Ombudsman determination
CIFO Reference Number: 15-000038
Complainant: [The complainant]
Respondent: [Insurance Company Z]

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.[1]

The complaint relates to the withdrawal of an annuity product offering by the complainant's pension provider, [Insurance Company Z].

Background

The complainant is a member of the [Insurance Company Z] Pension Scheme, which he contributed to during a period of employment with [Company B].

The complainant left [Company B] on [redacted for anonymisation purposes] and sought to apply the pension funds to an annuity product rather than draw down the full amount as a lump sum.

The complainant requested an illustration for a 10-year annuity from [Insurance Company Z], which was provided to him on 4th December 2012. He was unhappy with the purchase price and annuity amount which was offered and decided not to purchase the annuity. The illustration was valid for two weeks and subsequently expired.

Almost a year later, on 12th November 2013, the complainant was informed by [Company B] that [Insurance Company Z] had withdrawn their annuity product from the market and was no longer offering them to members of the pension plan.

The complainant said this left him no choice but to withdraw the pension funds as a lump sum, and he had been advised that this would have negative tax implications.

The complainant requested that [Insurance Company Z] continue to offer annuity products to pension plan members, and asked them to provide him with an illustration for a term of no less than 10 years.

In addition, the complainant did not consider that the annuity rate offered in the original illustration truly reflects the returns [Insurance Company Z] would make by

[1] Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

investing his pension funds over the term, and so he is also seeking a more favourable annuity rate than previously offered.

[Insurance Company Z] provided excerpts of the schedule and general conditions from 2003 when the pension plan was originally set-up for [Company B] employees. The case handler noted the section which states that:

> *'[Member contributions] shall be applied to secure an annuity from an insurance company of such type as the Member may desire and which is offered by that insurance company. '*

[Insurance Company Z] said that they had withdrawn their annuity product from the market and therefore it was no longer offering a product

> 'of such type as the Member may desire and which is offered by that insurance company'.

On this basis [Insurance Company Z] did not consider they were obliged to offer the complainant an annuity and advised that the pension funds could instead be transferred to another annuity provider with no charge if this was requested.

The case handler agreed and did not consider that [Insurance Company Z] was obliged to offer an annuity option to the complainant once they had withdrawn the product from the market. The complainant's desire to avoid the potential tax implications of a lump sum withdrawal could be satisfied by another annuity provider.

The complainant disagreed with the case handler's conclusions. He stated that, after beginning employment with [Company B] in 2005, he had not been given the documents from [Insurance Company Z] by [Company B]. Instead he referred to an employee benefits handbook provided by [Company B] which, in relation to the retirement plan, states that:

> *'The Plan has been established under an Insurance policy with [Insurance Company Z]'*
>
> *'This accumulated fund may then be paid as a cash lump sum. Alternatively, employees may choose to purchase an annuity'.*

Because [Insurance Company Z] is the pension plan provider, the complainant stated that it is reasonable to infer that they will be the annuity provider. By ceasing to provide this option, the complainant argued that [Insurance Company Z] are failing to meet the contractual obligation he says is imposed by this document.

The case handler considered the evidence provided by both parties and concluded that the complaint should not be upheld. The complainant did not agree with the case handler's conclusions, and the complaint was escalated to me for a formal determination.

Findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have taken note of further representations made by each party following the case handler's initial conclusions.

Reinstatement of the annuity

Financial service providers are commercial entities. Absent a contractual obligation to do so, I would not generally consider that they are obliged to continue offering certain products.

I have noted the document provided to the complainant by his former employer, which explains the particulars of the [Insurance Company Z] scheme. While it was not an [Insurance Company Z] document, and therefore not binding on [Insurance Company Z], I acknowledge that the complainant says he was not provided with these by his former employer [Company B].

The following statement was highlighted for my attention:

> *'This accumulated fund may then be paid as a cash lump sum. Alternatively, employees may choose to purchase an annuity'.*

I do not consider that this statement prevents [Insurance Company Z] from withdrawing their annuity products. Annuity products are offered by a large number of financial service providers. I consider that it is reasonable to infer that this statement referred to the ability to purchase an annuity generally with their pension funds, rather than specifically from [Insurance Company Z]. This statement does not create a contractual obligation for [Insurance Company Z] to provide an annuity option of their own.

[Insurance Company Z] confirmed that it will transfer the funds to any annuity provider upon request at no charge, so there is no potential argument of economic harm in this case.

Reasonability of previous annuity illustration

The price and terms of the original annuity offered were set by [Insurance Company Z] in what I consider to be a legitimate exercise of their commercial judgment. I therefore cannot reasonably comment on its merits, nor reasonably expect them to reinstate an expired offer long after it had expired.

Conclusion

On the basis of the above, I conclude that it would be unreasonable to expect [Insurance Company Z] to reinstate their now withdrawn annuity product, and offer a revised illustration more to the complainant's liking long after their previous offer had expired.

Decision

My final decision is that I do not uphold this complaint.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: 20 May 2016