

The complaint

Mrs P complains that Rothesay Life Plc (Rothesay) paid her less than its original illustration of benefits from her occupational pension scheme (OPS) said it would. She says because it recalculated the benefits, she received less tax free cash (TFC) and a lower income figure which she wouldn't have accepted if she had known beforehand. She wants Rothesay to honour its original higher calculation.

What happened

Mrs P belonged to an OPS although her pensionable service had ended in July 2006. Her normal retirement date was aged 65, but she applied to draw her retirement benefits from 1 May 2022. In March 2022 Rothesay provided a retirement quotation which was “*guaranteed for 90 days from 2 March 2022*” but noted that Rothesay had the right to undertake a recalculation if it received its required documentation after that date. The TFC that was available was £69,576.47 and the yearly pension was £10,436.52.

Unfortunately Mrs P couldn't return the documents until late June and emailed Rothesay on 4 July 2022 to ask if the documents had been received. Rothesay explained to Mrs P that there were a couple of additional forms which needed to be returned, which were completed by mid-July 2022. On 22 July 2022 Rothesay issued a revised statement of benefits which noted that the TFC payment on 26 July 2022 would be £67,387.80 and the yearly annuity payment would be £10,108.08.

Mrs P contacted Rothesay and said the new figures were much lower than the original forecast and asked for an explanation. Rothesay said the figures given in its original quotation were guaranteed for three months from the date of that letter. As Mrs P hadn't returned the required forms within that time it had been necessary to recalculate the benefits. It also added that as the value of the benefits had fallen by less than 10% it had acted within the rules of the scheme procedures – which meant it didn't have to confirm the new values to Mrs P before it settled the claim and paid the benefits.

Mrs P said she had sent the information to Rothesay before the deadline expired but Rothesay explained that she hadn't provided *all* the forms by that date – as she had been required to do. It said it was therefore required to recalculate the benefits.

Mrs P said she had to print off and return two forms and also hadn't received a response to her email of 7 July 2022 which asked if Rothesay had received the forms. But Rothesay said that, as the original quotation was dated 2 March 2022 it would have required the outstanding forms to be returned by the end of May 2022 – which Mrs P hadn't been able to do.

However, Rothesay noted that it should have told her, following her email correspondence of 20 June 2022, that a new quotation would be required – which it accepted may have allowed her to decide if she wanted to defer her benefits to a later date. It offered £400 compensation as a gesture of goodwill. It also said that Mrs P could reverse the decision to draw her benefits providing she repaid all the funds that had been paid to her. It thought this would allow her to defer taking her benefits if that was what she wanted to do.

But Mrs P said she hadn't been advised by Rothesay that the benefits would be recalculated so she brought her complaint to us where one of our investigators looked into the matter, but he didn't think the complaint should be upheld. He said there was no evidence to suggest that Rothesay hadn't done what it said it would in its original quotation – namely to recalculate the benefits if the quotation expired. He accepted that Rothesay hadn't handled the matter well and missed the opportunity to make Mrs P aware that it would carry out a recalculation. However, he didn't think there was any evidence to support the idea that Mrs P would have deferred her retirement date if she'd been made aware of Rothesay's position – and he concluded that the offer of £400 for the distress and inconvenience caused was fair and reasonable.

Mrs P said that, when she received an email from Rothesay with the updated calculation on 23 July 2022, she responded immediately but didn't get a reply and the funds were paid into her bank a few days later. She said this gave her no choice in the matter and has left her out of pocket – which she thought was unfair. She said that because she had retired, she was travelling during this whole process and even asked Rothesay if things needed to be updated because of the elapsed time – but was told everything was “fine”. She wanted her complaint to be referred to an ombudsman, so it was given to me to review.

My provisional decision

In my provisional decision I said I thought that Rothesay's offer of £400 for the distress and inconvenience caused and its willingness to reverse Mrs P's retirement and allow her to defer taking benefits until a later date was fair and reasonable. I made the following points in support of my findings:

- Mrs P received a letter from Rothesay dated 2 March 2022 which set out what she needed to return as “outstanding documentation”. It also noted that the illustration of retirement benefits payable was “*guaranteed for 90 days from 2 March 2022.*” So it was reasonable to expect the information to be provided before 1 June 2022 in order to guarantee those payments.
- But the first communication I'd seen from Mrs P was 20 June 2022 – which was 20 days after the expiry of the illustration.
- So, although Mrs P provided evidence to show that the matter remained unresolved for some time afterwards, I didn't think Rothesay had acted unfairly by recalculating the benefits payable when the deadline for providing the outstanding requirements expired.
- When Rothesay recalculated the benefits it didn't make Mrs P aware of what it was going to do and that the amounts payable had fallen. So I considered what Mrs P might have done if she'd been made aware of that fact. But I thought that if Mrs P had the option to defer her benefits and live off other means she would have done so in the first place instead of drawing her benefits at the first opportunity. So I thought it was difficult to conclude that she would have deferred taking her benefits if she'd been made aware of the recalculation prior to the claim being settled.
- I also noted that Rothesay had offered Mrs P the chance to repay the benefits she'd received and to unwind her retirement and defer taking the benefits. But she hadn't responded to that offer.

Mrs P said that was because she was travelling and only had three days to consider Rothesay's offer before she left the country again – which wasn't sufficient time to consider the possible tax implications of such an offer. I thought that if Mrs P had wanted to unwind the payment of her retirement benefits – as she said she would have done if she'd known about the lower recalculated benefits, then any offer to do so would more likely than not have been acceptable to her without the need to consider the tax implications.

- But in any case Rothesay's offer did put Mrs P as close to the position she'd be in now had she not taken her benefits. And it confirmed the offer was still available, so I thought it was a fair and reasonable resolution to the matter – along with the offer of compensation for any distress the matter had caused Mrs P.

Mrs P said that she and her partner had been retired since 2019 and were enjoying their time together. She said they didn't need to take the benefits from her pension in order to fund their travel or indeed their everyday living expenses, but when she was aware of the benefits payable she was happy to start using them as funds to be put aside for the new property they would be living in after their travel plans had finished.

So she said there was no need for her to have to accept payments which amounted to £10,000 less – over the duration of the plan - than the original illustration of benefits. But as they were paid into her account without prior notice she was unable to defer them at that time. She went on to confirm that, had she not been travelling for much of this time, she would have accepted Rothesay's offer to pay back the benefits she'd already received and return to the position she was in previously.

So she said she would like to explore the possibility of being returned to her initial position and wanted to know how she could go ahead with the process.

I explained that I wasn't offering the option as part of any negotiation but, as Rothesay had confirmed the offer was still available, I had provisionally decided that the fairest resolution to the complaint was to tell Rothesay that it should honour its original offer of restoration and take steps to unwind the whole process by returning the plan to the position it was in prior to benefits being drawn.

Having already confirmed that *"if Mrs P wishes to return to us all payments made to date (PCLS + regular pension payments) then we would be in agreement to unwind her retirement and return her to deferred status"* Rothesay said it had nothing further to add following my provisional decision.

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 see no reason to depart from my provisional findings. I have carefully considered Mrs P's further submissions, so I'll now set out the reasons for my decision.

The expiration of the guarantee within the illustrations

To begin the process of paying Mrs P's retirement benefits Rothesay sent her a retirement options pack dated 2 March 2022. It included a number of documents - and the covering letter explained that *"you must fill in and return the required forms as soon as possible. Any delay in returning the statement may result in a delay in paying your benefits."*

Apart from a delay in making payment, the main implication of not returning the signed statement was that *"the benefits shown on the statement are based on current information held on our records and the law in force at the date your pension benefits are worked out. The figures are guaranteed for 90 days from 2 March 2022, if any of this information changes between now and your date of retirement, or if you have any benefits from any other pension provider, the figures on the enclosed statement may change."*

This also includes the event that a request for payment of your retirement benefits are (sic) received after the 90 day period Rothesay reserves the right to undertake a recalculation to reflect updated market conditions.”

I think this was clear in outlining Rothesay's position that if it didn't receive the outstanding requirements it needed within 90 days, then it *may* recalculate the benefits that were payable. It went on to explain the reasons why this might be the case.

But the earliest communication I've seen from Mrs P in relation to this request was an email dated 20 June 2022 when she indicated she hadn't been able to print off the forms required and return them. Mrs P has explained that she was travelling during much of this time but there's no evidence of any prior communication in which she told Rothesay she might not be able to meet the guarantee deadline. I know Mrs P did return the forms by the end of June 2022 and she has said that the process was then “dragged out” by Rothesay who requested that further information was provided. I'll comment on that matter later in the decision.

But the fact remains that Mrs P was obliged to return the forms by 1 June 2022 (90 days after the date of the retirement pack) if she wanted to guarantee that Rothesay should use the figures set out within the retirement pack illustration. If this deadline wasn't met then Rothesay was entitled to do what it had already said it might do – which was to recalculate the figures. So I can't say that Rothesay did anything wrong here as it was entitled to carry out a new calculation if it felt it was appropriate.

However, Mrs P said that having recalculated the value of her benefits Rothesay didn't make her aware that the value had dropped significantly before paying the TFC and some backdated monthly payments into her bank account. She said this gave her no time to consider her options and she almost certainly would have deferred taking her benefits had she been given the choice. So, although I don't think Rothesay did anything wrong by recalculating the figures and applying the lower values, I have gone on to consider what Mrs P might have done had she been advised of Rothesay's actions before they were carried out.

What would Mrs P have done?

In her response to my provisional decision Mrs P explained her situation at the time. She said she'd been retired with her partner for a couple of years when the benefits from her pension became payable. She said she'd had no reason to use them up to that point and was able to fund everyday expenditure and the travel she was embarking on using other means of income. She says it was only because the figures seemed attractive to her that she decided to draw her benefits in 2022. She thought it would make sense to put the money aside for future improvements to the property they intended to live in after they'd finished travelling.

So Mrs P has given reasons for why she would have been in a position to defer her benefits in June 2022 if she'd known they were lower than anticipated – as she simply didn't need to take them at that time.

It's not possible for me to know what Mrs P would have done if she'd been made aware of the lower revaluation – and I can't discount the fact that she may have made a different choice based on the lower TFC and residual income. But I find it difficult to conclude that she would have applied to take the benefits in the first place if she didn't need them.

And, while Mrs P has explained that she simply didn't have enough time to consider Rothesay's offer of putting her back into the position she would have been prior to taking her

benefits, I think she would have made some contact with Rothesay when she received its offer, to align with her premise that she would definitely have deferred if she'd been made aware of the lower revaluation.

I'm also not persuaded that Mrs P would have needed to discuss the tax implications or otherwise of the offer as Rothesay had simply offered to put her back into the position she would have been had it not paid her pension benefits. I would have expected Mrs P to have at least contacted Rothesay to notify it that she'd received its offer and would take it up – albeit that she would be travelling and limited to what she could do to provide information if required.

But, as I've said previously, my assumption of what Mrs P would have done can only be made on the balance of probability, so I've considered her position should I be wrong in my assertion of what I think happened.

Rothesay's offer to put things right

If I am wrong in my assumption above then it's fair to conclude that Mrs P would have chosen to defer her benefits if she'd been made aware of the lower revaluation. So this would form the basis of any redress I might recommend if I thought the complaint should be upheld, thereby restoring Mrs P to the position she'd now be in had Rothesay not made an error.

However, Rothesay has accepted this position and made Mrs P an offer to reflect the fact that it should have made her aware that it was going to revalue the benefits and that this might lead to a reduction in those benefits.

It offered Mrs P £400 for the distress and inconvenience caused by the error and also said it was willing to reverse her retirement by unwinding the TFC and income payments and allowing her to defer taking benefits until a later date. Mrs P would need to repay what she's received so far – but she's confirmed that money remains in her savings so can be paid back to Rothesay. And Rothesay has confirmed the offer remains available to Mrs P and, while it has said that unwinding the annuity is a complex matter, it has given a commitment to carrying it out.

So I think, given the circumstances, Rothesay's offer puts Mrs P back as close to the position she would now be in had Rothesay made her aware of the lower revaluation and she had then requested the deferment as she said she would have done. So I think that's a fair and reasonable offer in the circumstances and the compensation offer of £400 is within the range of what I'd expect to see for the impact caused by an error like this.

My final decision

Rothesay Life Plc's offer is to put Mrs P back as close to the position she would now be in had she chosen to defer taking her benefits instead of receiving them in July 2022. It has also offered to pay compensation of £400 for distress and inconvenience arising from its decision not to make Mrs P aware of the outcome of its revaluation before it paid her benefits.

I think that offer is fair and reasonable in all the circumstances, so that's what Rothesay should do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 2 August 2023.

Keith Lawrence

Ombudsman