

Ombudsman's Determination

Applicant	Mr S
Scheme	Quartzelec Pension Scheme (the Scheme)
Respondent	Quartzelec Pension Trustees Limited (the Trustee)

Complaint Summary

1. Mr S' complaint concerns:-
 - The transfer of his pension benefits from the Alstom Pension Scheme (**the Alstom Scheme**) to the Scheme. Mr S said that he elected to transfer his pension benefits in 2004, so, his pension at age 60 should be calculated using a final salary of approximately £35,000 for all his pensionable service.
 - His alleged entitlement to the top-up element (**the top-up**).

Summary of the Ombudsman's Determination and reasons

2. The complaint is partly upheld against the Trustee due to the loss of expectation Mr S has incurred because of its maladministration.

Detailed Determination

Material facts

3. Mr S was previously employed by Manweb and a member of the Electricity Supply Pension Scheme (**ESPS**) from 27 December 1986. On 31 March 2001, Mr S' employment was transferred via TUPE to Alstom UK Limited (**Alstom**). On 1 July 2002, Mr S' employment was transferred under TUPE from Alstom to Cegelec Limited. Consequently, he became a member of the Cegelec 2002 Scheme (**the 2002 Scheme**).
4. Cegelec is now known as Quartzelec Limited and hereafter will be referred to as Quartzelec.
5. On 29 June 2004, an announcement (**the Announcement**) was issued on behalf of Quartzelec to members of the 2002 Scheme. The Announcement informed members that in April 2004, Quartzelec had decided to establish a new pension scheme, the Scheme. The Scheme would provide benefits for protected members in respect of their future service from 1 July 2004. It also said that active members of the 2002 Scheme would automatically become members of the Scheme from 1 July 2004, unless they confirmed in writing, by 16 July 2004, that they did not wish to join it.
6. The Announcement informed members that they would be given two options: option (i) - transfer their preserved benefits in the Alstom Scheme and the 2002 Scheme (**the Previous Schemes**) to the Scheme; and option (ii) - preserve their benefits in the Previous Schemes. If a member chose option (ii), the Previous Schemes would be responsible for paying the benefits they had accrued in the Alstom Scheme up to 30 June 2002, and the benefits accrued in the 2002 Scheme up to 30 June 2004.
7. The Announcement said:

“[Quartzelec] prefer you to make a decision regarding your transfer option by 30 August 2004. However, it is appreciated that it may take some time for you to appoint an Independent Financial Adviser, therefore transfers will be accepted provided your completed transfer discharge form is returned to Aon Limited [**Aon**] on or before 30 September 2004...”
8. Under the heading, 'Deferred Benefits – Option A', the Announcement said:

“The attached Transfer Offer Summary shows the pensionable service you have accrued as a member of the [2002 Scheme] from 1 July 2002 to 30 June 2004. If you decide **not** to transfer this service to [the Scheme] you will be issued with a Preserved Benefit Statement confirming your leaving service benefits under the [2002 Scheme]”(original emphasis).
9. The Transfer Offer Summary (**the Summary**) had Mr S' correct name, date of birth, and National Insurance number (**NI Number**). However, it incorrectly stated Mr S' past service in the Alstom Scheme, up to 30 June 2002, as 36 years and zero days.

10. Mr S said that he elected to transfer his pensionable service from the Alstom Scheme to the Scheme. He had sent the relevant paperwork to Aon to process by the deadline.
11. The Trustee says it has no record of Mr S' benefits being transferred. Consequently, he is only entitled to benefits from the Scheme from 1 July 2002 to the date he became a deferred member of the Scheme.
12. A general notice dated 16 December 2005, sent by the HR Director to members of the Scheme, stated:

“Over the last week you should have received a benefit statement...

It is clear that (based on the numerous calls received), the statements have caused some concern...

AON has been asked to contact all those receiving statements to confirm in writing what previous service members are entitled to treat as continuous (original emphasis). This will be sent to you in January...

As with last year's transfer forms, this will be based on information from Alstom Pensions Department.”
13. On two separate occasions in February and October 2006, Mr S received benefit statements which showed his benefits in the Scheme. These statements had Mr S' correct personal details, such as his name, NI Number and date of birth. However, the statements stated that Mr S' pensionable service up to 30 June 2002 amounted to 15 years and 189 days up to July 2005, and 15 years 186 days up to July 2006.
14. On 23 May 2007, Mr S left Quartzelec's employment. He was subsequently sent a deferred benefit statement in respect of the benefits he had accrued in the Scheme. In relation to transferred in service, the statement showed “N/A”.
15. In August 2007, the Trustee of the Alstom Scheme wrote to members who had elected to transfer and asked them to re-confirm that they wished to transfer (**the August Letter**). Mr S confirmed that he did not receive the August Letter.
16. On 28 November 2013, following a request from Mr S, Capita, the Scheme administrator at the time, sent Mr S details of the benefits he could receive from the Scheme at ages 60 and 65. Subsequent to this, there were further exchanges between Mr S and Capita concerning whether he had elected to transfer his benefits from the Alstom Scheme to the Scheme, as this was in dispute.

17. In July 2014, Capita wrote to Mr S and stated:

“We have now received a response from the Trustee who has advised that, as there is no evidence on file that you rescinded the right to transfer, you should be treated as not having rescinded that right.

Subsequently, your total service will be included in our calculation of your benefit entitlement...”

18. On 21 August 2014, Capita sent Mr S a benefit statement. It showed that it had included a top-up in the calculation of his benefits.

19. On 21 June 2016, Conduent HR Services (**Conduent**), formerly Xerox HR Services, the new administrators of the Scheme, wrote to Mr S following his request for a projection of the retirement benefits he could receive from his normal retirement date (**NRD**). It said:

“Your retirement benefits are calculated based on inflationary increases from date of leaving to NRD. As these increases are not yet known in the future we are unable to provide you with a projection at NRD. JLT, who administer your Alstom benefits have confirmed that they too are unable to provide a projection.

For information I can confirm that your Quartzelec only pension at date of leaving was £2,142.83 p.a., at today’s date this has increased to £2,779.25 p.a...”

20. In April 2017, Conduent sent Mr S a transfer value illustration. This illustration did not include the top-up.

21. In June 2017, Conduent confirmed to Mr S’ financial adviser that Mr S was entitled to the top-up. It explained that this was because the Alstom Scheme and the Scheme had not yet reached agreement on the bulk transfer terms. Consequently, the bulk transfer had not yet been completed. Conduent also explained that the purpose of the top-up was to ensure that members included in the bulk transfer were not disadvantaged by the delay in the Trustees of the two Schemes coming to an agreement.

22. Conduent stated:

“If a member decides to leave [the Scheme] they lose the top-up element offered by the Company and they sever the link with the Alstom Pension Scheme. I can confirm that the transfer value illustration we issued in our letter dated 21 April 2017 does not include the value of the top-up element...”

23. On 21 February 2018, the Trustee confirmed that Mr S did not sign a transfer request for his benefits to be transferred from the Alstom Scheme to the Scheme. So, Mr S was entitled to benefits from the Alstom Scheme and also the Scheme, based on the rules and his accrued service in each scheme. It said that he “continues to be

credited with his full years of service from separate schemes. He continues to be a Protected beneficiary under the 1990 Regulations.”

24. On 12 December 2018, Mr S made a complaint under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**). He disputed that he had not elected to transfer his benefits from the Alstom Scheme to the Scheme. He requested a guarantee that, if the bulk transfer was not completed by his retirement date, he would receive the top-up. He detailed the basis on which he wanted the top-up to be calculated.

25. On 22 February 2019, the Trustee responded to Mr S but did not uphold his complaint. In summary, it said:-

- In the absence of any evidence to confirm that a request to transfer benefits from the Alstom Scheme to the Scheme was received, Quartzelec cannot confirm that he would receive the top-up.
- This decision was reached following a thorough search of reports and data relating to the transfer. The Trustee took into account that there are no records held on file confirming that Mr S had consented to a transfer.
- His details were not contained in any report provided by Alstom, neither is his name on the Aon transfer list dated 31 July 2009. Therefore, the Trustee can only confirm payments for service in the Scheme.
- Any top-up that may be due will only be payable if benefit augmentation is agreed by Quartzelec.
- The Trustee does not have the power to decide whether accrued benefits will be treated as having transferred without consent from the employer. This is a matter he must take up with the employer separately.

26. **Summary of Mr S’ position**

- He disagreed that the wording, under Deferred Benefits - Option A in the Announcement, referred to members who were already deferred members. In his view, the document offered two transfer options: Option A, referred to ‘deferred members’. This meant that Option A would provide deferred benefits. It did not relate to existing deferred benefits.
- If he had opted not to transfer, he should have received a preserved benefit statement in 2004.
- He definitely opted to transfer his benefits from the Previous Schemes to the Scheme. He sent the relevant forms to Aon for processing before 30 September 2004. The various statements he was sent on various occasions, proves that he had returned the forms.
- The deferred benefit statement he had received in 2007 did not give cause for concern, because 16 months earlier, the general notice sent by the HR Director

had informed members of the Scheme that benefit statements had no reference to service years in previous schemes, as the monies from those were yet to reach the Scheme.

- The Trustee maintained that the statements he received related to another member. However, those statements contained his correct personal details. He accepts that his service for the Alstom Scheme on the Summary was shown as 36 years and zero days. He believed at the time that this was an administrative error, as his service was 16 years and zero days.
- This error should not detract from the fact that his Transfer Instruction Form (**the Form**) was returned showing his name, date of birth and address.
- He finds it inexcusable that the Trustee's only defence, for sending what it now says were incorrect statements, is based on a document dated two years in advance of the date he submitted his Form. It bears no resemblance whatsoever to the Form he had submitted.
- He is unhappy that the Trustee considers that the top-up is "null and void" as a result of him leaving Quartzelec's employment in 2007.
- The fact that the Trustee of the Alstom Scheme and the Trustee of the Scheme have not agreed terms for the bulk transfer after 16 years is evidentiary proof of the negligent handling of his pensionable funds and a reasonable duty of care that is owed to him.
- He will incur a financial loss when he reaches age 60. His annual pension will be approximately 40% or 50% less than he was expecting. Consequently, he will not be able to retire at age 60.
- He has consistently maintained the fact that he signed and submitted the Form before the deadline. However, the Trustee has repeatedly displayed incompetence in administering at a basic level, as evidenced by its numerous reviews over a 16 year period, which it now claims were in error.
- He finds this gross negligence unconscionable. He has relied on the information and figures sent to him and has made his future/retirement life plans based on the belief he had a secure pension in place, that accurately reflected the many years of loyal service and hard work.
- If the Ombudsman does not uphold his complaint, he will suffer a significant level of financial loss. Based on his calculations, using current evaluations, he estimates his total loss to be £157,400.00. He considers this to be a huge loss which will fundamentally have an adverse effect on his retirement plans and life.

27. Summary of the Trustee's position

- The Trustee provided copies of the correspondence between itself, the Scheme administrators, Quartzelec and Mr S between 2004 and February 2019. It has also provided a copy of the Rules.
- The Trustee remains of the view that Mr S did not request to transfer his benefits from the Alstom Scheme to the Scheme. There is no evidence that a request to transfer was ever made.
- Mr S considers that as he did not receive a preserved benefit statement, this demonstrated his transfer request was received by the administrators. However, the section in the Announcement, Mr S refers to, applied to deferred members. Mr S was not a deferred member in 2004, so this section did not relate to him.
- The section in the Announcement, before Option A, related to Mr S. The final paragraph in that section clearly stated in bold that the completed Form should be returned to Aon, on or before 30 September 2004. This Form was not received.
- Mr S has not provided a copy of the Form nor any proof of delivery. Mr S also did not receive a copy of the August Letter.
- The matter was complicated by a Form being received from another member with the same name (**Mr CS**) and placed on Mr S' file in error. Consequently, Mr S continued to receive benefit statements that showed he had transferred his past service.
- Mr S was sent a copy of Mr CS' Form. The final pensionable salary and pensionable service shown did not relate to Mr S but to Mr CS. Mr S did not query this information at the time.
- Mr S is not entitled to the top-up as he left Quartzelec's employment and became a deferred member of the Scheme in 2007. Furthermore, it is a matter for the employer, not the Trustee, whether to award it.
- Mr S will receive a pension from the Alstom Scheme and the Scheme. He remains a "protected" member in both schemes.

28. Although not a party to the complaint, the trustee of the Alstom Scheme provided the following comments:-

- It has checked every document it currently holds for Mr S. It cannot locate any request made by him around or after 2004, to transfer his benefits from the Alstom Scheme to the Scheme.
- Mercer, as administrator for the Alstom Scheme wrote to Mr S on 21 September 2018, to confirm this.

Conclusions

29. There are two parts to Mr S' complaint. I will give my findings on each part of his complaint separately.

The Transfer

30. Mr S asserts that he elected to transfer his benefits from the Alstom Scheme to the Scheme in 2004. He also asserts that he sent the required paperwork to Aon, confirming his election, by the deadline. Consequently, he believed he had transferred his pensionable service from the Alstom Scheme to the Scheme, so his pension at age 60 would be calculated using a final salary of approximately £35,000, in respect of his aggregate pensionable service.
31. The Trustee disputes that Mr S had elected to transfer his benefits from the Alstom Scheme to the Scheme. The Trustee's position is that it has no documentation that confirms Mr S had done so.
32. The Trustee has a range of duties, including the exercise of a reasonable duty of care and to ensure that members receive the correct benefits as set out in the Rules.
33. I have taken into consideration the correspondence Mr S received up to November 2013, when the Trustee appeared to question whether he had transferred his benefits. I find it was reasonable for Mr S to have believed that his benefits from the Alstom Scheme had been transferred to the Scheme. Capita's letter of July 2014, also re-confirmed Mr S' belief that this was the case. Conduent's subsequent letter of 2 June 2017, further reinforced Mr S' belief that he was entitled to the top-up.
34. The evidence supports the view that, as an active member of the 2002 Scheme, Mr S did not have to take any action to automatically become a member of the Scheme. However, becoming a member of the Scheme did not automatically mean that Mr S' benefits in the Alstom Scheme were also transferred to the Scheme. He had to complete and return the Form by the deadline for his benefits from the Alstom Scheme to be transferred to the Scheme.
35. Mr S maintains that he completed the Form and returned it by the deadline. Furthermore, correspondence he received from the employer subsequently, over a period of two years, confirmed his understanding that his pre 2002 service had been transferred to the Scheme. Mr S asserts that as he was not sent a preserved benefit statement, this is further evidence that he did elect to transfer his benefits from the Alstom Scheme to the Scheme.
36. I acknowledge that the benefit statements Mr S received in 2006, showed his correct name, NI Number and date of birth. However, the pensionable service up to 30 June 2002 stated on those statements were different to what was stated on the Summary. I note however, that the statements included the following caveat:

“Every effort has been made to ensure the accuracy of the benefits shown in this illustration. However, in the event of any error, your benefits are limited to your correct entitlement.”

37. In the notes accompanying the illustration, Aon warned that:

“Your present and expected benefits have been calculated from the information held on record. It is important that you examine and understand the amounts and the type of benefits in the statement. If there is any error, please report it immediately so that your records can be corrected, and a revised statement issued.”

38. The Trustee asserts that those benefit statements were incorrectly sent to Mr S because of the erroneous Form held on his file for Mr CS. The Trustee also asserts that Mr S should have realised the statements were incorrect, as they showed an incorrect service history.

39. Although the information on those benefit statements may have had an incorrect service history, I do not find that it was unreasonable for Mr S to have believed they were correctly sent to him. I find that it was reasonable up to 2007, for Mr S to have believed his benefits from the Alstom Scheme had been transferred to the Scheme.

40. Mr S left Quartzelec’s employment on 23 May 2007, and was provided with a deferred benefit statement. Alongside the heading “Transferred in Service,” displayed in the deferred benefit statement, it said “N/A”. Mr S asserts that he had no cause for concern after receiving this statement, and did not contact the Trustee concerning his past service not being detailed on that statement. This is because 16 months earlier, the HR Director had informed members of the Scheme that benefit statements had no reference to service years in previous schemes, as the monies from those were yet to reach the Scheme.

41. I note Mr S’ reason for not contacting the Trustee following receipt of the deferred statement. However, this statement was sent over a year after Mr S had received the general notice from the HR Director. I find that this statement ought to have put Mr S on notice that the Trustee may not have had details of benefits he believed had been transferred to the Scheme from the Alstom Scheme. Mr S should have queried this with the Trustee at the time.

42. Notwithstanding this, I note that subsequent to being sent the deferred statement, Capita advised Mr S, in a letter dated 4 July 2014, that the Trustee had confirmed there was no evidence on file that he had rescinded the right to transfer. Consequently, he should be treated as not having rescinded this right. On 14 August 2014, Capita provided Mr S with a benefit illustration that included the top-up. In June 2017, Conduent also informed Mr S that he would receive the top-up when he retired, provided he did not transfer his benefits from the Scheme.

43. I find that the correspondence Mr S received between 2014 and 2017, from Capita and Conduent was misleading and confusing. The position is certainly complicated by

the fact that the bulk transfer, is yet to be finalised. Mr S was unable to obtain any clarity in respect of his pension benefits until 21 February 2018, when the Trustee advised that there was no record of him consenting to a transfer.

44. I appreciate that Mr S considers that he elected to transfer his benefits from the Alstom Scheme to the Scheme. On the balance of probabilities, I am not persuaded that there is sufficient evidence to support Mr S' assertion that he did transfer his past service to the Scheme.
45. In his submissions to my Office, Mr S acknowledged that he will not incur any financial loss until he attains age 60, at the earliest. Mr S estimated that his alleged loss would represent a percentage reduction in his annual pension of approximately 40 to 50%. The implication being that he may not be able to retire from age 60, as he had anticipated.
46. As Mr S has not yet reached age 60, I find that there is no actual financial loss at this time and his complaint is one of loss of expectation.
47. Mr S was placed on notice as early as 2007, that there was a possibility that his transfer had not been processed correctly. I accept that he was provided with a deferred benefit statement that only showed his post Alstom pensionable service. However, due to the complexity of the Alstom bulk transfer not being agreed, I consider that he did not have sufficient knowledge that his benefits were not transferred until February 2018. I am mindful that Mr S was age 51 at the time, and that he could have taken action to mitigate the consequences of his initial service not having been transferred.

The top-up

48. Having reviewed the information the Trustee has provided, I find that the top-up is not a benefit Mr S is entitled to under the Rules. It is a discretionary benefit provided by the employer. Consequently, the Trustee has done nothing wrong in not agreeing to pay him the top-up should he choose to transfer his benefits from the Scheme. Mr S may wish to contact the employer directly concerning this issue.
49. As I am unable to conclude that the Trustee received Mr S' request to transfer at the appropriate time, I am also unable to conclude that he was entitled to the top-up.
50. Although there is insufficient evidence that Mr S did elect to transfer his benefits, I have considered whether Mr S has a case for negligent misstatement against the Trustee.

Negligent Misstatement

51. For a claim of negligent misstatement to succeed, it is necessary for the applicant to prove:-
 - (i) A clear, unequivocal, incorrect representation.
 - (ii) The Trustee and/or Employer owed a duty of care to the applicant.

- (iii) The duty of care shown was below a reasonable standard.
- (iv) The applicant has reasonably relied on the incorrect information. And, in doing so, experienced a reasonably foreseeable, irreversible loss that he would not have suffered had the employer and/or Trustee provided the correct information.

52. I find that the employer made clear representations to Mr S in 2005 and 2006. The correspondence confirmed that his pensionable service prior to joining Quartzelec would be included for the purpose of calculating his pension benefits from the Scheme.
53. However, from 2007 the information from the Scheme administrators, issued on behalf of the Trustee, was far from clear. There was conflicting information that indicated, on occasion, that Mr S did not transfer in 2004, while other correspondence confirmed that he did, in particular Capita's letter to Mr S dated July 2014. The fact that the bulk transfer from the Alstom Scheme to the Scheme remained outstanding likely compounded matters.
54. On balance, I do not consider that the correspondence issued by the Scheme administrators constitute a clear, unequivocal, incorrect representation. So, a claim of negligent misstatement cannot be substantiated against the Trustee. However, the lack of clarity in their correspondence does explain Mr S' continued efforts to seek clarification from the Trustee and the Scheme administrators.
55. I find that the deferred benefit statement Mr S received on leaving employment in 2007 is particularly persuasive in placing doubt on the transfer. It did not display a value in respect of transferred in service. Furthermore, it only referred to 4 years and 327 days pensionable service.
56. I do consider that the Trustee has a duty of care to Mr S, as he has deferred benefits within the Scheme. The Trustee has not shown sufficient care in the provision of correct information to Mr S. I note that it accepts there has been maladministration in its handling of Mr S' records.
57. I do not doubt that Mr S relied on the information he received between 2004 and 2019, and had a genuine belief that he transferred his pre 1 July 2002 accrued benefits. On this basis, he believed his pension payable from age 60 would be calculated on a final salary of £35,038 and include a top-up. However, this does not materially change the outcome given the sequence of events.
58. The key point is that the information in question was provided to Mr S after the date he decided to submit his transfer instructions. According to Mr S there was no ambiguity in respect of this information, and he knew that he had to submit the Form.
59. From 2007, Mr S was placed on notice that he may not have transferred his benefits from the Alstom Scheme to the Scheme. Despite the provision of further conflicting information, I do not consider it reasonable for Mr S to have relied on the information provided to him by the Scheme administrators on behalf of the Trustee.

60. However, I find that because of the confusing information the Scheme sent to Mr S between 2007 and 2018, he has suffered a loss of expectation and severe distress and inconvenience.
61. Mr S received two benefits statements in 2006, that reasonably led him to believe that his pensionable service from the Alstom Scheme had been transferred to the Scheme. In 2014 and 2017, the Scheme administrators incorrectly informed Mr S that his pensionable service in the Alstom Scheme would be treated as though he had transferred his benefits to the Scheme and that he would receive a top-up. Mr S is now unable to transfer his pensionable service from the Alstom Scheme to the Scheme.
62. The Trustee is ultimately responsible for the administration of the Scheme. It shall make an award to Mr S for the severe distress and inconvenience this situation has caused him.
63. I uphold this complaint in part.

Directions

64. Within 28 days of the date of this Determination, the Trustee shall pay Mr S £2,000 in recognition of the severe distress and inconvenience this situation has caused him.

Anthony Arter

Pensions Ombudsman
6 September 2021