

## The complaint

Mr B's complaint about Zurich Assurance Ltd trading as Allied Dunbar Assurance plc arises in connection with the Pension Review. Mr B says he wasn't put back in the position that he should've been. Mr B has also raised issues about whether payments made by what is now the DWP (Department of Work and Pensions) because Mr B had contracted out of SERPS (State Earnings Related Pension Scheme) were correctly credited to his pension.

## What happened

Mr B took out a personal pension with Allied Dunbar in March 1989. Mr B signed Allied Dunbar's Personal Pensions App 1 Joint Notice to begin paying minimum contributions. Mr B would be opting out of what was then known as SERPS.

In July 1989 Mr B transferred the value of his deferred benefits in a former employer's pension scheme into his Allied Dunbar personal pension. The transfer was later reviewed as part of the industrywide Pension Review. Zurich conceded that the transfer may not have been suitable and offered £27,400 which was the amount the employer's scheme had calculated as the cost of reinstating Mr B's total pensionable service (from 1 August 1981 to 31 October 1988). Zurich sent a cheque for £27,400 to the employer's pension scheme on 20 October 2001 and Mr B was reinstated in that scheme.

In 2010 Mr B's personal pension was transferred to a SIPP (self invested personal pension) with Hargreaves Lansdown. Zurich sent a cheque for £26,983.84, made up of £5,717.69 non protected rights and £21,266.15 protected rights.

Mr B retired in 2021. There was a shortfall in his state pension which Mr B hadn't been expecting. Mr B complained to Zurich in 2022. Zurich issued a final response letter on 11 January 2023. Zurich said it had investigated Mr B's concerns that Zurich had failed to reinstate Mr B in the state pension and hadn't returned payments made by the DWP from 1999 to 2010. In summary Zurich said:

- In 1989 Mr B opted out of SERPS and payments were instead made by the DWP to his personal pension plan. Zurich had no control over the amounts paid by the DWP or when. If Mr B was unemployed, self employed or if he joined a company pension scheme, no payments would be sent to Zurich. Zurich received the first DWP payment on 1 December 1989 and the last payment on 27 May 1999 for the tax year 1997. Zurich refunded that payment to the DWP on 26 February 2003.
- As of 6 April 2012 opting out of the State Second Pension (S2P, formerly SERPS) was no longer an option and all customers were automatically reinstated into S2P.
- Zurich had reviewed the transfer in and reinstated Mr B in the employer's scheme. Zurich had explained that the reinstatement was only in relation to the transfer in and not the personal or separate DWP payments received outside of that. Zurich had informed HMRC at the time of the reinstatement.
- On 11 March 2010 a transfer to Hargreaves Lansdown was completed as instructed, including the former protected rights fund value. Zurich did inform HMRC so it knew Mr B was no longer invested with Zurich but Zurich hadn't received any payments apart from in May 1999 and which was refunded to the DWP.

- Zurich had been unable to identify any errors on Mr B's plan. The payments Zurich received from the DWP were correctly allocated. Zurich didn't receive any request for the payments to be returned, aside from the May 1999 payment. The reinstatement into the employer's scheme was correctly made and in line with the agreement Mr B signed.

One of our investigators looked into what had happened but he didn't uphold the complaint. He referred to Zurich's letter of 30 May 2001. It explained that the potential benefits from the personal pension as a result of the transfer (from the employer's scheme) were likely to be less than the value of the benefits that would've been available to Mr B, had he remained a member of the employer's scheme. Zurich's offer was aimed at putting Mr B, as far as possible, back in the financial position he'd have been in, if he hadn't transferred and the best way of doing that was reinstating his benefits in the employer's scheme. Mr B had confirmed he accepted that offer in full and final settlement of all claims he had against Allied Dunbar in connection with the advice given to transfer.

The investigator said Mr B's complaint was that Allied Dunbar had promised to put him in the position he'd be in, had the pension not been mis sold. The transfer had been corrected by reinstatement in the employer's scheme and the DWP contributions would continue. So there was no need to repay the DWP contributions or make up any shortfall. In 2010 when the personal pension was transferred to the SIPP, Zurich had confirmed, in its letter of 24 February 2010 explaining Mr B's retirement choices, that there was a protected rights element of £20,418.37. So Mr B already had the 'value' he was seeking to increase his state pension by – it was held within his SIPP.

The investigator explained the background to the Pension Review and the approach taken by the then regulator as to what businesses needed to do to put things right if unsuitable advice had been given. Zurich had put things right as part of the Pension Review and in line with the regulatory guidance. The current regulator didn't require businesses to revisit complaints which had already been considered as part of the Pension Review.

Mr B was still unhappy. He said he'd signed a form saying Allied Dunbar would put him back in the position he'd be in if he hadn't been mis sold a personal pension and they hadn't done so as he was receiving a reduced state pension. He didn't think the Pension Review covered his situation.

The investigator reiterated that the Pension Review was to correct the transfer (from the employer's scheme) and Mr B's membership was reinstated. If he'd received the full state pension that would mean, because of the payments that were made to Zurich/ Allied Dunbar and which were then transferred to Hargreaves Lansdown, he'd have received the same contributions and benefit twice – from the state and his SIPP.

There were further exchanges. Amongst other things, Mr B said Zurich had confirmed they'd never received any DWP payments after the tax year 1996/1997 but HMRC had said payments were taken by Zurich until 2010. Mr B supplied a copy of a letter from HMRC in support. Mr B also said that Zurich had failed to inform HMRC when Zurich had admitted to mis selling the personal pension and which should've stopped Mr B as having been recorded as having a personal pension. Alternatively, Zurich had informed HMRC about the termination of his personal pension and HMRC had failed to record it on their system. Mr B suggested Zurich should provide evidence that they told HMRC that they were no longer able to accept payments after 1997 so he could take up the matter with HMRC. If Zurich didn't inform HMRC then that had cost him eleven qualifying years.

The investigator said Mr B's complaint seemed to be different to the one Mr B had asked us to look into – that Zurich hadn't put him back in the correct position following the Pension

Review. It now seemed the issue was that Zurich hadn't correctly applied the contributions HMRC had said were paid.

About that the investigator said the documents provided were somewhat confusing but HMRC's contracted out schedule shows payments from 1988 to 1997. The last former protected rights payment had been on 1 June 1999 for £594.43 in respect of the tax year 1997/1998. That seemed to match Zurich's records and suggested the correct contributions had been applied. It wasn't clear why HMRC's letter said that, until the policy was cancelled in 2009, payments were made into the personal pension. That didn't seem consistent with other information from HMRC. The investigator said he'd try to obtain some more information but Mr B had been given an answer on the complaint he'd made.

Mr B said he understood why the investigator was saying that Zurich hadn't failed in respect of the Pension Review. But Mr B said his government gateway account showed he'd made 50 years of full NI contributions but 22 years were missing from his state pension entitlement which Mr B said was due to Allied Dunbar/Zurich mis selling him a personal pension. The tax years 1988/1989 to 1996/1997 were accounted for and all sent to Hargreaves Lansdown. But that still left him with 13 years of 'lost' contributions which Mr B said wouldn't have been the case but for Allied Dunbar/Zurich being involved. Mr B raised a number of queries about what would've happened at the time. He suggested we should make further enquiries with Zurich and HMRC as to what had happened.

The investigator said we don't have access to Zurich or HMRC's systems. The issues that Mr B was referring to had nothing to do with the Pension Review – that had been resolved in 2001 and was in respect of the transfer only. The investigator said he'd ask Zurich for any documentation that might assist and if he got anything he'd forward it to Mr B. In the meantime Mr B's questions should be directed to HMRC.

Mr B didn't agree he'd raised different issues – he said it had always been about the fact that he hadn't been put back into the financial position he'd have been in before Allied Dunbar's/Zurich's involvement. He said he'd tried to get information from Zurich before which would enable him to go back to HMRC. But it hadn't been forthcoming. And without such further evidence HMRC would continue to blame Zurich so it was a 'Catch 22' situation.

In response to the investigator's request, Zurich provided information which showed that no payments had been received – and so hadn't been applied to Mr B's personal pension – after 1997. Reason codes had been provided when payments were not received from HMRC. For example, reason code 1 was that earnings hadn't been recorded by the DWP and reason code 3 was the employment didn't qualify for payment of contributions. In 1992 and 1998 reason code 1 had been applied to Mr B's account and in 1999 reason code 3 was recorded. So in 1998 it seemed earnings hadn't been recorded by the DWP and in 1999 Mr B's employment didn't qualify for payment of contributions. From the file Zurich said Mr B had been employed between 1989 and 1997 in car sales and in 1999 he'd said he was unemployed. Zurich didn't know what Mr B's occupation in 1998. Zurich supplied copies of screen prints in support.

The investigator shared with Mr B what Zurich had said (although copies of the internal screen prints couldn't be provided). The investigator said that HMRC's investigation had determined the law had been applied correctly and detailed the reasons why in its complaint response letter to Mr B. We don't have jurisdiction over HMRC and, from what the investigator had seen, Zurich hadn't done anything wrong.

Mr B asked for the matter to be referred to an ombudsman. He reiterated that Zurich had said in its offer that he wouldn't suffer any financial loss due to Allied Dunbar/Zurich's mis selling and on that basis he'd signed the agreement. But he was suffering a financial loss

due to their mis selling and that contravened the agreement reached. Mr B said there was still no evidence that Zurich had informed HMRC the pension had been mis sold so terminating the need for Zurich to reclaim his NI payments. It was only when that evidence was to hand that Zurich could be exonerated as HMRC would then be at fault having failed to take the necessary action required.

### **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.

Having done so, I agree with what the investigator said and the reasons he gave as to why he was unable to uphold the complaint.

As I understand it, Mr B's complaint was that he'd believed that, under the Pension Review, he'd be put back in the position he'd be in if there'd been no involvement by Allied Dunbar/Zurich in his pension arrangements. Mr B says he accepted the offer made on the basis he wouldn't suffer any financial loss due to Allied Dunbar's/Zurich's mis selling.

I can only echo what the investigator said about that and, in particular, that Zurich's offer only related to the transfer into the Allied Dunbar personal pension of the deferred benefits Mr B had accrued as a member of an employer's pension scheme between 1 August 1981 and 31 October 1988. Mr B's membership of that scheme predated the setting up of his pension plan with Allied Dunbar which wasn't established until March 1989. In July 1989, a few months after Mr B's policy with Allied Dunbar had been set up, the transfer of Mr B's deferred benefits into the Allied Dunbar plan took place.

The transfer – and just the transfer into the personal pension and not the sale of the personal pension itself - was reviewed as part of the Pension Review. Zurich accepted that the transfer may have been unsuitable – that is, it would've probably been better for Mr B to have remained as a member of his employer's scheme. So Zurich offered to reinstate Mr B in the employer's scheme. That's as far as things went. Any acceptance of mis selling was confined to the transfer.

And what Mr B signed in terms of putting things right only related to the transfer and not to the sale of the Allied Dunbar personal pension itself. All that happened was that the units in the Allied Dunbar policy which the transfer value paid by employer's scheme had bought were cancelled and Zurich paid £27,400 to the former employer's scheme to reinstate Mr B's membership. So it was as if the transfer hadn't happened.

Mr B suggests Zurich should provide evidence that they told HMRC that they were no longer able to accept payments after 1997. But I don't think that was the case. Zurich informed HMRC that Mr B's membership of his former employer's scheme had been reinstated. I think that's all Zurich needed to do. The personal pension remained in force. Mr B remained contracted out of SERPS. Zurich didn't need to return any other payments it had received and the plan was still able to accept any payments from DWP that Zurich received.

I think Zurich also told Mr B what would happen. Zurich's letter of 20 October 2001 confirmed the reinstatement and that Zurich had cancelled the units in Mr B's personal pension that related to the reinstatement, adding that the units relating to Mr B's regular contributions and the DSS receipts would remain invested in the personal pension, according to Mr B's current fund selection and the indexed policy charges would continue to be deducted. So it wasn't the case that Mr B was told that the Allied Dunbar/Zurich personal pension was in effect cancelled.

Moving on to look at wider issues beyond the Pension Review, I think Mr B may be inferring that the Allied Dunbar personal pension was mis sold in 1989. I don't think the suitability of the sale of the personal pension has ever been considered. As I've explained, the transfer of Mr B's deferred benefits in his employer's scheme was reviewed under the Pension Review. That review didn't extend to the sale of the Allied Dunbar personal pension itself. I don't want to try to decide a complaint that hasn't been made but, in broad terms, contracting out of SERPS in the 1980s and early 1990s wasn't unusual. Assumed growth and annuity rates at the time made it seem likely that those who contracted out would be better off. So complaints about contracting out are often not upheld.

Mr B is unhappy that he's getting a reduced state pension. I've seen that he's complained to HMRC – and I think HMRC is the appropriate body to deal with any complaints or queries about state pension entitlement – but HMRC maintains that Mr B's state pension and, in particular, the contracted out deduction (COD) that's been applied, has been calculated correctly.

What happened was that because Mr B contracted out of SERPS some of his NI contributions were redirected to his Allied Dunbar/Zurich personal pension. The redirection of NI contributions is reflected in Mr B's state pension by the COD. HMRC looks at what the consumer's entitlement to SERPS would've been, if they hadn't contracted out. A COD is then applied for each period when the consumer was contracted out through an employer's pension scheme or a personal pension plan.

I note HMRC's letter to Mr B dated 17 June 2022. It explained that he'd been a member of an employer's contracted out pension scheme between 6 April 1981 and 31 October 1988. He hadn't been a member of SERPS and he'd been paying lower contracted out NI contributions. He'd earned a Guaranteed Minimum Pension (GMP) which was part of the pension he should receive from the employer's scheme. The GMP is £65.33 pw.

The letter also said that Mr B had been a member of a personal pension with Zurich and that the policy had been taken out with effect from 6 April 1988. It went on to say: *'Until the policy was cancelled on 5 April 2009, each time full rate Class 1 National Insurance contributions were received on your National Insurance account, the Inland Revenue made annual payments to your Personal Pension scheme of minimum contributions based on your earnings.'* The letter said that, during that period, Mr B hadn't been a member of SERPS. That meant a further COD of £21.72 had been applied to his state pension. So the total COD was £87.05.

I can understand why Mr B may point to the sentence I've highlighted as indicating that payments were made to Zurich each year up to 2009. But the letter did refer to a full list of minimum contribution payments having been provided. I've seen that the letter about that included a table headed *'Post 88 Contracted-Out Deduction Calculation – Period 6/4/88 to 5/4/09 – the Zurich scheme'*. The entries in the table below show Contracted-Out earnings only for the tax years 1988/1989 to 1996/1997. As it seems, from the heading, that the period up to April 2009 is covered, that would suggest payments were only in fact made to Zurich up to 1996/1997.

That's consistent with what Zurich says – that it received no further payments after the tax year 1996/1997. And it has provided evidence in support – screen shots and records of reason codes why payments for some years weren't received. I haven't seen reason codes for the period entire period Mr B is questioning – 1998 to 2010. But the fact remains that Zurich says it didn't get any payments after 1996/1997 and I don't think the information from HMRC suggests differently.

The upshot is that although Mr B has said some 22 years of his NI contributions are missing, it seems he accepts that the tax years 1988/1989 to 1996/1997 are accounted for and were included in the transfer value sent to Hargreaves Lansdown in 2010. Although that still leaves the period – some 13 years – from 1997 to 2010, from what I've seen Zurich didn't get any payments during that period. If Mr B doesn't agree he'll need to go back to HMRC to query what it has said. If HMRC provides further information which suggests that Zurich might've been at fault then Mr B can take that up with Zurich. But as matters stand and from what I've seen, I don't think Zurich is at fault.

I know Mr B is likely to remain unhappy but I hope I've been able to explain why I don't think Zurich has done anything wrong, either in terms of the steps taken in relation to the Pension Review or in accounting for payments received from DWP.

### **My final decision**

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 August 2023.

Lesley Stead  
**Ombudsman**