

The complaint

Mr A has said that ReAssure Limited mis-sold him a “section 32 buy out” pension plan as it said at the outset that he would be able to access his pension benefits at age 60. ReAssure has recently informed him that, as there is an insufficient fund value to pay the guaranteed minimum pension (GMP), Mr A won’t be able to access the benefits until age 65.

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I’m broadly setting out the same background below, with some amendments for the purposes of this decision.

In October 1992, a Legal & General (the pension policy has since been transferred to ReAssure) adviser recommended that Mr A transfer defined benefits from his occupational pension scheme (OPS) into the section 32 policy.

As the policy represents the benefits Mr A had accrued in the OPS whilst he was contracted out of the State Earnings Related Pension Scheme (SERPS), it contained a guaranteed benefit known as the GMP.

On 6 January 2021 and 8 March 2023, ReAssure sent Mr A letters saying that he wouldn’t be able to access his GMP until he was 65.

Mr A was unhappy with this, as his selected pension age at the point of sale of the policy was 60, and so he raised a complaint with ReAssure on 18 September 2023. Mr A said the policy was mis-sold to him because he was advised that he could access his pension at age 60 at the point of sale – only to recently be told this will be 65.

ReAssure responded to Mr A’s complaint on 13 November 2023. It explained that the GMP is payable at age 65 for men and age 60 for women in line with current pension legislation. It added that this isn’t a condition specific to Mr A’s policy, but rather it is set by the government and can’t be changed.

Unhappy with the response he received from ReAssure, Mr A referred his complaint to our service on 17 November 2023.

Our investigator considered the matter, but didn’t think it should be upheld. He said the following in summary:

- Although there was the provision within the section 32 policy for pension benefits to be paid earlier than age 65, this would only be the case where there was an excess of funds over and above those needed to pay the GMP.
- Unfortunately, the plan’s fund value was lower than the amount required to pay the GMP, and ReAssure was only obliged to pay the GMP. As such, and as the commitment to pay the GMP only applies at age 65 for men, it hadn’t declined to pay the benefits from the plan at age 60 unfairly.

- Mr A had said that he was persuaded to transfer into the section 32 plan on the basis that the plan would perform very well and he'd be able to access his benefits at age 60. Mr A had added that, if the plan had been properly explained, he wouldn't have transferred.
- The investigator said that he'd therefore requested a copy of the terms and conditions of the policy at the point of sale. ReAssure wasn't able to provide this, but was able to provide a "plan guide", which was the closest document it had to the terms and conditions. This said the following

"Certain conditions apply to the Guaranteed Minimum Pension. These include: GMP benefits must be available at State Pension Age. However, these may be taken early if the pension, at the time it is paid, is at least equal to the GMP revalued up to State Pension Age."

- As it couldn't be known what was in the terms and conditions at the time, the investigator was unable to speculate as to the content, but the GMP rules as set by the government provided for it to be paid at age 65. Any access earlier than this would be dependent upon the value of the plan.
- ReAssure had also confirmed that it couldn't make payments until age 65 if it was to honour the GMP. It couldn't offer a reduced payment of benefits based on the current plan value and increase it to the GMP at age 65.

Mr A disagreed, however, saying the following in summary:

- ReAssure should have all the plan information, irrespective of the passage of time.
- At the time he established the section 32 policy, he also took out a personal pension plan and a further policy with which to opt out of SERPS.
- These had all been separate policies until Legal & General sold his plans to ReAssure. At this point, the SERPS policy was incorporated into the personal pension plan. The SERPS policy never formed part of the section 32 policy, and so Mr A didn't understand why ReAssure was saying that it did.

In response, the investigator acknowledged the lack of terms and conditions from the point of the sale, but said that the rules relating to the payment of the GMP were set by the government rather than individually by ReAssure.

Mr A then said that he would be forwarding additional information relating to the section 32 policy, and reiterated that the SERPS policy shouldn't be combined with the section 32 policy under our investigation. Mr A considered that he would be far better off had he retained his defined benefits within the OPS.

As agreement couldn't be reached on the outcome, it's been referred to me for review.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, I've reached broadly the same conclusions as the investigator, and for

similar reasons.

I'd firstly note that, although Mr A has set out his dissatisfaction with the specific matter of not being able to take his pension benefits earlier than age 65, he has more generally said that he was mis-sold the pension policy and that he would have been better off retaining his pension benefits in the OPS.

As part of the industry wide pension review undertaken from 1996 for such policies sold between 1988 and 1994, Legal & General completed a "loss calculation" to determine whether Mr A was likely to suffer financial disadvantage when he came to retire. But based on assumptions relating to the fund value of his section 32 policy and the value of the OPS benefits he'd transferred when he came to retire, it was established in the outcome letter in July 2000 that he was unlikely to suffer a financial loss.

This was a "once only" exercise designed to draw a line under the historic mis-selling of such policies, and wasn't designed to be repeated when an individual actually came to retire. As such, the potential more general "mis-sold" nature of the policy has already been addressed.

But as I've noted above, part of Mr A's complaint is a little more specific than that, to the extent that he considers he was informed that he'd be able to retire at age 60, rather than 65.

In my consideration of this, the plan documentation that Mr A has more recently submitted has been helpful in determining what was disclosed to Mr A at the time. And I set out below some of the pertinent sections within those documents:

The plan "questions and answers" document said the following relating to restrictions on when pension benefits could be taken:

"It is currently a statutory requirement that you can only take benefits before the ages 60 for females and 65 for males if the pension from that earlier age is at least equal to the GMP. This means that, if the fund under your policy is insufficient to cover the GMP from that earlier age, then you cannot take your benefits from that age – this applies even when your retirement is due to incapacity."

In the document "Your section 32 buy out plan", under the section entitled "When are benefits available under the plan and when do they become payable", it also said the following:

"In the case of Guaranteed Minimum Pension (GMP) you cannot retire before age 65 (male) and age 60 (female) unless your fund is big enough to provide that level of pension at an earlier age".

And then in the document "Section 32 buy out plan", under section four entitled "Restriction of annuity benefits", it said the following:

"(5) Contracting out provisions – If there is a guaranteed minimum pension and/or equivalent pension benefit quoted in the Plan Statement, then the provisions of this Policy will be overridden by the conditions set out in the appendix to the Plan Statement, to the extent necessary to ensure that those conditions are complied with."

Within the Plan Statement, it said the following under the section entitled Guaranteed Minimum Pension:

"£703.56 increased by 7.5% per annum compound for each complete tax year falling

between 11/10/1991 and the annuitant's 65th birthday or, if earlier, the date of his death."

And then provisions within the plan statement appendix effectively set out that, if the pension payable at normal retirement date of 60 would be lower than the GMP payable at age 65, then it was at the discretion of the provider as to what payment might be made from that date, so as to protect the value of the GMP at age 65.

In this case, as the fund value was determined as being insufficient to pay the GMP at age 65, there was simply no "excess" fund value with which a payment from age 60 could be made.

So I think it's clear enough from the plan documents that, where the pension provider had taken on the responsibility to pay the GMP, this superseded other provisions, such as being able to take pension benefits earlier than 65, to ensure that the amount payable at age 65 under the GMP was correct.

And as set out by the investigator, where there is insufficient money within the pension fund to pay the GMP, all of that money must go towards paying the GMP. The pension provider then needs to make up the shortfall to pay the required GMP at age 65. But it isn't required to pay pension benefits earlier than that age.

I know this outcome will disappoint Mr A, and I also acknowledge his sentiment regarding the initial transfer itself. As I've set out above, however, in recognition of the policy possibly having been mis-sold to him, Legal & General undertook a review of it to determine whether Mr A was likely to suffer a financial loss as a result. And as of July 2000, it determined that he wouldn't be financially disadvantaged by the transfer.

On a fair and reasonable assessment of the facts of the case, therefore, including the very helpful documents which Mr A has been able to provide, I don't think the complaint should be upheld.

In closing, I've also noted what Mr A has said about the policy he established at the same time as the section 32 policy to contract out of SERPS. As this would have been set up to receive payments from the forerunner to the Department of Work & Pensions from that point on, this is entirely separate from the section 32 policy and ReAssure won't have factored the value of this policy into its calculations. Mr A will still retain the benefit of that policy separately from the section 32 plan.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 12 June 2024.

Philip Miller
Ombudsman