DRN-4038217

Financial Ombudsman Service

**The complaint**

Mr G complains that Zurich Assurance Ltd didn't offer him reasonable compensation following its failure to provide him with information about his options when he took some pension benefits in 2018.

**What happened**

Mr G has been assisted in reviewing his pension provision, and in making this complaint, by his financial advisor. But in this decision, for ease, I will generally refer to all communication as having been with, and from, Mr G himself.

Since Mr G took his pension benefits, another firm has taken over the ownership of that part of Zurich's pension business. Zurich remains responsible for this complaint, and for putting things right for Mr G, but it has relied on information provided by the actuaries of the new business.

I issued a provisional decision on this complaint in September 2022. In that decision I explained why I thought the complaint should be upheld and what Zurich should do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

> *Mr G held pension savings with Zurich in two different plans – a Group Transfer Plan ("GTP") and a Zpen policy. In August 2018 Zurich issued retirement options, at Mr G's request, for his GTP benefits. In September 2018 Mr G informed Zurich that he wished to claim the maximum pension commencement lump sum ("PCLS" – generally known as tax free cash) and transfer his remaining pension savings to another provider. Mr G says the amount that was transferred was £33,776.*
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> *In February 2019 Mr G decided to claim on his Zpen policy. At that time he became aware that it would have been possible to transfer his GTP benefits into the Zpen policy. And that would have meant his pension benefits were increased. Mr G says that his financial advisor obtained quotations from Zurich that showed that if the transfer had taken place he would have received an additional PCLS of £8,684 and a pension income of £1,303 per annum that included dependants' benefits and annual inflation linked increases.*
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> *Zurich accepted that the information it provided to Mr G about his options when taking his GTP benefits had been deficient. So it offered him some compensation. Zurich told Mr G that he could either be paid a taxable lump sum of £28,627.03 or a taxable annual income of £688.21. But although it says that compensation was calculated by the actuaries of the new firm, it has been unable to provide either Mr G, or us, with further details to support those offers.*
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> *With assistance from his financial advisor, Mr G provided Zurich with an alternative estimation of his loss. He calculated that, after deducting the additional PCLS from the transfer value he received, he would be able to purchase an annuity on the open*

*market valued at £417 per annum. So he thought that he had missed out on additional income of £886 as a result of Zurich's error. He didn't therefore accept Zurich's offer and brought his complaint to this Service.*

*When I started to review the complaint I noted that neither party had provided any reasonable evidence to support the loss calculations they had undertaken. So I asked both Mr G and Zurich for additional supporting evidence. Zurich replied that it was unable to gather further information from the business that has taken over its pension plans. Mr G asked his financial advisor to update the calculations that had been performed when he first made his complaint. As a result of changing annuity rates, and Mr G becoming two years older, Mr G told us that he now thought the additional annuity income Zurich had offered was reasonable. But he noted that he had been without that income for two years, so would expect Zurich to make backdated payments.*

*Matters such as these are not easy to decide. Whilst it is clear, and Zurich entirely accepts, that Mr G was not given sufficient information when he asked for quotations on his GTP plan, it is difficult given the time that has elapsed to fairly calculate the loss that has been incurred. Mr G has taken his benefits from the GTP scheme in an alternative form, and I don't consider it appropriate, or potentially even possible, for those decisions to be unwound.*

*It is disappointing that Zurich hasn't been able to provide further evidence to support the estimate it has made of Mr G's losses. Whilst I entirely accept the explanation it has provided, and agree, to some degree, that it is reliant on the actions of a third party to provide the necessary information, Zurich is still responsible for dealing with this complaint. And as a regulated business I would generally consider that the burden of performing, and explaining, complicated calculations such as these should be its responsibility rather than that of Mr G or this Service.*

*Whilst he hasn't provided us with evidence of the annuity rates that are available to him, Mr G has at least given us some explanation for his calculations. But those explanations have naturally been affected by the passage of time. Since Zurich first made its loss calculation, there have been many changes in the underlying circumstances. Mr G is now two years older, interest rates have risen, and so there have been corresponding changes in the annuity rates that are available to Mr G.*

*I haven't seen evidence of the quotation Mr G says he received from Zurich of the alternative benefits that he could have received had his pension savings been transferred into the Zpen plan. But unless Zurich provides alternative information in response to this provisional decision I have no reason to doubt what he says. Mr G says that, had his pension benefits been transferred to the Zpen plan he would have received an additional PCLS of £8,684 and a pension income of £1,303 per annum that included dependants' benefits and annual inflation linked increases.*

*So those are the pension benefits that I would expect Zurich to put in place, from the date that Mr G took his Zpen benefits, in order to correct its error. But of course, Mr G has taken the remainder of his GTP benefits in the form of a transfer to another provider. So the equivalent value of that transfer should be deducted from the compensation that Zurich needs to pay. And ascertaining that equivalent value is where the dispute between Mr G and Zurich appears to arise.*

*I think the additional PCLS is relatively easy to deal with. The funds that Mr G transferred to the new provider would give him a taxable income since he had already taken the PCLS before the transfer. So an allowance needs to be made for* *the additional income tax that Mr G will pay as a result of the loss of the further PCLS payment. Based on an additional PCLS of £8,684, and an assumption that Mr G is a basic rate taxpayer, I calculate that amount to be £2,171, although I invite both parties to confirm that calculation as part of their response to this provisional decision.*

*Mr G says that Zurich's quotation showed that he would have received an annuity of £1,303 per annum if his GTP benefits had been transferred into the Zpen plan. Zurich should provide Mr G with a clear and transparent estimation of what annuity rate would be currently available to him on the open market, based on the same characteristics as the Zpen annuity he took (eg dependants' benefits, guarantee, escalation rates etc). That rate can then be used to estimate the capital value of the remaining benefits that Mr G transferred (£33,776 less the additional PCLS of £8,684) in terms of an annuity income. Zurich should then arrange an annuity for Mr G to represent the difference between the annuity that can be purchased now, and the estimated income if the benefits had been transferred into the Zpen plan.*

*But that additional annuity would have been paid to Mr G since 2019. So Zurich should also make a payment to Mr G to reflect those additional annuity payments he would have received since he took his Zpen benefits. But, that income would have been taxable, so Zurich can reduce this part of the compensation to notionally reflect the tax Mr G would have paid at his marginal rate. I assume that to be 20%, but Mr G should confirm that in response to this provisional decision. Zurich should add simple interest at a rate of 8% per annum to each of the net additional annuity payments from the date they would have been paid to the date of settlement.*

*It is clear that Zurich's failure to provide all the appropriate information to Mr G when he took his GTP benefits will have caused significant disruption to his retirement planning. So I intend to direct Zurich to pay an additional sum of £300 to Mr G for the inconvenience he's been caused.*

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Since then I have had extensive discussions with both Mr G and Zurich that has allowed me to reach a position of consensus on the compensation that should be paid. I will set out that compensation below.

**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.

As I explained earlier, both parties now agree about what needs to be done in order to put things right for Mr G. I will set out below in some detail those steps, so that it is clear what is required.

But given that agreement I think it is reasonable to conclude that Mr G's complaint should be upheld and that Zurich should pay him appropriate compensation including the sum of £300 that I proposed in my provisional decision for the significant disruption caused to Mr G's retirement planning.

## Putting things right

In order to put things right for Mr G, Zurich should do the following;

- Mr G has confirmed he is a basic rate taxpayer. By not transferring his pension savings into the Zpen plan he lost the opportunity to take an additional PCLS payment of £8,684. So Zurich should pay Mr G £2,171 to reflect the additional income tax he will need to pay.
- Zurich should calculate the cost of purchasing, on the open market, an annuity to reflect the income Mr G could have received from the Zpen policy for his transferred benefits. That annuity should be based on the same terms as the Zpen annuity he took (eg dependants' benefits, guarantee, escalation rates etc).
- Zurich should pay Mr G the difference between the annuity cost calculated above and the residual amount transferred to the new provider (£25,092). Given the annuity if taken would have provided a taxable income I think it reasonable to reduce that payment to allow for a notional income tax deduction of 20%.
- Mr G has missed out on some potential annuity income. So Zurich should pay a lump sum to Mr G to reflect the additional annuity payments (that could have been purchased by the compensation calculated above before the deduction of the notional tax) he would have received in the period since he took his Zpen benefits. The annuity payments should be notionally reduced to reflect the income tax Mr G would have paid.
- Add interest at a rate of 8% simple to each of the above payments from the date they would have been paid to the date of settlement. HM Revenue & Customs requires Zurich to take off tax from this interest. Zurich must give Mr G a certificate showing how much tax it's taken off this interest payment if he asks for one.
- Pay a sum of £300 to Mr G to reflect the disruption caused to his retirement planning.

Zurich should set out its calculations of the above compensation for Mr G in a clear, and easily understandable format.

## My final decision

My final decision is that I uphold Mr G's complaint and direct Zurich Assurance Ltd to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 April 2023.

Paul Reilly
**Ombudsman**