

The complaint

The executor of the late Mr K's estate complains that Rothesay Life plc (Rothesay) only returned Mr K's pension contributions when he died instead of the full transfer value of the pension fund. She would like Rothesay to pay either an additional five year lump sum or other financial compensation to his estate.

What happened

The late Mr K held deferred benefits in a previous employer's pension scheme which were transferred to Rothesay in 2016. On leaving the scheme Mr K had made contributions of £514.10 and his deferred annuity was £272.60. The normal retirement date of the Rothesay policy was 7 April 2022.

In 2017 Mr K contacted Rothesay for details of his retirement options. Because Mr K's plan was a section 32 policy which had received the benefits from the employer's final salary pension scheme, Rothesay had to pay Mr K a guaranteed Minimum Pension (GMP) at age 65. But it said it was unable to provide the GMP benefits earlier, and because Mr K had total retirement benefits of over £30,000 – he was drawing annuities from another provider – it couldn't pay him a one off lump sum either. So it advised Mr K that he could either transfer his benefits to another provider or leave them within the Rothesay plan until such a time as it could meet the GMP. At this time Rothesay noted the surrender value of the plan was £41,942.

Mr K complained about this outcome and Rothesay said it provided a summary of its resolution to him at that time.

Unfortunately Mr K passed away in February 2019. The executor managing his estate contacted Rothesay to request payment of the pension proceeds to the estate. Rothesay paid £3,145.15 in October 2019. But the executor complained stating that it should have paid the surrender value of the plan. She also complained about the advice Mr K had previously been (or should have been) given.

Rothesay said that, as the benefits had originally been held in a final salary pension scheme which it had taken over, and benefits transferred to a new section 32 plan, no advice was needed as Mr K would have been entitled to a pension based on the benefits he previously held. It also confirmed that, as Mr K had passed away before his normal retirement age, it had followed the rules for paying benefits as "*death before retirement*", which meant it was obliged to pay the revalued contributions that had been made to the plan.

It also said that the surrender value of around £42,000 was a transfer value that would have been paid to another provider so that it could provide Mr K with his pension benefits – so it wasn't an amount that would have ever been paid as a cash lump sum.

The executor wasn't happy with the outcome and thought it was unfair. She continued to communicate with Rothesay – engaging a legal representative for some of that time – until early 2024 when Rothesay said it would no longer correspond any further about the matter. So the executor brought a complaint to us and one of our investigators looked into the matter.

He thought some aspects of the complaint couldn't be considered as they'd been brought outside of the time limits allowed. He thought the rest of the complaint shouldn't be upheld making the following points in support of his assessment:

- The complaint point that additional monies were due to the estate because Rothesay had only paid a refund of contributions following Mr K's death was out of time. This was because a final response letter about the matter had been sent out in November 2020 and no complaint had been brought to us within six months of that letter as the rules dictated.
- Rothesay had been unable to provide a copy of the final summary response it sent to Mr K in 2017 in relation to his complaint about not being able to access his pension benefits – so we could consider that matter.
- But he didn't think Rothesay had mis sold Mr K's pension as no advice was given when the employers' final salary scheme was taken over by Rothesay and individual plans to "safeguard" the retirement benefits were set up.
- He also thought that Rothesay had set out the options Mr K had in 2017 including transferring his benefits to another provider and discussing serious ill health retirement. But he noted Mr K didn't undertake a transfer and didn't provide any further documentation in support of his eligibility to access benefits due to serious ill health. So he didn't think Rothesay had done anything wrong and had acted fairly.

The executor didn't agree. She said we hadn't taken account of the late Mr K's considerable health issues and she provided evidence to support those conditions which she thought ought to have qualified Mr K to be paid under the "serious ill health" option. She also said that she had complained to the legal ombudsman service and that we should try to corroborate that as evidence that she had tried to raise this matter previously. The investigator said that it was immaterial to this complaint that the executor had complained to another service and remained of the view that Rothesay hadn't done anything wrong.

The executor wanted the complaint to be referred to an ombudsman – so it's been passed to me to 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 the same conclusion as the investigator. I know this outcome will disappoint the executor who brought this complaint on behalf of the late Mr K's estate, and I have some sympathy for the position the estate finds itself with regards to the payment of the pension benefits following Mr K's passing. But I don't think Rothesay has acted unfairly here and there are some parts of the complaint which we cannot consider – so I'll set out my reasoning below.

The 2020 complaint about the pension payments to the estate

The executor complained that when Mr K passed away Rothesay only paid a refund of the contributions – with interest – that he had made to the section 32 pension plan. She believes it should have paid the transfer value of the plan at the time or even a lump sum equal to five years' worth of payments – which is what she thinks the terms and conditions suggested. She complained about this matter in 2020 and in November 2020 Rothesay issued a final response confirming *"we can only reiterate what we previously outlined in our letter dated*

22 October 2020, that the only benefits payable under the policy was the refund of contributions.”

The letter provided referral rights to this service which said a complaint needed to be brought to us within six months of the final response letter. I'm satisfied Rothesay's letter was a valid final response letter and made it clear what the executor needed to do, but a complaint wasn't brought to us until 2024. Rothesay said this means that complaint point has been brought too late and it wasn't willing to let us consider it.

The rules under which we operate are set out in the Dispute Resolution (DISP) rules in the Financial Conduct Authority's Handbook. The relevant part of DISP 2.8.2 states:

“The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

- (1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication; or*
- (2) more than:*
 - (a) six years after the event complained of; or (if later)*
 - (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

Unless in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances.”

So, as Rothesay's final response letter was issued in November 2020 and the executor brought the complaint to us in 2024, it wasn't brought within the six months timescale and therefore has been brought too late and can't be considered.

I do have discretion to disregard the time limits if there are exceptional circumstances to explain the delay in bringing a complaint, but I haven't been provided with evidence of any exceptional circumstances that would allow me to disregard the time limits in this case. The executor has said that she made a complaint about this and another matter to the legal ombudsman and thought we should be able to confirm this to support the claim that she registered her dissatisfaction.

I'm unaware why the executor made her complaint to another ombudsman service, but I can see that Rothesay's final response said, *“should you wish to take this case further you will need to contact the Financial Ombudsman Service directly using the details provided below.”* Our correct address was then set out. So the executor was made aware of who she should approach to pursue her complaint and there's no evidence to suggest she was given details of another service that she should use instead – so I'm satisfied she ought to have known how and who to bring the complaint to and that it needed to be within six months of the final response letter.

The late Mr K's 2017 complaint

In 2017 Mr K contacted Rothesay for details of his retirement options. He was informed that his pension contained a requirement to pay a GMP at age 65 – so if it wasn't possible to pay these same benefits at an earlier age, Mr K would need to wait until Rothesay was able to meet the GMP requirements (no later than age 65). He was also told that he could transfer his benefits to another provider – if that were possible – but that a lump sum alternative was not possible because of the level of pension benefits he held across all his plans. Mr K

complained about not being able to access his benefits and Rothesay said it provided Mr K with a final response or resolution letter to his complaint at that time.

So Rothesay said that this complaint was also out of time because it hadn't been brought to us within the time limits allowed as set out in its resolution letter. But I haven't been provided with a copy of that letter or any evidence that Mr K was made aware of the time limits that applied to him bringing a complaint to us, so I can't reasonably say that he didn't bring that complaint outside those time limits. I've therefore gone on to look at the merits of that part of the complaint to see if Rothesay acted fairly.

Mr K's plan with Rothesay was an individual section 32 pension plan which came about when his employers sold the benefits of its final salary scheme to Rothesay as part of a bulk buy-out. This was designed to safeguard the scheme members and meant Rothesay had to provide the same benefits Mr K would have accrued from the scheme by way of a GMP. But the GMP was only payable at age 65 under the terms of the policy and if the underlying fund didn't support payment of the GMP before that age – and Rothesay was unable to meet that requirement, it wasn't able to give Mr K earlier access to his plan. So, according to HMRC regulations, Rothesay acted appropriately by not allowing Mr K access to his (lower) benefits.

Rothesay did set out Mr K's alternatives which included transferring the cash equivalent transfer value to another provider and it issued an illustration for this purpose. But I understand Mr K didn't take up this alternative – possibly because he wasn't able to meet the cost of financial advice required to undertake such a transaction. But either way Rothesay wasn't acting as Mr K's adviser here so it wasn't able to help with a transfer and I don't think it could be held responsible if Mr K didn't pursue the matter. In my experience it was also very unlikely that another provider would have accepted such a transfer where a GMP was involved.

The executor has also said that Mr K suffered from a number of medical conditions and may have qualified to access his benefits under a serious ill health option. She provided medical evidence from throughout Mr K's life to support this claim. I've seen from contemporaneous call notes from 2017 – which I've no reason to dispute – that Rothesay did discuss this matter with Mr K. It advised him that the serious ill health rule required him to substantiate that he had a life expectancy of less than one year and I understand Mr K accepted he wouldn't qualify for such a benefit.

I have also carefully considered the medical evidence that has been provided on the late Mr K's behalf, but I haven't seen anything which might suggest he would have been able to demonstrate that he had less than 12 months to live. But in any case, it wasn't for Rothesay to make that judgement, it was required to make Mr K aware of the option so that he could provide the appropriate supporting documentation, if available. The executor has also made reference to Mr K's inability to understand the information he was provided with or to complete documentation he may have needed to provide – such as an expression of wishes form. She didn't think Rothesay provided Mr K with the support or help he needed.

There aren't any available call recordings from the time Mr K spoke with Rothesay in 2017 – so it's difficult to conclude how he presented in those calls. But from the notes I've seen it seems clear that Mr K was able to ask the relevant questions about his plan and register a complaint about the lack of early access to his benefits. He was also able to request a surrender/transfer quotation. There's also no evidence to suggest he didn't understand the information he was given – even though he subsequently didn't act upon it – or that he made Rothesay aware of any difficulties he might be having with the information or documentation it provided. In those circumstances it's difficult for me to conclude that Rothesay should have

done more to help Mr K and I don't think it did anything wrong in the way it communicated with Mr K or in the information it provided to him in 2017.

Like the investigator I think it was the restrictive nature of the terms of the plan that caused problems for Mr K, so I've also gone on to consider whether there was any responsibility on Rothesay with regards to the suitability of the plan. The executor has also suggested that she thought it "*was mis sold*" to Mr K.

The suitability of the plan

As I've set out previously Mr K's plan was the result of a buy-out of his employer's final salary pension scheme whereby the members were given their own individual section 32 plans which were required to reflect the same level of retirement benefits. This was a bulk buy out whereby all scheme members were told of the transfer of benefits but weren't required to do anything or to be given advice. It was the choice of the employer to choose Rothesay as the provider of the plans and they were transferred at the same time into the same type of section 32 plan.

So, as there was no requirement to give advice or consideration of individual suitability, I can't reasonably say the plan was mis sold to Mr K or was unsuitable. The idea of the transfer was to ensure the same retirement benefits Mr K had accrued with his employer were preserved through Rothesay until the age of 65. In that respect the new plan wasn't actually *sold* to Mr K but became the outcome of the buy-out of the scheme. For that reason I can't say it was mis sold to him.

My final decision

For the reasons that I've given we can't consider the complaint about the death benefits that were paid to Mr K's estate. And I don't uphold the complaint Mr K raised in 2017 about being denied access to his benefits or that he was mis sold the section 32 plan.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr K to accept or reject my decision before 8 January 2025.

Keith Lawrence
Ombudsman