The Equitable Life Assurance Society

Rectification scheme (2003)

9199
Crystal Mark
Clarity approved by Plain English Campaign

CONTENTS

DEFINITIONS

Additional annuity – the compensation we will pay if you used the proceeds of your GAR policy to buy a non-profit annuity with us. We will add this compensation to the current annuity we are paying you.

Differential final bonus practice – the practice the Society used from 1 January 1994 to 19 July 2000, where lower final bonuses were paid to policyholders who bought a GAR annuity than to policyholders who bought a non-GAR product.

GAR – the guaranteed annuity rate provided under with-profits pension policies which were issued until 1988.

GAR annuity – an annuity based on the guaranteed annuity rate in the policy document.

GAR-like annuity – an annuity based on current annuity rates where the same annuity could have been provided on GARs.

GAR policy – a with-profits policy that entitles the policyholder to an annuity at a guaranteed annuity rate.

Managed Pension Review – a review we are carrying out into the circumstances under which we sold our Managed Pension policies (also known as income drawdown products). We arranged the Managed Pension Review in response to the Financial Services Authority's (FSA) request to make sure that the product was suitable, taking into account a person's general attitude to risk.

New final bonuses – the former board set these in October 2000 for all with-profits policies which became due for payment from 1 January 1994 to 19 July 2000. The level of these revised non-differential bonuses takes account of the House of Lords judgment and lies between the two levels that applied when the differential final bonus practice was in place.

Non-profit annuity – an annuity from which the income you receive is guaranteed. The annuity can be level or can increase either at a fixed rate or at a rate linked to an index such as the Retail Price Index (RPI).

Relevant benefits – the benefits you bought with the proceeds of a GAR policy while the differential final bonus practice was in place – between 1 January 1994 and 19 July 2000.

Relevant period – the period during which the differential final bonus practice was in place.

Relevant policyholders – those policyholders who held a GAR policy and who, when the policy became due for payment, took retirement benefits under that policy while the differential final bonus practice was in place – between 1 January 1994 and 19 July 2000.

Supplementary annuity – the compensation we will pay if you used the proceeds of your GAR policy to buy benefits that were invested in our with-profits fund or from another provider. This compensation will be paid as a level non-profit annuity.

The scheme – the rectification scheme (2003).

With-profits annuity – an annuity from which the income you receive depends on the bonus rates declared on the with-profits fund.

We, us, our, the Society – The Equitable Life Assurance Society.

You – the relevant policyholder.

SUMMARY

We have designed the rectification scheme (2003) to pay appropriate compensation to those policyholders or former policyholders:

- who chose a guaranteed annuity rate (GAR) annuity; or
- where the value of the GAR annuity would have been important to their choice if we had worked it out correctly at the time they retired.

This booklet sets out the background to the scheme, its principles and how the scheme will apply to individual policyholders in different circumstances. We are dealing with group schemes separately.

We will review cases (including those of policyholders who have died) and, where appropriate, offer compensation between late 2003 and December 2004. Not all cases will be eligible for compensation.

The scheme will deal with different categories of business at different times. If you are eligible for an offer of compensation, we expect to send an offer between:

- November 2003 and the end of March 2004 if you took a pension with us either as a GAR annuity or a GAR-like annuity; or
- February and the end of September 2004 if you used the proceeds from a GAR policy to buy benefits from us that were different from a GAR annuity; or
- June and the end of December 2004 if you used the proceeds from a GAR policy to buy benefits from another company.

In some cases we may need extra information from you before we decide on whether you are entitled to compensation and the amount you should receive. We will send out questionnaires to do this from February to September in 2004.

These dates will apply to most cases. However, we will review a few special cases at other times. We will make all offers of compensation under the scheme by December 2004.

BACKGROUND

Most of the with-profits pension policies we issued between 1957 and June 1988 gave the policyholder an option when the policy became due for payment of using the proceeds to buy an annuity from us at the guaranteed annuity rate (GAR) or at the current annuity rate (CAR) we were offering at the time. CARs are market rates, which are affected by any rise or fall in interest rates and life expectancy. GARs are fixed by the terms of the policy. In late 1993, CARs fell below the GARs for most policies that we had issued, though it was some years before the difference became significant.

When a GAR policy became due for payment, the board at the time aimed to make sure, as far as possible, that whether or not the policyholder decided to buy the GAR annuity, they should receive benefits that were roughly equal to their interest in, or share of, the with-profits fund. This led to a lower final bonus if the policyholder chose the GAR option, because policyholders who bought a GAR annuity would receive more value from their funds than other with-profits policyholders. Higher final bonuses were paid to GAR policyholders who did not buy a GAR annuity and to policyholders whose policies did not contain a GAR. This was known as the ‘differential final bonus practice’.

Some policyholders objected to this differential final bonus practice and the case went to court. In July 2000 the House of Lords ruled that the Society was not entitled to award differential final bonuses according to whether or not the policyholder bought a GAR annuity. The House of Lords judgment meant that the board in place at the time had to change the rate of final bonuses awarded for those years in which differential rates applied.

In October 2000, the then board changed the levels of final bonus for with-profits policies that became due for payment between 1 January 1994 and 19 July 2000. This was to bring them into line with the requirements of the House of Lords judgment. They set the revised final bonuses (the ‘new final bonuses’), for each of the bonus years 1994 to 2000, at a level between:

- the higher level which previously applied where policyholders took benefits at the CAR; and
- the lower level which previously applied where policyholders took benefits as a GAR annuity.

This meant that under the differential final bonus practice, policyholders who retired between 1994 and 2000 had received the wrong amount of final bonus. They received too much if they did not buy a GAR annuity (whether or not they had a GAR policy) and too little if they bought a GAR annuity.

In September 2000, the Society announced that it would set up a ‘rectification scheme’ for all policyholders who took retirement benefits from GAR policies when the differential final bonus practice was in operation. The scheme proved very complicated and time-consuming because of the large range of factors we needed to consider to assess each case. The scheme also gave GAR policyholders the opportunity to replace the product they chose when they retired with a GAR annuity. This was unfair because it allowed those who bought Managed Pensions and with-profits annuities to change the investment decision they took when they retired because they had the benefit of hindsight.

For these reasons, we announced that we were withdrawing the rectification scheme we had proposed, and were replacing it with a scheme that was simpler to run and fairer to policyholders overall. This new scheme is known as the rectification scheme (2003). Within this scheme, those with a valid claim will receive fair compensation while we will avoid passing on unreasonably high costs to continuing policyholders. In particular, the new scheme will pay compensation for any loss at retirement, but it will not pay compensation for investment losses after that date.

Although the scheme is not regulated by the Financial Services Authority (FSA), we have developed it in discussion with the FSA and we have taken account of their comments and suggestions. The FSA have confirmed that they do not object to the scheme as it now stands.

THE AIM AND PRINCIPLES OF THE RECTIFICATION SCHEME (2003)

The aim of the scheme is to provide compensation to those policyholders who chose a GAR annuity or where the value of the GAR annuity would have been important to their choice had we worked it out correctly at the time they retired. The scheme will follow three guiding principles to achieve this aim.

Simplicity

The terms of any offer we make to policyholders who are eligible for compensation under the new scheme will be as simple to understand as possible and easy to put into practice. The type of benefit the policyholder chose at retirement will continue. We will not look again at any decisions made at retirement which relate to tax-free cash and annuities for surviving husbands or wives.

Speed

We expect to make all offers under the scheme by December 2004 and we should put the offers into practice within six weeks of receiving the acceptances.

Fairness

We are a mutual society, and it is essential that we provide fairness between policyholders (both those who are being compensated and those who must meet the cost of this compensation). It is important to treat policyholders with similar claims in the same way and to make sure that we correctly identify and compensate the policyholders who are legally entitled to compensation.

HOW THE SCHEME WORKS

If you are a relevant policyholder, you may qualify for compensation under the rectification scheme (2003) for our failure to work out correctly the value of your GAR annuity when you retired.

Broadly speaking, the scheme aims to provide the compensation which we are advised is appropriate for our failure to correctly state the GAR annuity in your policy. When you are entitled to compensation, we begin by working out the difference in value at retirement between the GAR annuity we should have offered you and the annuity you actually took up.

If you took a GAR or GAR-like annuity, the comparison is straightforward. If the GAR annuity we should have offered you was more valuable, we simply increase the annuity and pay a lump sum to cover past instalments we would have paid you.

If you chose an annuity of a type that was not available in GAR form, we work out the value at retirement of the GAR annuity we should have offered to you and compare it to the value at retirement of the annuity that you took.

1 To work out the GAR annuity that we should have offered you, we add the new final bonuses to the guaranteed fund you took when you retired and take away any tax-free cash that you took. We then apply the GAR to that fund to decide on the income you could have bought using that policy on the day you retired.

2 Because you did not take an annuity of a type that was available in GAR form, we need to use a GAR-like annuity that you could have bought at the time you retired using the proceeds of your policy to compare with the GAR we should have offered you.

3 To work out the GAR-like annuity you could have bought when you retired, we look at the proceeds of your GAR policy when you retired (to which the higher differential bonus had been applied) and take off any tax-free cash that you took. We then use the appropriate annuity rates that we used at the time of your retirement to find the GAR-like annuity you could have bought for that price at that date. (Or, if you bought your benefits from another provider, we use the comparable rate, if better, that they used.) This GAR-like annuity had the same value at retirement as the product that you took.

4 If the GAR annuity that we should have offered was more valuable than the GAR-like annuity we have worked out in 3 above, and if you are entitled to an offer under the scheme, we will offer you compensation equal in value at retirement to the difference.

5 We will offer you the extra value as a supplementary annuity. We will work out this annuity using the annuity rate that was available at your retirement date. This annuity will be guaranteed and will be paid to you by us or another annuity provider. The amount you receive will not be affected by who the provider is. Your existing annuity will stay in force and will not be affected.

We have received legal advice that this is appropriate compensation for our failure to tell you the correct value of the GAR annuity.

If your existing annuity includes a pension for your surviving husband or wife (spouse), the extra amount of annuity will also include this spouse's pension using the same percentage that you chose for your existing annuity. If the policy did not provide a GAR for a spouse's pension, we will provide their pension at the rate which was available on your retirement date.

If we decide that your circumstances make it unlikely that you would have taken a GAR annuity had you known its value, we will not offer any compensation. However, if you do not agree with our decision, you can send us evidence that you would have taken a GAR annuity.

We will give priority to making offers within the terms of the scheme before we consider requests from policyholders who do not want to be dealt with under the terms of the scheme. If you ask us to consider your circumstances further, or disagree with the amount of compensation that we offer you, we will review your file. You are legally entitled to compensation only if you can show that you would have bought a GAR annuity had you known its correct value. Because of this, after reviewing your file, we can decide that you are not entitled to any compensation.

When we make an offer, we are not admitting liability. If you accept an offer under the scheme, you will not be able to make any further claims against us under your GAR policies based on, or arising out of, the differential final bonus practice.

OFFERS UNDER THE SCHEME

Relevant policyholders who took a pension with us as either a GAR Annuity or a GAR-Like Annuity

If you used the proceeds of your GAR policy to buy a pension with us as either a GAR or a GAR-like annuity, we will offer you:

- an increase to future payments of your existing annuity (the additional annuity); and
- a lump-sum back-payment representing the additional annuity you are entitled to, for the period beginning on the date when you first took benefits and ending on the date we start paying the additional annuity, plus interest.

We will work out the additional annuity by comparing the value at retirement of the GAR annuity that should have been available to you (with a fund where we used the new final bonuses) to the value at retirement of the annuity you bought (with a fund where we used the differential final bonus).

Relevant policyholders who took a non-profit annuity with us that is not a GAR annuity or a GAR-like annuity

If you used the proceeds of your GAR policy to buy a non-profit fixed or increasing annuity from us and we decide that the value of the GAR annuity would have been important to your choice if we had worked it out correctly using the new final bonuses when you retired, we will offer you:

- an increase to future payments of your existing annuity (the additional annuity); and
- a lump-sum back-payment representing the additional annuity you are entitled to, for the period beginning on the date when you first took benefits and ending on the date we start paying the additional annuity, plus interest.

We will work out the additional annuity by comparing the value at retirement of the GAR annuity that should have been available to you (with a fund where we used the new final bonuses) to the value at retirement of the annuity you bought (with a fund where we used the higher differential final bonus).

Relevant policyholders who took a with-profits annuity with us

If you used the proceeds of your GAR policy to buy a with-profits annuity from us and we decide that the value of the GAR annuity would have been important to your choice if we had worked it out correctly using the new final bonuses when you retired, we will offer you:

- a supplementary annuity; and
- a lump-sum back-payment representing the supplementary annuity you are entitled to, for the period beginning on the date you first took benefits and ending on the date we start paying the supplementary annuity, plus interest.

Your existing with-profits annuity will stay in force and will not be affected. We will pay the supplementary annuity as a non-profit annuity.

We will work out the supplementary annuity by comparing the value at retirement of the GAR annuity that should have been available to you (with a fund where we used the higher differential final bonus) with the value at retirement of the with-profits annuity that you bought with the same fund.

Relevant policyholders who took a Managed Pension with us when they retired

If you took a Managed Pension when you retired, we will assess your case under the scheme at the same time it is assessed under the Managed Pension Review, which will be completed by the end of 2004. Any future correspondence on this issue will come from our Managed Pension Review team. We organised the Managed Pension Review in response to the Financial Services Authority's (FSA) request to make sure that the product was suitable, taking into account a person's general attitude to risk. We will take your GAR option into account when reviewing your case.

Relevant policyholders who transferred their benefits to another provider when they retired

If you used the proceeds of your GAR policy to buy retirement benefits from another provider, we will ask you to fill in a questionnaire (if we do not already have the relevant information) and to send us documents, such as a 'reasons why' letter, giving us the reasons you chose the product you bought and details of it. If on the basis of this information we agree that it is likely that you would have chosen a GAR annuity from us when you retired if we had worked it out correctly, we will offer you:

- a supplementary annuity; and
- a lump-sum back-payment representing the supplementary annuity you are entitled to, for the period beginning on the date you first took the benefits and ending on the date we start paying the supplementary annuity, plus interest.

Your existing policy will stay in force and will not be affected. We will pay the supplementary annuity as a non-profit annuity.

We will work out the supplementary annuity by comparing the value at retirement of the GAR annuity (with a fund where we use the new final bonuses) to the estimated value at retirement of the product you bought with the proceeds of your original GAR policy (with a fund where we used the higher differential final bonus). As a result, if you received a better annuity rate than we offered you, we will reduce the compensation due to you in line with this.

OTHER WITH-PROFITS POLICIES

If, as well as your GAR policy, you held one or more other with-profits policies with us from which you took benefits during the relevant period, you would have received a final bonus at the higher differential level for each policy. In line with the House of Lords decision, this means we overpaid you for each differential final bonus on those policies.

We will reclaim these overpayments when we pay you compensation under the scheme. In this case, we will take off the amount of any overpayments when working out the additional annuity or supplementary annuity and back-payment that we would otherwise pay you under the scheme. Where relevant, your offer will show the effect of this.

TAX

You will pay tax on the extra payments (the additional annuity or supplementary annuity, back-payment and interest) as income in the tax year you receive them.

QUESTIONS AND DISPUTES

If you have any questions about any offer you may receive, you should send them to:

PO Box 486
Walton Street
Aylesbury
Bucks HP21 7WR.

Phone: 0870 165 6560. Fax: 01296 561783

If you disagree with the terms of our offer, or with our decision that you are not entitled to an offer, you can send a formal complaint to the address shown above. We will review your claim. If we do not uphold your claim, you would be entitled to refer it to the Financial Ombudsman Service (FOS) or the Pensions Ombudsman (if appropriate) or to a court of law.

NOTES

For security and training purposes, telephone calls may be recorded.

Regulated by the Financial Services Authority. The Equitable Life Assurance Society is a mutual Society registered in England No. 37038.

Registered Office:
City Place House, 55 Basinghall Street, London EC2V 5DR, United Kingdom.

The Equitable group comprises:
The Equitable Life Assurance Society, University Life Assurance Society.