PO-22137

Ombudsman's Determination

Applicant	Mr N
Scheme	Iveco Limited Pension Scheme (**the Scheme**)
Respondents	Iveco Pension Trustee Limited (**the Trustee**) Capita Employee Solutions (**Capita**)

Outcome

1. Mr N's complaint against the Trustee and Capita is partly upheld. To put matters right, the Trustee shall pay £1,000 to Mr N in recognition of the serious distress and inconvenience it has caused.

Complaint summary

2. Mr N's complaint is that his deferred pension has not been increased at a fixed revaluation rate, contrary to information he received when he left the Scheme.

3. Mr N states he can no longer expect the pension he was told he would get, and so he will suffer a financial loss in retirement.

Background information, including submissions from the parties

4. On 11 September 1978, Mr N began working for Iveco Ford Truck Limited (**Iveco**). Under the terms of his employment with Iveco, he was eligible to join the Scheme.

5. On 1 April 1979, Mr N joined the Scheme.

6. On 31 March 1993, Mr N left Iveco through voluntary redundancy and became a deferred member of the Scheme. He claimed that he was offered a "Foundry Terms redundancy package" for voluntary leavers, which included a deferred pension that would increase by a fixed rate of 5% compounding every year (**the Foundry Terms**). He said that this was confirmed in a conversation with his employer.

7. On 29 April 1993, a schedule setting out Mr N's entitlement under the Scheme was prepared internally. It stated that Mr N had a deferred pension of £11,983.56 p.a., and his pension at normal retirement date (**NRD**) would be £19,745.40 p.a.

8. On dated 7 May 1993, Mr N was sent confirmation in writing of his Scheme entitlement (**the Leaver's Certificate**). In particular, the Leaver's Certificate stated:

> "This is to certify that following termination of your employment with [Iveco] you remain entitled to the following benefits, based on your personal details shown above.
>
> A pension from Age 65 of: £19,745.40 p.a.
>
> …
>
> The above benefits are payable in accordance with the terms and conditions relating to [**the Scheme**] and include the Statutory minimum benefits to which you may be entitled (the "Guaranteed minimum pension or GMP")."

9. There was no reference to increases or rates of revaluation within the Leaver's Certificate.

10. Mr N was also provided with a copy of the Pension Scheme Guide (**the Booklet**) which included a section on preserved pension benefits. In particular, section 10 of the Booklet stated:

> "Your preserved pension is…increased in two ways, namely:
>
> Your basic GMP is…increased by 7.5% for every year between the date you leave and your [NRD]. The amount of this 7.5% is then added to your preserved pension or to your basic GMP, if bigger.
>
> If your preserved pension is greater than your basic GMP then the difference is increased by 5% for every year up to your [NRD], (it should be noted that the 5% increase only applies to your pension for Scheme Service after 1 January 1985). The amount of the 5% increase is then added to your pension."

11. On 1 November 2005, Mr N was provided with a statement which confirmed that his benefits had a transfer value of £33,108. There was no reference to his deferred benefits otherwise, or any appliable revaluation rates.

12. On 30 April 2014, Capita provided Mr N with a statement of his benefits. The statement confirmed that his expected pension at NRD was £19,742.91. It also said:

> "Please note that these figures are estimates only and are not guaranteed. They have been prepared using the factors recommended by the Scheme's Actuary and agreed by the Trustees. If the Trustees agree to change these factors between now and your retirement date, the revised factors will be applied. This may result in a reduction to the figures currently quoted."

13. On 2 May 2014, Mr N emailed Capita with a series of questions regarding the recent benefit statement. In particular, he highlighted that his projected benefits at age 60 were significantly lower than his projected benefits at age 65; his NRD. He queried why this was and asked whether the latter figures took into account inflation.

14. On 29 May 2014, Capita responded and said:

"In calculating your pension at 60 and 65 your pension has been revalued by fixed percentages so that will be the pension payable and future inflation has not been applied. These were the terms for when you left the Scheme."

15. On 17 February 2015, Capita provided another benefits statement, following a request from Mr N for an early retirement quotation. The statement confirmed that, at that time, Mr N was entitled to a pension of £5,925.48 p.a. The statement did not refer to Mr N's pension at NRD or revaluation rates.

16. In early 2017, Capita moved the administration of the Scheme to its office in Scotland. Around the same time, Mr N contacted it for information about potentially transferring his benefits out of the Scheme. At this point, he was informed that his benefits were not revalued at a fixed rate, but instead were revalued in line with the retail prices index up to a maximum of 5% a year (**the RPI Cap**).

17. On 3 July 2017, Capita confirmed to Mr N that the Trustee was conducting a full investigation into the information deferred members had been provided with regarding revaluation rates. Capita confirmed that, pending the outcome of this investigation, benefit statements would be issued with benefit increases calculated in accordance with the RPI Cap.

18. On 4 January 2018, Capita provided Mr N with another benefits statement. The statement confirmed that Mr N's projected benefits at NRD were £14,481.24 p.a. This was based on Mr N's benefits above GMP increasing at a rate of 1% p.a.

19. On 10 February 2018, Mr N raised a formal complaint against the Trustee and Capita.

A summary of Mr N's position

- He accepted voluntary redundancy from Iveco in 1993 after very careful consideration of the Foundry Terms.

- Upon leaving Iveco, he was provided with the Leaver's Certificate, which confirmed the pension he would be entitled to at NRD. There was no reference to the RPI Cap on the Leaver's Certificate and no accompanying notes.

- He had also been provided with the Booklet, which confirmed his benefits above GMP would be increased at 5% per year. As this was a fixed rate, it aligned with his understanding that he could expect a certain level of benefits at NRD.

- The benefits statement in April 2014 aligned with the information he had been provided with previously. In addition, Capita's email in May 2014 confirmed his benefits were subject to fixed increases, which aligned with the information provided in the Booklet.

- The reference to the RPI Cap only came into use in 2017, when Capita moved its office to Scotland. Neither the Trustee or Capita have been able to provide evidence that the RPI Cap applies to him or other employees who left on the Foundry Terms.

- Other members of the Scheme had retired with pension benefits based on a revaluation rate of 5% a year, although he has not found anyone willing to have their benefits investigated as part of his complaint.
- He had based his retirement planning and all major financial decisions on the information the Trustee and Capita have provided him since he left Iveco in 1993. In particular, he stopped working full time in 2006, on the basis that he would receive £19,745.40 p.a. from the Scheme at NRD.
- If he had known his pension from the Scheme might only be £14,481.24 p.a. at NRD, instead of £19,745.40 p.a. he would not have left full time work in 2006.
- He had accrued benefits under other pension schemes such that, with a pension of £19,745.40 from the Scheme, he would have a total pension of £40,000 at NRD. He had intentionally accrued this level of benefits to ensure he was a not a higher rate taxpayer when he retired, as £40,000 was previously the relevant threshold.

A summary of the Trustee and Capita's position

- Mr N's Scheme benefits are governed by the definitive trust deed and rules dated 11 December 1988 (**the 1988 Rules**), as these were the rules in force when he became a deferred member.
- Rule 15.01 of the 1988 Rules provides that deferred pensions should be increased annually by reference to changes in the retail prices index up to a maximum of 5% a year. Mr N's pension increases are subject to the RPI Cap in line with the relevant Scheme rules.
- The Leaver's Certificate would have been accompanied by a document explaining that the RPI Cap applied (**the Notes**). The Trustee has provided a copy of the Notes, which state that pension increases will be based on inflation up to a maximum of 5%.
- An addendum to the Booklet was in circulation on 4 February 1993, a month before Mr N left the Scheme. The Trustee has provided a copy of the addendum, which includes the following information:

  "Preserved Pensions

  If you leave on or after January 1st, 1991 and your preserved pension is greater than your guaranteed minimum pension (GMP) then the difference is increased by 5% maximum for every year up to your normal retirement date. The amount of this 5% increase is then added to your preserved pension."

- The benefit statement Mr N was provided with in April 2014 confirmed that the figures quoted were not guaranteed.
- The email which Capita sent in May 2014 contained misleading information, but the correct position had now been clarified to Mr N.

- The Trustee and Capita cannot comment on benefits received by any other members of the Scheme without their consent.

Adjudicator's Opinion

20. Mr N's complaint was considered by one of our Adjudicators, who concluded that further action was required by the Trustee.

21. The Adjudicator's findings are summarised below:-

- The Leaver's Certificate stated that Mr N would be entitled to a pension of £19,745.40 p.a. from the Scheme at NRD. It did not state that the benefits listed were estimates only.

- The Leaver's Certificate did state that *"the above benefits are payable in accordance with the terms and conditions relating to the Plan..."*. However, the Adjudicator noted this statement was vague and Mr N may have taken it to simply mean his entitlement was derived from the Scheme. The Adjudicator considered that the Leaver's Certificate ought to have clearly stated the figures were not guaranteed, and that Mr N could reasonably have relied on the figures otherwise.

- The Notes may have prompted Mr N to realise that the figures in the Leaver's Certificate were not guaranteed. However, there is no evidence that the Notes were included with Mr N's Leaver's Certificate. In particular, the Leaver's Certificate did not refer to any accompanying documents.

- The Trustee has provided an example leaver's pack from 1996, in order to demonstrate that the Notes were routinely sent with Leaver's Certificates. However, the example Leaver's Certificate has a different format and also explicitly refers to the Notes as an accompanying document. The Adjudicator noted that the information sent to leavers may have changed during the relevant intervening years.

- The Booklet states that pension increases on benefits in excess of GMP will be 5% p.a. until normal retirement age. The Booklet does not contain any caveats regarding this.

- The Trustee has no evidence that Mr N was provided with the addendum to the Booklet, or that it was ever widely circulated. The Adjudicator also considered that the Trustee ought to have included such key information with the Leaver's Certificate itself, as this is the document a Scheme member would reasonably be expected to refer to most.

- The benefit statement provided in April 2014 said Mr N could expect to receive £19,742.91 at age 65. This was almost identical to the benefits promised by the Leaver's Certificate.

- The benefit statement provided in April 2014 did state that the figures were estimates, but this was potentially the first time Mr N was told this. In addition, when Mr N queried the figures, Capita referred to the revaluation rate as “fixed” and said the figures provided on his benefit statement “will be” the pension payable.

- The Adjudicator considered that Mr N had been given incomplete, unclear and misleading information, such that he would have been shocked to receive the statement in January 2018 with a projection of £14,481.24 p.a. at NRD.

- However, the Adjudicator believed Mr N had suffered a loss of expectation only, and not a financial loss.

- The Adjudicator concluded that Mr N’s benefits were being revalued in line with the rules of the Scheme, and there was insufficient evidence that a contract had arisen between Mr N and the Trustee, that he would be paid benefits in excess of his Scheme entitlement. So, while Mr N may have expected to receive a higher pension, he was not entitled to one.

- In addition, there was insufficient evidence that Mr N had relied on the information he had received irreversibly or to his detriment. In particular, there was insufficient evidence that he would have acted differently or taken steps to increase his retirement benefits, had he been aware sooner that he may not receive £19,745.40 p.a. from the Scheme.

- Mr N previously said that he opted out of other pension schemes because, including the amount he expected to receive from the Scheme, he had accrued enough to generate a pension at retirement without breaching the higher tax rate threshold. However, he did not pay more into his pension when the higher rate threshold was increased. He has also not taken steps to increase his pension provision, since discovering in January 2018 that his benefits from the Scheme may be lower than he expected.

- Notwithstanding this, the Adjudicator was satisfied that Mr N had suffered a serious loss of expectation. The Adjudicator believed the Trustee was responsible for the fact Mr N had been provided with incomplete and misleading information, and it should pay Mr N £1,000 in acknowledgement of this.

22. None of the parties accepted the Adjudicator’s Opinion and the complaint was passed to me to consider. In particular, Mr N stated that:

    - When he discovered in 2018 what his Scheme pension may be, he only had five years until NRD, to take action and ensure he would accrue the retirement income he wanted.

    - He has taken steps to mitigate his potential financial loss. In particular, he is continuing to work part time and will do so after age 65, if necessary.

- He does not wish to seek full time employment, because this will reduce the amount of time he can spend with his son.
- He does not wish to sell his house to release funds for his pension, as this will reduce his son's inheritance.
- He has not paid more into any of his pension schemes, as he now has other financial commitments and priorities. In particular, in the coming years, he will be paying for his son to attend private school.

23. The further comments provided by the parties do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

24. Based on the Leaver's Certificate and the Booklet which Mr N received in 1993, he would have reasonably expected to receive a pension of £19,745.40 at NRD.

25. While it seems that there may have been other documents in circulation at the time to cast doubt on this, neither the Trustee nor Capita has provided compelling evidence that these were widely distributed or that Mr N had sight of them.

26. In addition, I find that Mr N would primarily have referred to his Leaver's Certificate for information about his benefits, and so this is the document which ought to have included key information such as the fact that his pension increases, and so his projected benefits, were not guaranteed.

27. It is not known at this time what Mr N's Scheme benefits ultimately will be, so I cannot say how much they will differ from those set out in the Leaver's Certificate. However, the starting position is that Mr N is only entitled to benefits in accordance with the Scheme rules, and these state that the RPI Cap will apply.

28. In addition, while Mr N may have been provided with inaccurate and incomplete information, I do not find that he has relied on it or that a contract over-riding the Scheme rules has arisen.

29. It is unclear what Mr N's retirement plans have been historically. He states that he initially planned to accrue a pension of £40,000 p.a. so as to ensure he was a basic rate taxpayer in retirement. While he may have had valid reasons for this, he did not increase his pension contributions when the relevant tax threshold was raised. Mr N has stated that this was because he then decided £40,000 p.a. was sufficient, but he has not clarified why this was the case.

30. Mr N's complaint spans multiple decades, and so I would not expect him to be able to clearly demonstrate his rationale for all financial decisions since he became a deferred member of the Scheme. However, without plausible evidence of what retirement income Mr N has been working to accrue, I cannot conclude that he would have acted differently had he known his that his Scheme pension may be lower.

31. I also note that Mr N has not taken any appreciable steps to increase his retirement provision, since being aware in 2018 that his Scheme pension may be less than anticipated. This is despite having a number of years in which to do so.

32. I understand that Mr N may now have other priorities, but ultimately the evidence indicates that he has chosen to adjust his financial planning to the pension he can now expect from the Scheme. I have kept in mind that Mr N may have done the same, had he been provided with more accurate information about his Scheme benefits sooner.

33. In short, Mr N is due to receive the benefits he is entitled to under the Scheme, which is the correct position. He has also not been placed into a position whereby he has irreversibly relied on misleading information about his benefits. So, I do not find he will suffer a financial loss.

34. However, I do find that Mr N has suffered serious non-financial loss. He is not entitled to a guaranteed Scheme pension of £19,745.40 p.a., but it was reasonable for him to have expected to have received it. I have no doubt it would have caused Mr N significant disappointment to discover that the benefits he had been quoted for many years were not guaranteed.

35. Mr N would have also been caused serious distress and inconvenience, having to reconsider his future finances and priorities, so I uphold Mr N’s complaint in part.

Directions

36. Within 21 days of the date of this Determination, the Trustee shall pay Mr N £1,000 for the serious distress and inconvenience he has been caused.

Anthony Arter

Pensions Ombudsman
17 June 2021