annuity to Mr Harris at age 60 of the GMP as calculated under the definition of Guaranteed Minimum Pension under the Policy. That will give him five years' more payments than Aviva would wish, but it does not require anything to be implied into the Policy that is not already there, and it is consistent with its overall purpose.

That reading does in a sense create what Aviva describe as a “pseudo GMP” before Mr Harris reaches age 65. But that is to take the GMP under the legislation as if it were a pension in its own right. It is not. Mr Harris’ GMP under the legislation was simply an amount of pension that his occupational pension scheme had to provide at state pension age and thereafter from time to time. The scheme’s liability for it was discharged by entering into the Policy. There is nothing in the legislation that prevents an equivalent pension being paid earlier than age 65, and given that the Policy does not define the GMP in relation to statute, it should be read as requiring such a pension to be paid.”

12. The Ombudsman also gave directions in the Harris case for Aviva to secure an annuity, backdated to Mr Harris’ 60th birthday, equal to the GMP calculated from time to time, in accordance with the Policy definition and including a contingent 50% widow’s pension, if relevant.
13. Aviva have interpreted this direction to mean that the GMP payable to Mr N should be the GMP of £606.32 quoted in the policy revalued at 8.5% to age 60. The Adjudicator did not consider this an unreasonable approach and said that it was consistent with the Ombudsman’s determination and direction in the Harris case.
14. Mr N did not accept the Adjudicator’s Opinion and has provided his further comments which do not change the outcome. I agree with the Adjudicator’s Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman’s decision

15. Mr N says that when he read and signed the policy in 1988 he took it at face value and that he would receive a benefit at age 60. There are no references in the policy to the situation in which he finds himself today. It has had a huge financial impact on his and his wife’s lives. The fundamental fact is Aviva failed over a 25 year period to manage his policy sufficiently to provide the returns outlined in the policy as he read it in 1988.
16. Mr N says he received annual notifications on the performance of the policy but at no time was he given any warning that the funds were insufficient to provide the GMP at age 60. As an ordinary man he quite rightly assumed that Aviva were managing the policy and that he should have no fears over the outcome. Aviva wrote to him five or six months and again five weeks before the Benefit Date to remind him that he was due to receive his pension in July 2013. Following a phone call he made a week before his 60th birthday to ask what lump sum and pension would be available he was told that no benefit would be paid until age 65.
17. Mr N also says Aviva were well aware of the ongoing failure of the policy to achieve the value required to satisfy the policy requirements but did nothing to warn him.

Since that time Aviva have buried their heads in relation to their failure and have done their utmost to defend the indefensible and prevaricated at every opportunity.

18. I can understand Mr N's feelings in this matter and it must have been extremely distressing to be told a week before his 60th birthday that there would be no benefit payable until age 65. Mr N took his complaint to FOS and again he was disappointed in the result. It was only as a result of the Harris case that Aviva contacted him to say that a pension would be paid and backdated to his 60th birthday. The pension payable would, however, only be the value of the GMP revalued to age 60, with further increases at 8.5% a year until age 65. Mr N says that this is incorrect and the full GMP revalued to age 65 should be paid from the Benefit Date at age 60.
19. I do not agree with Mr N's conclusion. The arguments as to why the previous Pensions Ombudsman arrived at the conclusion that a benefit must be paid from the Benefit Date is set out in the Harris case and above. I do not need to repeat it further here. The crucial point is that the benefit to be paid has to be:

“equal to the GMP calculated from time to time, in accordance with the Policy definition and including a contingent 50% widow's pension, if relevant.”
20. The GMP is defined in Mr N's policy as £606.32 per annum increased at 8.5% compound for each complete year from 6 April 1987 to 6 April preceding the attainment by the Insured of State Pensionable Age of 65 or the Insured's death whichever is the earlier. Similarly the Guaranteed Minimum Widow's Pension is defined as an amount equal to one half of the GMP calculated as at the date of the Insured's death.
21. It is clear from the above definitions that both the GMP and Widow's GMP have a precise value at any point before Mr N's State Pension Age and on which any Widow's GMP will be based. Therefore, I find that Aviva have correctly interpreted the decision in the Harris case and applied it correctly to Mr N's Plan. To pay the full GMP revalued to age 65 from Mr N's 60th birthday would be incorrect.
22. I do sympathise with the position that Mr N found himself back in 2013 and find that Aviva did not provide any warnings that there would be insufficient funds available to provide any pension benefit from age 60. Aviva made a payment of £300 to compensate Mr N for this distress which was in line with any payment that would have been awarded from this office at that time.
23. Mr N has pointed out that following the Harris determination it took Aviva some 17 months to notify him of the decision and the consequences of that decision. I realise that Aviva have a number of other Section 32 policies which are impacted by the Harris decision and it will have taken time to address these. As a result Aviva are adding interest to any backdated payments to make up for the delay and this would be in line with any direction that I may make. I do not find, therefore, that any further payment for distress and inconvenience is warranted.

PO-12714

24. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman

6 March 2017