

## Ombudsman's Determination

Applicant	Mr H
Scheme	The Old British Steel Pension Scheme ( <b>the Scheme</b> )
Respondents	British Steel Pension Fund Trustee Limited ( <b>the Trustee</b> )

## Outcome

1. I do not uphold Mr H's complaint and no further action is required by the Trustee.

## Complaint summary

2. Mr H has complained that the Trustee:
  - (i) failed to provide necessary information to enable him to replicate the calculation of his AVC benefit;
  - (ii) provided misleading and inaccurate information in its 2017 Annual Report as to when the triennial valuation was due; and
  - (iii) did not respond to his letter dated 7 November 2017 or to his e-mail dated 30 November 2017.

## Background information, including submissions from the parties

3. Mr H was a pensioner member of the Old British Steel Pension Scheme (**OBSPS**) following his retirement on 31 December 2001. He elected to transfer to the new British Steel Pension Scheme under the Time to Choose exercise conducted in 2017. This transfer took effect from 29 March 2018.
4. Mr H says that he received his "Time to Choose" pack in early October 2017. It showed the split to the nearest "penny" between the pension built up prior to 1997 and that after 1997 until the time he retired. This implicitly included the allocation of his 4 years AVCs between pre- and post-1997. Despite undertaking many iterations and several requests for details of the methodology used he has been unable to replicate the calculation to the precision he expected.
5. Mr H contacted the Helpline and subsequently received an email from the Pensions Office on 17 October 2017 outlining the method of calculation. It explained that the

detailed calculation had been generated externally and the Pensions Office did not have access to the algorithm used.

6. Mr H raised the issue at one of the Time to Choose roadshows and as he was unable to get a reply raised a formal complaint under the Service Standards Complaints procedure on 30 November 2017.
7. Mr H did not receive a response to his complaint and after contacting the Pensions Advisory Service and this office made a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**) on 19 April 2018.
8. Mr H received a response to his complaint on 17 May 2018 from the Scheme Secretary who said:
  - (i) The 2017 Annual Report did say that "the next triennial valuation is due as at 31 March 2017" as it was a matter of fact and as such was not misleading or inaccurate. The 2017 triennial valuation was not completed because the Scheme entered a PPF assessment on 29 March 2018. A valuation of the new British Steel Pension Scheme was carried out with effect from 31 March 2018 and the results of that valuation was issued to members.
  - (ii) The Trustee accepted that Mr H did not receive a response to his letter and email as this was misfiled and apologised that this had happened.
  - (iii) The third element of Mr H's complaint concerned the calculation of his AVC benefit which was to be split into pre and post 1997 accrual. This point was significant as the Scheme provided RPI indexation on the whole of Mr H's pension entitlement whereas the new British Steel Pension Scheme provides only statutory minimum increases to pensions in payment.

The Trustee provided Mr H with the AVC information in its letter of 5 September 2018. This confirmed that Mr H had accrued 4 years (48 months) of AVC added years. The Scheme treats these AVC added years as accruing uniformly over the period from the AVC start date to the date that Mr H ceased accrual in the Scheme.

This meant that Mr H's four years of additional service were distributed evenly over the period 11 September 1996 to 31 December 2001. Mr H received roughly 0.4 years of pre 1997 additional service and 3.6 years of post 1997 additional service. The aggregate service in each period was then used to re-tranche Mr H's overall pension amount at retirement date.

9. Mr H says:-

- (i) Please note the use of the term "roughly". Using the latest information provided, he is unable to replicate the calculation and he now identifies a difference in excess of £150, although favourable in his particular case as the post-1997 figure in the Time to Choose looks to be on the high side. This does

give credence to a suggestion made by another member of the Scheme that the calculation was indeed only approximate.

Moreover, when he took out the AVCs in September 1996 the anticipated term was until his normal date of retirement at 60. In his case this was December 2006 meaning he should have made contributions for some 11 years and 87 days. He only became entitled to 4 years AVCs because he left the Scheme, using the appropriate terminology, at the request of the company with at least 5 years of contributions.

Mr H considers there may be a case that the split of his AVCs should be based on the original term up to his normal date of retirement. This would mean he would have 95% of his 4 years AVCs classed as post-1997 rather than approximately 89% used.

- (ii) The Scheme Officers have apologised that both of his communications in November 2018 had been misfiled. However, it said there is no suggestion of maladministration.

His dictionary defines maladministration as: to administer badly, inefficiently or dishonestly. There is no suggestion that the Scheme acted dishonestly but he does consider misfiling, possibly a synonym for lost, is an example of bad and inefficient administration.

He would welcome the considered view of the Pensions Ombudsman as to whether the failure of the Scheme as described was indeed maladministration.

- (iii) With regards the wording about a triennial review in the 2017 Accounts, the Trustee said that as he had not been financially disadvantaged this element of the complaint was not upheld.

He does not consider it is a matter of whether he has been financially disadvantaged but a principle that the Annual Report should be as accurate as possible so that the membership can rely upon the statements within it. The wording in the 2017 Report had to be clarified in order to give a true reflection of what had been decided before the report was finalised.

He would welcome the considered view of the Pensions Ombudsman as to whether it would have been more appropriate to note in the 2017 Annual Report that the triennial review due as at 31 March 2017 was not in fact to be undertaken.

## **Adjudicator's Opinion**

10. Mr H's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below and deals separately with each of these issues.

### **AVCs**

11. It was for the Trustee, with advice from its actuarial advisers, to decide how the AVC benefit was to be split between the pre and post 1997 accrual. The Trustee has explained that the AVC added years benefit was treated as accruing uniformly over the period from the AVC start date to the date that Mr H ceased accrual in the Scheme. In the Adjudicator's opinion this would seem to be a reasonable approach and although Mr H may believe there are other calculation methods it is not my role to say which method should be used.
12. The Trustee has provided a copy of an illustration of the AVC retrenching calculation for Mr H provided by its actuarial advisers Willis Towers Watson. The illustration shows a split of 0.43 additional years for pre 1997 service and 3.57 additional years for post 1997 service. In the Adjudicator's view the calculation appeared to accurately reflect the pensionable service periods and calculation method agreed. Mr H seems to object to the term "roughly" when the figures were reported to him as somehow implying that the calculations were inaccurate. The Adjudicator did not agree but thought the word roughly was used to imply that the figures were rounded up or down to the nearest figure, that is 0.4 and 3.6 years of additional service respectively.
13. As the retrenching calculations were carried out by the Trustee's actuarial advisers, the Adjudicator had no reason to believe the figures were inaccurate. It is not this office's practice to question or try to independently verify the calculations carried out by a Scheme's actuarial advisers unless there is substantial evidence of an error or erroneous information as we do not have the resources to carry out such calculations. If there is any evidence of an error or erroneous information, then we would normally ask the Trustee to obtain verification from its actuaries that the figures were correct.
14. As the Adjudicator had said in paragraph 12 above, the AVC calculation appeared to accurately reflect the pensionable service periods and the calculation method agreed by the Trustee. The Trustee had also confirmed that the AVC calculation was correct, and the Adjudicator was of the view that there was no need for further confirmation. If Mr H was still unhappy with the figures provided, then he was free to engage his own actuary, at his own expense, to carry out a fresh calculation.

### **Annual Report**

15. Mr H has complained that the Trustee provided misleading and inaccurate information in its 2017 Annual Report as to when the triennial valuation was due. The Report stated that the next triennial valuation was due as at 31 March 2017 but this triennial valuation did not take place as the Scheme entered a PPF assessment.

16. The Pensions Regulator has set out in its Codes of Practice the information that should be included in a pension scheme's annual report. One of the requirements is to state when the next triennial valuation is due. So, in the Adjudicator's view it was correct for the Trustee to state that the next triennial valuation was due as at 31 March 2017. Subsequent events made the carrying out of the triennial valuation unnecessary.
17. The Adjudicator understood Mr H's concern that the Annual Report may appear misleading, but it is similar to a company's annual report as it reports the situation as at a year end, that is 31 March 2017. It may have been useful to add some clarification but that is a Trustee decision, and it is not something that I can decide. The governance of annual reports is the responsibility of the Pensions Regulator.

### **Initial Response to Complaint**

18. Mr H has asked if the Trustee's failure to respond to his initial complaint was maladministration. The Trustee has apologised that both of Mr H's communications were misfiled and said there is no suggestion of maladministration.
19. The question of what constitutes maladministration is a complex subject and the reason why we would deem a respondent's actions to be maladministration depends on the facts of the case. In this instance Mr H's initial complaint was made under the Service Standards Complaints procedure in November 2017. When no reply was received Mr H made a further complaint under the IDRPs in April 2018.
20. Mr H received a response to the IDRPs in May 2018 and the issues complained of have, in the Adjudicator's view, been responded to in a reasonable manner since then.
21. It is unfortunate that Mr H's initial communications were misfiled which was an administrative oversight. However, the Adjudicator did not consider that it was tantamount to maladministration as Mr H has not suffered an injustice as a result of the delay.
22. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H provided his further comments, which I have noted, but they do not change the outcome. I agree with the Adjudicator's Opinion apart from the point re the misfiling of communications leading to an inability to provide a timely response. I agree with Mr H that it does amount to maladministration, but I also accept the Adjudicator's Opinion that Mr H did not suffer an injustice as a result of the delay.
23. Following the issue of the Adjudicator's Opinion Mr H requested a copy of the illustration of the AVC retrenching calculation mentioned in paragraph 12 above which he had not previously seen. Following receipt of this, Mr H says that if this information had been made available in October / November 2017, or during the subsequent years, he would have been able to replicate the calculation and thereby render unnecessary this main element of the complaint. He believes the late provision

of the illustration which is dated August 2021 reinforces his view that the Trustee and its advisers have not competently handled his complaint.

24. Mr H has also queried the comments made by the Adjudicator regarding the content of the annual report. Mr H contends that the annual report was indeed misleading and believes that the report should have included a statement that the triennial valuation had been postponed. The Adjudicator had said that it is not a matter that I can decide, and Mr H has asked me to confirm this point.

### **Ombudsman's decision**

25. It is unfortunate that Mr H's complaint has taken so long to be resolved. The illustration of the retrenching calculation was prepared in August 2021 but does not appear to have been sent to Mr H until the Adjudicator did so recently. Mr H has now been able to understand the arithmetic behind the calculations.
26. The Adjudicator has, in paragraphs 16 and 17 above, pointed out that the information to be included in a pension scheme's annual report falls under the control of the Pensions Regulator and not the Pensions Ombudsman, I am unable to direct what should or should not be included in a report. I confirm that this position is correct.
27. I do not uphold Mr H's complaint.

**Anthony Arter**

Pensions Ombudsman  
7 June 2022