Ombudsman's Determination

Applicant	Mr L
Scheme	Lloyds Bank Pension Scheme No.2 (**the Scheme**)
Respondents	Equiniti Limited (**Equiniti**), Lloyds Banking Group Pensions Trustees Ltd (**the Trustee**)

Outcome

1. Mr L's complaint against Equiniti Limited and Lloyds Banking Group Pensions Trustees Ltd is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) the Trustee should pay Mr L £500.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr L's complaint against Equiniti, the administrator of the Scheme, and against the Trustee is about the guaranteed minimum pension (**GMP**) element of his pension being paid from age 65, rather than from age 60 with the rest of his Scheme benefits. Mr L says that Equiniti informed him in writing that he would receive all of his Scheme benefits, including the GMP, from age 60.

Background information, including submissions from the parties

4. Mr L had a preserved annual pension of £1,299.10 when he left the Scheme on 21 February 1985. As his employment had been contracted out of the State Earnings Related Pension Scheme he had an accrued GMP of £216.84. Under the Scheme rules his normal retirement age was his 60th birthday.

5. A letter sent to Mr L by Lloyds Bank's pensions department on 23 November 2005 stated that his GMP accrued up to his date of leaving would be revalued by 8.5% p.a. until age 65; based on current estimates the GMP revalued to age 65 would be £4,089.28; from State Pension Age the State would assume responsibility for increasing the GMP; any excess pension above the GMP would increase in line with the Scheme's standard basis. The figures quoted were stated to be for illustration purposes only and not guaranteed.

6. In 2009 Mr L asked whether his preserved pension could be paid early. A letter from Equiniti dated 17 March 2009 (**the 2009 Letter**) said:

> "Your preserved pension since you left the bank will have increased from £1,299.10 per annum to £3,146.00 per annum on the above date [20 April 2009] and is payable at age 60.
>
> If you elect to receive your pension from the above date, it would be reduced to reflect the longer period that it would be in payment and the resultant pension payable would be £2,009.00 per annum.
>
> However, under current government legislation, after age 60 the Lloyds TSB Group Pension Scheme No.2 must guarantee to provide you with a pension at least equal to that which you would have received in the State Earnings Related Pension Scheme for the period which you have been contracted-out with the Bank. The equivalent State Pension is known as the Guaranteed Minimum pension (GMP) and I estimate that this will be approximately £4,088.76 per annum.
>
> Our current estimates show that even though your pension will receive annual increases between 20/04/2009 and age 60 the resultant pension will not cover the GMP. As a result of this I regret you are unable to take early payment of your pension at this time."

7. A letter from Equiniti dated 16 September 2014 confirming the current value of Mr L's preserved pension said:

> "Under current government legislation, after age 65, the Lloyds Bank Pension Scheme No.2 must guarantee to provide you with a pension which is equivalent to what you would have received from the State Earnings Related Pension Scheme for the period which you have been in contracted-out employment with the Bank. This equivalent pension is known as the Guaranteed Minimum pension (GMP) and I estimate that this will be approximately £4,088.76 per annum at your 65th birthday.
>
> Our current estimates show that even though your pension will receive annual increases between 01/10/2014 and age 65 the resultant pension will not cover the GMP. As a result of this I regret you are unable to take early payment of your pension at this time."

8. Mr L told Equiniti that he had understood that his pension would be payable from age 60, not age 65. In a letter dated 29 September 2014 Equiniti replied:

> "I can confirm you will be able to take your pension from age 60. Although your Guaranteed Minimum pension (GMP) may not be covered at this time, it will be uplifted to cover the difference between age 60 and age 65. Unfortunately, you do not have the option to take your pension before age 60 as we are unable to cover the GMP before this date."

9. On 18 May 2016, as Mr L was then approaching his normal retirement age of 60, Equiniti sent him a retirement quotation and options pack. This said that the Scheme's governing trust deed and rules would prevail if there was any discrepancy in the figures quoted. The quotation referred to a full annual pension of £3,624.00 (consisting of £904.40 pre-1997 non-GMP and £2,719.60 pre-1988 GMP). The quotation also said:

   > "Under current Government legislation, after age 65 the Lloyds Bank Pension Scheme No.2 must guarantee to provide you with a pension at least equal to that which you would have received in the State Earnings Related Pension Scheme for the period which you have been contracted-out with the Bank. The equivalent State Pension is known as the Guaranteed Minimum pension (GMP) and we estimate yours to be £4,088.76 p.a. Our current estimates show that even though your pension will receive annual increases between 04/08/2016 and age 65, if we were to allow you to take the maximum lump sum your pension will not grow to be sufficient to cover your GMP entitlement. We have therefore restricted the amount of pension you can commute for tax free cash."

   Retirement notes attached to the quotation included a statement that:

   > "The pension paid to you when you retire cannot be less than the GMP".

10. Mr L objected, saying that the GMP should be payable at age 60 as set out in earlier correspondence. Equiniti's reply dated 3 June 2016 said that its retirement quotation figures were correct; the deferred pension would be increased annually in line with Scheme rules; if at age 65 the revalued pension was less than the GMP it would then be uplifted to that level; however, there was no Scheme option to retire after age 60, so if Mr L did not claim his pension at that age it would not be actuarially uplifted for late payment but would continue to receive annual increases.

11. Mr L then signed and returned the retirement application forms, but he amended one page to refer to a full annual pension of £4,088.76 (the expected GMP) instead of £3,624.00 as had been quoted. In his covering letter he complained that the GMP should be provided at age 60, and that the previous letters he received were evidence of corrupt, criminal deception.

12. Equiniti's letter of 29 July 2016 to Mr L confirmed that £3,624.00 was the correct amount of pension if he wished to draw his pension at age 60. Equiniti also reiterated that the GMP of £4,088.76 was payable from age 65. An extract from the DWP website was attached, which said "a GMP is payable at age 60 for a woman and 65 for a man".

13. When Mr L refused to accept this, Equiniti's letter of 15 August 2016 explained:

   > "The GMP usually comes into force when the State pension comes into payment, but in some cases can be later, for example, when an individual

either actively defers or does not claim their State Pension at State Pension age.

In the vast majority of cases, the value of the scheme pension is far greater than the GMP, however if your scheme pension is not greater than the minimum amount we are required to pay you at State Pension Age, which for yourself is age 65, your pension will be uplifted on your 65th birthday to reach this amount."

14. After further correspondence, the Scheme's internal dispute resolution procedure (**IDRP**) was invoked. The Scheme's pensions manager wrote to Mr L on 25 November 2016, under stage 1 of IDRP. He apologised that Equiniti's letters had not consistently referred to payment of GMP from age 65, and admitted that the 2009 Letter had contained incorrect information and the letter of September 2014 could have been worded more clearly. He clarified that age 60 was the normal pension age for taking Scheme benefits; there was no entitlement to draw pension earlier; the Trustees would not consent to early payment if the reduced pension meant that the GMP would not be covered at age 65 when the GMP became payable. The manager also apologised that Equiniti's letter of 3 June 2016 had said that a deferred pension postponed after age 60 would attract annual increases. In light of the errors made the manager offered, on behalf of the Trustee, to pay Mr L £150 compensation for his distress and inconvenience.

15. On 9 January 2017 Mr L signed a statement that he would accept the offer of £150 in full and final settlement of the dispute. However, he sent further complaints to the Trustee, alleging wilful misrepresentation and conspiracy to defraud Scheme members, and made clear that his dispute had not been settled.

16. On 24 February 2017 the chairman of the Trustee's Operations Committee sent Mr L the IDRP stage 2 response, rejecting his complaint. The chairman's letter said that Mr L's Scheme benefits had been calculated correctly and were payable from a normal retirement age of 60, but the GMP was not payable until age 65; if at age 65 the pension was less than the GMP it would be uplifted accordingly; because Mr L had left service before 1986 there was no statutory revaluation of his deferred pension, but the revaluation provided under Scheme rules would be applied; his deferred pension (£1.299.10) plus revaluation on the accrued GMP (£3,871.92) when the GMP came into payment would give him a minimum pension of £5,171.02 from age 65. In view of the way that some of Equiniti's letters had been worded, the Committee offered to double the compensation offer to £300.

17. The Scheme administrators arranged for Mr L's pension to start in April 2017, with arrears backdated to August 2016 (his 60th birthday).

18. In its formal response to Mr L's complaint to us, the Trustee increased its compensation offer from £300 to £500.

Adjudicator's Opinion

19. Mr L's complaint was considered by one of our Adjudicators. The Adjudicator's findings are summarised briefly below:-

- The nub of Mr L's complaint is that he believes his GMP should be payable from age 60, not age 65. This belief is based on Equiniti's correspondence with him in 2009 and 2014.

- The calculation and payment of a GMP is set out in legislation, originally the Social Security Pensions Act 1975 and subsequently the Pension Schemes Act 1993. See the Appendix hereto. The GMP is payable from "pensionable age", defined as age 65 for a male, 60 for a female. The wording on the DWP website, sent to Mr L on 29 July 2016, is consistent with this.

- Therefore the 2009 Letter was incorrectly worded as it said:

  "under current government legislation, after age 60 the…Scheme must guarantee to provide you with a pension at least equal to that which you would have received in the State Earnings Related Pension Scheme".

  This statement would have been correct for a woman, but in Mr L's case it should have said "after age 65".

- The retirement notes contained in Mr L's retirement quotation pack were also misleading, as they said:

  "The pension paid to you when you retire cannot be less than the GMP".

  There is no GMP until age 65, but that sentence could be misinterpreted to mean that the GMP becomes payable at whatever date the member's pension becomes payable. That is not the case.

- Equiniti's letter of 16 September 2014 correctly described the position, because it said the GMP must be provided "after age 65". However, Equiniti's letter of 29 September 2014 was ambiguous about the payment of the GMP because it said:

  "I can confirm you will be able to take your pension from age 60. Although your Guaranteed Minimum pension (GMP) may not be covered at this time, it will be uplifted to cover the difference between age 60 and 65".

- These communications wrongly gave Mr L the impression that his GMP would become payable at age 60 if he took his deferred pension at that age. The badly worded correspondence on matters of a financial nature is especially unfortunate as the Scheme is run by a major financial institution.

- However, the fact remains that the GMP is a statutory benefit, not a benefit payable at the Trustee's discretion, and it is payable only when Mr L attains age 65, whatever was said or implied in correspondence. Mr L has not demonstrated that his misunderstanding of the correct position has caused him financial loss. Therefore that part of Mr L's complaint should not be upheld.

- Mr L's recent allegations of criminal deception, conspiracy and fraud are outside the Pensions Ombudsman's jurisdiction as defined in the Pension Schemes Act 1993.

- The lengthy correspondence generated shows that Mr L has found this matter very frustrating, and he should be compensated for the significant distress and inconvenience caused to him by the inaccurate wording. The Trustee has admitted that there were errors in the communications and has increased its original offer of £150 to £300, and later to £500. The revised offer of £500 is in line with the amount that the Pensions Ombudsman usually awards in those cases where maladministration has caused significant distress and inconvenience.

20. On the basis that the offer of £500 was still available, the Adjudicator concluded that the Pensions Ombudsman would not make any additional award to Mr L.

21. Mr L did not accept the Adjudicator's Opinion, and the complaint was then passed to me to consider. Mr L 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 L for completeness.

22. Mr L reiterated that his pension had not been calculated correctly. In making his further comments, Mr L said that the Adjudicator's Opinion was symptomatic of an establishment conspiracy to cover up fraud and theft. He also made similar allegations against other parties involved.

Ombudsman's decision

23. The Adjudicator's Opinion came to conclusions that were reasonable in the circumstances, and despite Mr L's strong objections I am satisfied that there is no conspiracy.

24. Mr L is fortunate to be a member of a defined benefit pension scheme which has a normal pension age of 60. This is defined in the Scheme rules as "Normal Retirement Date". The pension payable to Mr L from age 60 was £3,624.00, as stated in the retirement quotation of May 2016. The scheme pension in payment is increased annually. The GMP calculated as £4,088.76 is payable from age 65, the age prescribed by legislation (see the Appendix). This is defined in the Scheme rules as "State Pension Age". This means that if Mr L's scheme pension at age 65, with its annual increases up to that date, is otherwise less than £4,088.76 it will then be topped up to that level.

25. The inter-relationship between the GMP and the other scheme benefits is admittedly quite complicated. In Mr L's case, several of the communications sent by Equiniti on behalf of the Trustee to describe the position were misleading or ambiguous. The 2009 Letter wrongly referred to age 60 instead of age 65. Equiniti's letter of 16 September 2014 corrected this error, but its letter of 29 September 2014 was confusing. The retirement quotation and options pack contained the correct figures, although the retirement notes attached should not have included a sentence that the pension paid cannot be less than the GMP.

26. However, Mr L has not shown that he relied to his detriment or changed his financial position because of the poorly worded communications he received, and I am satisfied that he has not suffered any financial loss as a consequence.

27. In making his submissions to me Mr L has cited various statutory provisions, but most of these are not relevant to his complaint. The provisions of the Pension Schemes Act 1993, set out in the Appendix prescribe that the GMP is payable from age 65 for a man or age 60 for a woman. As, under this legislation, Mr L is not entitled to receive his GMP before age 65 I cannot uphold the main part of his complaint.

28. However, I consider that the inaccurate explanations that were given to Mr L before his retirement amount to maladministration. Mr L has spent a lot of time setting out his grievances to the various parties involved. He recently said that he had spent over 800 hours on this matter. I am satisfied that he has suffered significant distress and inconvenience since the correspondence in 2014. This could have been avoided if the Scheme communications sent to him had been worded more accurately. I consider that Mr L should be compensated by the Trustee for that. Therefore, I partly uphold Mr L's complaint.

Directions

29. To put matters right, within 28 days of the date of this determination the Trustee shall pay Mr L £500 for his significant distress and inconvenience.

Anthony Arter

Pensions Ombudsman
30 October 2017

Appendix

Pension Schemes Act 1993

Provision of GMP

“8(2) In this Act

"guaranteed minimum pension" means any pension which is provided by an occupational pension scheme in accordance with the requirements of sections 13 and 17 to the extent to which its weekly rate is equal to the earner's or, as the case may be, the earner's widow's or widower's guaranteed minimum as determined for the purposes of those sections respectively;”

“13 Minimum pensions for earners

(1) Subject to the provisions of this Part, the scheme must

(a) provide for the earner to be entitled to a pension under the scheme if he attains pensionable age; and

(b) contain a rule to the effect that the weekly rate of the pension will be not less than his guaranteed minimum (if any) under sections 14 to 16.

…

(3) Subject to subsection (4), the scheme must provide for the pension to commence on the date on which the earner attains pensionable age and to continue for his life.”

Meaning of pensionable age

“181(1)…"pensionable age"

(a) so far as any provisions (other than sections 46 to 48) relate to guaranteed minimum pensions, means the age of 65 in the case of a man and the age of 60 in the case of a woman, and

(b) in any other case, has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995.”