

## **complaint**

Mr H complains he was advised by Norwich Union to invest in a Norwich Union Transfer Plan 32 in February 1986. Norwich Union is now part of Aviva ("the firm"). He says the fund has under-performed. He is unable to transfer due to the restrictions of the Guaranteed Minimum Pension ("GMP").

## **background**

In February 1986 Mr H took out the Transfer Plan 32. In March 2004 the firm confirmed that the transfer value was insufficient to fund the GMP. So it could not be transferred.

Mr H complained. The firm gave its final response in June 2004.

In February 2014 Mr H discussed his plan and its GMP with the firm. After this, Mr H complained. The firm gave a final response in July 2014. Mr H referred his complaint here.

It was investigated by an adjudicator. It was not upheld.

Mr H did not agree. He said:

- The quote at outset did not say that the guaranteed fund and GMP rely in part on projected bonuses.
- He did not know what bonuses were needed to fund the guarantees.
- He was led him to think he would get the full benefit of the bonuses and the guarantees.
- The quote did not say what he gave up in transferring from his previous scheme to the new plan.
- The With Profit fund has been grossly mismanaged.

The firm said that advice was not given. But it said the plan got an uplift in value from a commission rebate. This can only happen if a direct application, with no advice, was made.

## **my findings**

I have considered the available evidence to decide a fair and reasonable outcome.

I have reached the same conclusions as the adjudicator for the same reasons.

I considered whether the firm's representative in 1986 gave Mr H advice. The evidence is not clear. At that time there was no need to keep fact find documents or suitability letters.

So I cannot say for certain whether advice was given and if so, whether it was suitable. I have though noted the firms comment about the commission rebate.

But that is not the crux of this complaint. It is rather that the performance of the plan has not met expectations. And that Mr H was not told this could impact his ability to transfer his plan.

The firm told Mr H in June 2004 that its responsibility then was to review sales where customers could have stayed in their occupational pension schemes. If they were advised to take out a personal pension plan between April 1989 and June 1994 the advice had to be reviewed. Mr H's plan was taken out in 1986. So Mr H's plan fell outside the industry wide Pensions Review. But it also said it did have a duty of care to Mr H.

It said:

*.....additionally whether they (the representative) gave you advice or simply information about the Norwich Union products available, they were also under a duty of care not to make any negligent statements. A breach of the latter can only be held to have occurred where it can be established that a mis-statement was made, or the policy was actually mis-represented to you."*

I have not seen evidence that Mr H was given incorrect information or that the plan was misrepresented. The illustrations given to him in 1986 were based on investment and annuity forecasts then thought realistic.

It may be helpful to give some background about with profits funds. Mr H's plan was a conventional with-profits plan. These plans have a guaranteed amount of cash or pension to which bonuses are added. The guaranteed amount is payable as set out in the plan document. Regular bonuses increase the face value of the plan. The guaranteed sum reflects both contributions and a growth element.

A final bonus may be paid at maturity or if there is an earlier (death) claim. It will broadly reflect any excess of a policy's share of the fund over the sum guaranteed. It includes previous additions or regular bonuses. Final bonuses are set when a claim arises. A final bonus is unlikely to be paid if, for example, the guaranteed sum exceeds a policy's share of the fund.

I know Mr H expected a higher fund value at maturity. This was based on illustrations he got when the plan started. But these used projected growth rates which *had* to be used. They were set by the industry regulator. They were only a *projection* of potential benefits. They were not guaranteed.

Investment returns have fallen short of the assumed growth. If funds have had no growth there will be no profits to distribute. If there has been growth, a provider *must* first ensure all guaranteed benefits are covered before distributing additional profits.

I am not persuaded that Mr H was given unsuitable illustrations in 1986. Unfortunately investment returns have not met the levels forecast. But that does not mean Mr H was misled.

When a plan has a GMP, typical of many section 32 plans, it is not possible to transfer to another provider *unless* the transfer value is sufficient to fund the GMP. As this was not the case here, the firm was correct when it said it could not transfer the plan.

Mr H says that the firm have not properly managed it's with profits fund. This is a matter for the regulator, the Financial Conduct Authority. They have said they have no concerns about this fund.

**my final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr H to accept or reject my decision before 24 August 2015 .

Terry Connor  
**ombudsman**