Ombudsman’s Determination

Applicant	Mr Y
Scheme	Legal & General Group UK Senior Pension Scheme (**the Scheme**)
Respondent	Trustee of the Legal & General Group UK Senior Pension Scheme (**the Trustee**)

Outcome

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

Complaint summary

2. Mr Y has complained that the Trustee reduced his pension when a new Scheme administrator was appointed. He considers that the original pension he accepted should now be paid.

Background information, including submissions from the parties

3. Mr Y was an active member of the Scheme until he left in December 2013.

4. On 26 August 2018, Mr Y emailed the Scheme administrator and requested an estimate of his pension benefits assuming a commencement date of 1 November 2018. He asked for illustrations based on two scenarios: the first assuming he took the maximum annual pension and minimum Additional Voluntary Contributions (**AVC**) lump sum and the second based on taking tax-free cash of £60,000 and a reduced pension.

5. On 5 September 2018, the Scheme administrator wrote to Mr Y with the requested information explaining that the figures provided were estimates, and not guaranteed. Under the “Estimated Retirement Options Statement Notes” it said, among other things, that:

   “If there is any conflict between this Statement and the Scheme Trust Deed and Rules then the Trust Deed and Rules prevail.

…

The Final benefits payable will always be subject to the Trust Deed and Rules of the Scheme…"

6. On 13 September 2018, Mr Y completed and returned the forms required to take his pension benefits. He requested a cash sum of £60,000 and a reduced annual pension of £30,735. He confirmed he would continue working after his pension started. The forms he signed carried the following notice:

   "Importantly, if any part of the benefits is dependent on financial conditions at the time benefits are actually payable (such as investment market conditions and annuity rates), it should be recognised that the final benefits could be reduced from those shown. If irrevocable financial decisions are to be made on the basis of this illustration you should seek clarification as to the extent to which the details shown could change."

7. On 21 September 2018, the Scheme administrator wrote to Mr Y and provided a revised estimate of the pension options available following a revision of the late retirement factors. This showed an annual pension of £30,701 based on Mr Y taking a lump sum of £60,000 and included the same warnings regarding the Trust Deed and Rules of the Scheme prevailing should there be a conflict.

8. On 28 September 2018, Mr Y contacted the Scheme administrator asking what forms were required to commence payment of his pension. He was told that someone would call him back.

9. On 2 October 2018, Mr Y emailed the Scheme administrator as he had not received a call back. He also said that he did not think the death after retirement amount that had now been quoted was correct.

10. On 8 October 2018, Mr Y emailed the Scheme administrator for a response.

11. On 15 October 2018, the Scheme administrator wrote to Mr Y asking him to complete and return another retirement options form. Once the form had been received it explained that his Additional Voluntary Contributions (**AVCs**) would be disinvested and the pension would be put into payment and then backdated to his selected retirement date. The Scheme administrator confirmed the correct death after retirement amount and apologised for the error.

12. On 19 October 2018, Mr Y returned the required paperwork.

13. On 29 October 2018, the Scheme administrator confirmed it had all the necessary paperwork to process the pension payments.

14. In November 2018, a new Scheme administrator was appointed.

15. On 7 November 2018, Mr Y asked the new Scheme administrator when his pension would be paid, as it had been due to commence on 1 November 2018.

16. On 15 November 2018, Mr Y emailed the new Scheme administrator again as he had not had a reply.

17. On 29 November 2018, the new Scheme administrator emailed Mr Y and apologised for the delay in replying. It explained that it was standard practice when a member reached his retirement date to recalculate his benefits. As a result, there was a decrease from the initial retirement quotation, which in any case had not been guaranteed. The revised benefits were for an annual pension of £29,104.83 based on Mr Y requesting a tax-free cash sum of £60,000. The email asked Mr Y to confirm if he still wished to proceed with his retirement based on these revised figures. The new Scheme administrator also confirmed that the tax-free cash could be paid via faster payment, so he would receive it within one day of the payment being authorised.

18. On 29 November 2018, Mr Y challenged the figures and asked for the "rationale" and "evidence" that the original figures were incorrect.

19. The new Scheme administrator told Mr Y that the difference was due to a different "actuarial interpretation" of the Scheme Rules.

20. Mr Y did not accept the amended pension amount and complained about the reduction. He said his pension benefits had been reduced "arbitrarily" because of the change in the Scheme administrator. He considered the original quoted pension should be paid. Mr Y also complained that there had already been a significant delay in his pension being processed.

21. On 4 January 2019, the Trustee acknowledged receipt of the complaint and said it would reply within four months.

22. On 16 May 2019, the Trustee replied under the Internal Dispute Resolution Procedure (**IDRP**). The Trustee said:-

    - As Mr Y left the Scheme in December 2013, the calculation of his pension was governed by the Trust Deed and Rules dated December 2011.

    - Scheme Rule 7(d) provided that Mr Y's pension was calculated in accordance with the provisions of Rule 7(c) and increased by an amount (the **Revaluation Factor**) for each complete tax year and proportionately for any additional complete months for the period from the date Mr Y left pensionable service to his Normal Retirement Date.

    - When the new Scheme administrator took over the administration of the Scheme, it looked at the pension Mr Y had been quoted by the previous Scheme administrator but could not reconcile the amount with the pension it had calculated.

- The new Scheme administrator was unable to access the calculation of the previous estimate but believed it had been overstated, due to the previous Scheme administrator rounding up part months rather than following the approach provided for in the Scheme Rules.

- All quotations that had been issued to Mr Y confirmed that if there was any conflict between the Scheme Rules and the estimate, the Scheme Rules would apply.

- It had a duty to pay members the benefits provided for in the Scheme Rules. It could not now pay Mr Y a higher pension than he was entitled to according to the Scheme Rules.

- It acknowledged that Mr Y had suffered distress and inconvenience because of the error made by the previous Scheme administrator and offered £500in respect of the error made.

23. As part of our investigation, the Trustee confirmed that Mr Y subsequently elected to take tax free cash of £50,000, and a pension of £32,218.20 was brought into payment with effect from a revised retirement date of 1 July 2019. It also provided a copy of the relevant Scheme Rules (see Appendix) that related to the whole months revaluation that should be used when calculating Mr Y's pension benefits.

24. Mr Y confirmed that as a result of the error he had to reduce his lump sum by £10,000, to increase his pension from the Scheme. This meant he could not afford to purchase a replacement car and his wife had to continue to work until April 2020 to cover shortfall in the lump sum amount. Mr Y said he would have continued to work and cover the shortfall through building up his pension contributions in his other pension scheme had he been aware of the correct pension value.

Adjudicator's Opinion

25. Mr Y'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 set out below:-

    - The Adjudicator appreciated that Mr Y was unhappy that he was provided with an incorrect estimate of his pension, but he was only entitled to the pension benefits that were allowed under the Scheme rules.

    - It was not reasonable for Mr Y to have relied on the pension figures provided by the previous Scheme administrator in September 2018, as it was explained that those figures were estimated.

    - The Adjudicator was satisfied with the explanation as to why there were differences in the pension benefits quoted to Mr Y by the different Scheme administrators.

- Mr Y's financial loss was not irreversible as he had confirmed he would still be working after he took his retirement benefits.
- Mr Y was receiving the pension benefits he was entitled to under the Scheme, just in different proportions.
- The Adjudicator agreed that Mr Y had been caused significant distress and inconvenience as a result of a loss of expectation but considered that the offer of £500 by the Trustee was reasonable.

26. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his further comments which do not change the outcome. Mr Y said:-

- He could see no valid reason why the new Scheme administrator reviewed and then reduced his pension benefits after he had already agreed the figures with the previous Scheme administrator.
- Without the change in the Scheme administrator and the delay in the payment of his pension benefits he would be receiving the pension proposed by the previous Scheme administrator.
- He was a "non-actuarially qualified" person and relied on the figures given by the previous Scheme administrator, as "any reasonable person" would have done.
- Any change in "actuarial interpretation" should have only applied to any future illustrations, not retrospectively to a person that was waiting to have their pension set up. Otherwise the logical extension would be for the new Scheme administrator to review all Scheme member arrangements that were already in payment.
- There is no "factual evidence" that the previous Scheme administrator's calculations were overstated, or that the new Scheme administrator's calculations were correct.
- The reference to him continuing to work was misleading as he retired from his main occupation at age 60, and his work was now casual low paid work, to keep himself active rather than for an income.
- He had suffered a financial loss as he is receiving a lower pension than he accepted originally. By reducing his tax-free cash sum and opting for a longer deferment period he had partly mitigated the shortfall in his pension. However, the £500 compensation offer did not cover his financial loss because it did not take account of the delays in him receiving his pension and having to reduce his cash sum by £10,000.

27. The Trustee said Mr Y did not receive "an unequivocal representation of his benefit entitlements given the qualifications that were provided with each of his retirement

quotations." He was not entitled to the higher pension benefits and it was still of the view that the complaint should not be upheld. The Trustee considered that an award of £500 was in accordance with the Ombudsman's guidelines for non-financial injustice and was appropriate.

28. I agree with the Adjudicator's Opinion and note the additional points raised by Mr Y.

Ombudsman's decision

29. Mr Y has complained that he should be entitled to the pension he accepted in September 2018. The Trustee has acknowledged that Mr Y was provided with an incorrect estimate in September 2018. I consider the provision of the incorrect pension figures amounts to maladministration. The Trustee accept this and has offered £500 for the distress and inconvenience caused.

30. The Trustee has confirmed that the change in pension amount was as a result of a change in "actuarial interpretation" of the Scheme Rules by the new Scheme administrator, who used whole months to revalue Mr Y's pension in accordance with Rule 7(d) (see Appendix). I have no reason to doubt this explanation and that Mr Y's pension was amended in line with the correct interpretation of the Scheme Rules by the new Scheme administrator.

31. The new Scheme administrator had a duty to administer the Scheme in line with the Scheme Rules. It was appropriate for the new Scheme administrator to review Mr Y's pension in 2018, when it took over the Scheme administration. If the error had not been picked up at this point, then this could have led to an overpayment of Mr Y's pension which the Trustee could have claimed back years later.

32. However, it is clear that Mr Y was provided with misleading information regarding the level of benefits to which he was entitled. The basic principle regarding negligent misstatements is that a scheme is not bound to follow incorrect information. Mr Y is only entitled to receive the benefits provided for under the Scheme rules. As the Scheme rules have been applied correctly, for financial loss to be claimed as a result of misstatement Mr Y needs to show that there was a direct reliance on the misstatement, that it was reasonable to do so and that it resulted in an irreversible loss.

33. Mr Y has argued that he has suffered an actual financial loss due to the pension being lower than the amount he accepted. He had to then lower his lump sum value to compensate for the shortfall. For clarity, the difference between the correct pension that is payable, and the incorrect estimate is not a financial loss as Mr Y was never entitled to the overstated pension. It was Mr Y's decision to reduce the tax-free lump sum by £10,000 in order to increase his pension.

34. I appreciate that Mr Y was unhappy when he learned that his pension would be smaller than he had been led to believe, and he has argued that it was reasonable to rely on the pension figures provided in September 2018. Given that the estimates

were not guaranteed and clearly marked as such, I do not consider it was reasonable for Mr Y to rely on the pension figures contained in the 5 September 2018 letter. It also included a warning that the final benefits payable would always be subject to the Trust Deed and Rules of the Scheme.

35. In order for Mr Y to be successful in his claim for financial loss it would need to be established that the loss was irreversible. Mr Y said he gave up his main occupation based on the incorrect pension figures but has provided no evidence to support this assertion. In any case Mr Y had a responsibility to act in a way to mitigate any shortfall where possible. One way of mitigating a perceived loss was for Mr Y to return to work, and he has confirmed that he is now working, albeit in a lower paid role. Mr Y cannot say that the loss due to giving up his main occupation is irreversible.

36. Mr Y has acknowledged he mitigated his loss by changing the amount of tax-free cash he has taken. He is still receiving the correct level of benefits from the Scheme, just in a different format. I consider it was Mr Y’s decision to change the format of his benefits when he found out the correct level of pension benefits due to him.

37. The Trustee acknowledged that an incorrect estimate was issued in September 2018, and in my view, this amounts to maladministration. I do not doubt Mr Y was disappointed when he found out his pension would be less than he was expecting. This is a loss of expectation rather than a financial loss. I consider the offer from the Trustee of £500 for distress and inconvenience is reasonable. If Mr Y wishes to accept the offer, he should contact the Trustee directly.

38. I do not uphold complaint.

Anthony Arter

Pensions Ombudsman
12 November 2020

Appendix

Scheme Rules

44. As relevant Rule 7 says:

"…

(d) A pension calculated in accordance with sub-rule (c) of this Rule will be increased for each complete Tax Year throughout the period, if any, between:-

(i) the date on which the Member ceased to be a Member; and

(ii) the earlier of Normal Retirement Date and the date on which his pension

starts and proportionately on a basis determined by the Trustees in respect of any additional complete month in that period (hereinafter called "the Deferred Period") by the Revaluation Factor appropriate to the relevant Tax Year or other period specified.

For the purposes of this sub-rule, "Revaluation Factor" means:-

(1) in respect of pension which has accrued from pensionable service on or before 1st May 2006, the greater of the percentage increase specified in orders made under section 148 of the Social Security Administration Act 1992 and the revaluation percentage specified by reference to section 84 of the 1993 Act in respect of each Tax Year, but subject to a maximum in any Tax Year of five per cent; and

(2) in respect of pension which has accrued from pensionable service on or after 2nd May 2006, the revaluation percentage specified by reference to section 84 of the 1993 Act in respect of the whole of the Deferred Period, but subject to an overall maximum increase of five per cent per annum compound over that period.

Provided that:-

(A) all increases under this sub-rule will be compound; and

(B) the amount by which the pension is increased will not be less than an amount calculated using the final salary method specified in Schedule 3 to the 1993 Act.

Full- and part-time Contributory Pensionable Service

(e) In the case of a Member or a Deferred Member whose last or only period of Contributory Pensionable Service comprised Service both as a Full-time Employee and as a Part-time Employee, the calculation of his pension will be subject to the following special provisions:-

(i) his Final Pensionable Earnings will be calculated in relation to the Pensionable Salary actually received by the Member over any relevant period before 1st January 2009 and the Notional Salary attributable to the Member over any relevant period on and after 1st January 2009 which, in either case, is used in calculating his pension. No regard will be taken of any earlier period during which his Pensionable Salary or Notional Salary, as described in this paragraph, will have been of a higher or lower amount

…"