The Pensions Ombudsman

Ombudsman’s Determination

Applicant	Mr D
Scheme	MMC UK Pension Fund (**the Fund**)
Respondent	MMC UK Pension Fund Trustee (**the Trustee**)

Outcome

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

Complaint summary

2. Mr D’s complaint concerns his early retirement pension, which was later reduced due to the use of an incorrect early retirement factor when his benefits were initially calculated. Specifically:-

   - His lifetime allowance (**LTA**) has been adversely impacted.
   - He wants the benefits quoted to him shortly before his retirement to be honoured and his pension to be reinstated to its original level.

Background information, including submissions from the parties and timeline of events

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

4. Mr D is a member of the Fund. The Fund is administered by Mercer and managed by the Trustee.

5. In October 2017, at the request of Mr D, Mercer sent him an early retirement quotation based on a retirement date of 3 August 2018. The quotation included a bridging pension.

6. On 25 October 2017, Mr D emailed the Fund’s actuary (**the Actuary**). He expressed concerns about the potential tax implications of receiving a bridging pension. He asked whether he could convert his bridging pension into another form of benefit.

7. Mr D was offered the option of exchanging his bridging pension for additional spouse's pension.

8. On 21 June 2018, a Trustee meeting took place during which the Fund's factors were reviewed. The Trustee agreed to replace the early retirement factors in place at that time (**the Old Factors**) with a new set of factors (**the New Factors**). The change came into effect from 31 July 2018.

9. On 31 July 2018, Mr D emailed Mercer to confirm that he wished to take early retirement with immediate effect. He asked that the option to convert his bridging pension to additional spouse's pension be included in the quotation.

10. On 15 August 2018, Mercer sent Mr D an email. It stated that the calculation of his main early retirement benefits had been completed. However, the conversion of his bridging pension to additional spouse's pension had been referred to the Actuary. It said that there would be a short delay before the quotation was sent to him.

11. On 17 September 2018, Mercer sent Mr D an early retirement quotation based on a retirement date of 1 October 2018. It quoted an early retirement pension of £6,636.36 per annum.

12. On 26 September 2018, Mr D contacted Mercer to accept the early retirement quotation. He elected to convert his bridging pension to an additional spouse's pension.

13. On 1 October 2018, Mr D's early retirement pension of £6,636.36 per annum was put into payment. So, 8.84% of his LTA was utilised.

14. On 17 December 2018, Mercer wrote to Mr D. It stated that his pension was being reduced to £6,432.00 per annum. It said that his pension had been overpaid and the overpayments would have to be repaid.

15. On 1 January 2019, Mr D emailed Mercer to object to the reduction of his pension. He cited the implications that this would have on his LTA usage.

16. On 28 January 2019, Mercer wrote to Mr D. It said that his pension would be reduced to £6,098.28 per annum. This figure was inclusive of the year end pension increase. It stated that the reduction would be implemented from March 2019 and that past overpayments would be reclaimed. It offered Mr D a goodwill payment of £500, from which it proposed to deduct £179.67 in respect of the overpayments.

17. On 31 January 2019, Mr D emailed Mercer to object to the reduction in his pension. He asked for a breakdown of the calculation.

18. On 19 February 2019, Mr D contacted Mercer for a response to his email of 31 January 2019. On 26 February 2019, Mercer acknowledged the email.

19. In March 2019, Mr D's pension was reduced to £6,098.28 per annum.

20. On 10 April 2019, Mercer responded to Mr D's email of 31 January 2019. It included a breakdown of the calculation of his retirement benefits. It said that:-

- On 17 September 2018, it provided Mr D with an early retirement quotation, which quoted an annual pension of £6,636.36. The quotation included a temporary bridging pension of £383.64 per annum and a spouse's pension of £3,318.24 per annum. An additional quotation was provided based on Mr D surrendering the bridging pension in order to increase his spouse's pension to £3,711.72 per annum. The annual pension of £6,636.36 represented 8.84% of Mr D's LTA.

- During a review of the actuarial factors, it had been identified that there had been an error when applying the New Factors to the calculation of Mr D's benefits. The corrected figures had been provided to him on 17 December 2018.

- The annual pension of £6,432.00, that it quoted in its letter of 17 December 2018, had been calculated correctly using the New Factors. However, this figure included the bridging pension that Mr D had agreed to surrender to purchase additional spouse's pension.

- Deducting the bridging pension reduced the annual pension to £6,048.36. This was the correct level of pension Mr D was entitled to at the point he retired and represented 8.06% of his LTA.

- On 1 January 2019, an annual increase was applied to this pension, which increased it to £6,098.28 per annum. This was the figure that Mercer had adjusted his pension to from 1 March 2019.

- It offered Mr D the option of revoking his decision to surrender his bridging pension for an additional spouse's pension. If he took this option, it would increase his LTA utilisation to 8.57%.

- It was prepared to pay Mr D £500 in recognition of any distress and inconvenience it had caused him. This amount would be offset against the pension overpayments he had received, resulting in a net payment of £320.33.

21. On 13 April 2019, Mr D wrote to Mercer. He said that he was prepared to settle for a compensation payment equal to the tax liability that he believed he had incurred. He calculated that this would equate to 0.78% of £1.5 million multiplied by 55%, which amounted to £6,435. Failing that, Mercer should provide him with details of the Fund's Internal Dispute Resolution Procedure (**IDRP**).

22. On 25 April 2019, Mercer emailed Mr D. It asked for details of his retained benefits.

23. On 29 April 2019, Mr D responded to Mercer's email of 25 April 2019.

24. On 31 May 2019, Mercer contacted Mr D to ask for more information on his retained benefits. It explained that this would enable HM Revenue & Customs (**HMRC**) to amend his tax return, that had already been submitted for the 2018/19 tax-year.

25. On 2 June 2019, Mr D contacted Mercer. He asked for details of the IDRP that he had requested on 13 April 2019.

26. On 14 June 2019, Mercer provided details of the IDRP.

27. On 21 June 2019, Mr D contacted the Trustee to raise a complaint under stage one of the Fund's IDRP. He provided a history of his case and said that:-

    - It took six months for Mercer to explain why his pension was reduced and provide details of the IDRP. The matter was in his hands for only 12 days during this period.

    - He was adversely impacted by the change in the early retirement factors. He took decisions based on the figures originally quoted to him. The factors then changed between the date of the quotation and the date his benefits were paid out. The error was then compounded because Mercer did not provide adequate answers to his questions until after the end of the 2018/19 tax-year.

    - It is normal practice to honour the initial pension quoted. There would be no loss to the Fund, as a factor change should not be applied retrospectively.

28. On 19 August 2019, the Trustee provided its response under stage one of the IDRP. It did not uphold Mr D's complaint. It said that:-

    - It acknowledged that Mr D had reported to HMRC that 8.84% of his LTA had been used up by his Fund benefits. It also acknowledged that he had stated that this had resulted in an overpayment of an LTA charge of £6,435, when he crystallised his other pension benefits.

    - It apologised that Mr D was provided with incorrect early retirement figures. It also apologised for the length of time Mercer took to respond to his questions.

    - It may consider paying compensation to Mr D, if he has suffered an irreversible financial loss. However, it considered it likely that he would be able to reclaim the overpayment of the LTA charge from HMRC.

    - Mercer had offered to assist him with reclaiming the overpayment.

29. On 24 August 2019, Mr D applied for his complaint to be considered under stage two of the IDRP. He said that:-

    - He was not satisfied with the Trustee's response. He did not consider that this had addressed all of his concerns.

    - His early retirement pension was reduced twice after it had been put into payment. The pension should have been maintained at the original level; this would have honoured the original quotation provided to him.

- He has suffered a financial loss because his tax liability was based on his original pension. The appropriate remedy would be for the Trustee to maintain his pension at the original rate; this would correct his tax position.

30. On 30 September 2019, the Trustee provided its response under stage two of the IDRP. It said that:-

    - In June 2018, the Trustee agreed the New Factors, which were to be applied to benefits with effect from 1 August 2018. When providing Mr D with his early retirement quotation in September 2018, the Old Factors were used in error.
    - Using the New Factors resulted in a pension of £6,048.36 per annum, which increased on 1 January 2019 to £6,098.28 per annum.
    - It apologised that the breakdown of the early retirement calculation Mr D requested in February 2019, was not provided until 10 April 2019.
    - It is appropriate for the Trustee to pay the correct benefits based on the early retirement factors that were in force at the time of payment.
    - It may consider paying compensation for Mr D's tax loss if it was irreversible. The offer made by Mercer to assist him in liaising with HMRC remained open.
    - It agreed that the delays in responding to Mr D's queries were not satisfactory. The offer of £500 for distress and inconvenience also remained open.

31. Mr D made additional comments as follows:-

    - The original calculation of his benefits was based on the factors applicable at the time of calculation, and before any subsequent change to the factors. No error had been made.
    - When factors are changed, existing quotations should be honoured.
    - He made four separate requests to Mercer before he was sent details of the IDRP.
    - Reversing the surrender of his bridging pension for additional spouse's pension would result in him paying additional tax.
    - Mercer proposed to reduce the award of £500 that had been offered to him to allow it to reclaim what it alleged were past overpayments of pension. However, the overpayments had been taxed.

32. The Trustee subsequently explained that the overpayments of pension amounted to £245.82 (£179.67 net). The Trustee stated that, if Mr D preferred, the gross overpayment could be deducted from his monthly pension. It suggested that this could be done over a six-month period. The £500 distress and inconvenience payment could then be paid direct to him in full.

Adjudicator's Opinion

33. Mr D'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:-

- The Adjudicator noted that the Fund is governed by pensions legislation and its trust deed and rules. The Adjudicator also noted that the rules in force at the time of Mr D's retirement were the Sedgwick Section Rules of the Marsh Mercer Pension Fund dated 21 May 2002 (**the Rules**). The Rules did not indicate that the early retirement factors were fixed and not subject to review.

- Mr D confirmed to Mercer on 31 July 2018, that he wished to take early retirement. His benefits were put into payment with effect from 1 October 2018. The change in the Fund's early retirement factors came into effect on 31 July 2018.

- In the Adjudicator's opinion, the correct early retirement factors to use in the calculation of Mr D's benefits were the New Factors; the factors in force at the time of his retirement. Mercer had made an error in its initial calculations because it had used the wrong early retirement factor.

- The Adjudicator was of the view that, following the adjustment that Mercer had made in March 2019, Mr D was receiving the correct level of benefits he was entitled to under the Rules.

- In attempting to correct the error that it had made, Mercer made a further error on 17 December 2018 when it included the bridging pension. Mr D had already surrendered this for additional spouse's pension. It was not until 28 January 2019, that Mercer corrected this error, quoting the correct pension figure. In the Adjudicator's view, these two errors amounted to a negligent misstatement.

- Mr D said that he notified HMRC that he had used 8.84% of his LTA, as a result of the information provided to him at the time of his retirement. Following the adjustment made to his pension, Mercer confirmed that he had used up 8.06%. He stated that this had resulted in an overpayment of an LTA charge amounting to £6,435.

- The Adjudicator stated that it was reasonable for Mr D to have relied on the figures provided to him by Mercer on 17 September 2018, until such time as it notified him of its error. However, the Adjudicator was not persuaded that the incorrect information caused a financial loss to Mr D as he had not shown that he had taken steps to mitigate this.

- In May 2019, the Adjudicator noted that Mercer offered to assist Mr D in his attempts to correct his tax position with HMRC. The Adjudicator also noted that Mr D did not take Mercer up on this offer, as he considered that he was entitled to the higher pension initially quoted to him. So, the Adjudicator could not say whether it was possible to make the correction. For this reason, it was unclear to the Adjudicator whether Mr D has suffered a financial loss.

- The Adjudicator also noted the Trustee's offer to consider compensation for Mr D's additional tax liability, if it was irreversible. In the Adjudicator's view, the offers that had been made to Mr D were reasonable. It was for Mr D to decide if he wished to accept Mercer's assistance.

- The Adjudicator noted that more than two years had passed by since Mercer made its offer. In his opinion, the Trustee could not be considered at fault should it transpire that, due to the passage of time, Mr D's tax position could not be corrected.

- The Adjudicator considered whether the Trustee had caused Mr D any non-financial loss, such as distress and inconvenience. In particular, the Adjudicator noted that, in addition to the errors that occurred, there were some delays in the provision of information. Mr D asked for a copy of the calculation of his benefits on 31 January 2019 and this was not provided until 10 April 2019. He also asked for a copy of the IDRP on 13 April 2019, but this was not provided until 14 June 2019.

- The Trustee had acknowledged that Mr D had suffered some distress and inconvenience as a result of these errors and delays. In recognition of this, an offer of £500 had been made to Mr D. The Adjudicator considered that the amount offered was sufficient in the circumstances and that the Ombudsman was unlikely to award a higher amount if the complaint were to be determined.

- The Adjudicator noted that the legal position was that monies paid in error may be recovered; regardless of the reason for the error. However, there were circumstances where the recipient of the incorrect payments may not be required to repay some, or all, of the monies received. Those circumstances arise when one of the legal defences to recovery applied. Mr D will be required to repay the sum of £245.82 unless he can establish a defence against recovery. The Adjudicator considered that, when the Trustee began taking steps to recover the overpayment, it should allow Mr D the opportunity to put forward any arguments that he wished to make against the recovery.

- The Adjudicator said that, having reviewed the evidence available to him, he was of the view that no defence against the recovery of the sum of £245.82 was available to Mr D.

34. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

35. Mr D provided his further comments which do not change the outcome. He said that:-

- He would not have asked for his benefits to be put into payment had the quotation sent to him on 17 September 2018 been accurate.

- He has suffered a material loss: a lower pension and an additional tax liability.
- Delays in responding to his requests, including the time taken to provide details of the IDRP, gave him no opportunity to mitigate his losses.

36. The Trustee provided additional information on the incorrect pension figure that had been provided to Mr D on 17 September 2018. While its response under stage two of the IDRP stated that the Old Factors had been used in error, the correct position was that:-

    - When Mr D's benefits were initially calculated, an erroneous early retirement factor of 0.79 had been used. The factor that should have been used was the New Factor of 0.72.
    - The New Factors were slightly more generous than the Old Factors. The Old Factor at the time Mr D's benefits were settled would have been 0.70.

37. I note the additional points raised by Mr D, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

38. Mr D's complaint concerns the reduction in his benefits due to the initial use of an incorrect early retirement factor and the impact that this has had on his LTA.

39. Following the introduction of the New Factors on 31 July 2018, I am satisfied that the early retirement factor of 0.72 should have been used when Mr D's benefits were put into payment on 1 October 2018.

40. I note that an incorrect early retirement factor of 0.79 was used at the time Mr D's pension was initially paid to him. Consequently, he was paid a higher level of pension than he was entitled to. I find that the action that Mercer took, in recalculating the pension based on the early retirement factor of 0.72, and adjusting Mr D's pension accordingly, was the correct action in the circumstances.

41. Mr D's pension was reduced to £6,098.28 per annum in March 2019. The corrected pension included a pension increase that had been applied following his retirement. Ignoring the impact of the increase, his pension effectively reduced from £6,636.36 per annum to £6,048.36 per annum. This equates to a reduction of £588 per annum, approximately nine percent of the initial rate of pension that was paid to him in error.

42. Mr D has said that he would not have asked for his benefits to be put into payment had he been aware of the correct figures at the time of his retirement. I am not satisfied on reviewing the evidence that Mr D has demonstrated that he would have acted materially any differently had he been aware of the correct position. On 31 July 2018, Mr D emailed Mercer to confirm that he wished to take early retirement with immediate effect. This was before he had seen the higher (incorrect) retirement figures.

43. To help mitigate his financial position, Mercer offered Mr D the opportunity to revoke his decision to surrender his bridging pension for additional spouse's pension. If Mr D had revoked his decision, instead of a £588 per annum reduction in his pension the reduction would have been £204.36 per annum.

44. Mr D has said that he incurred a higher LTA charge as a result of the errors made by Mercer. I note that, after the correction was applied to Mr D's benefits, the percentage of the LTA he had used up reduced to 8.06%. Had Mr D revoked his decision to surrender his bridging pension for additional spouse's pension, then the LTA utilised would be 8.57%.

45. I do not agree that it is appropriate for me to award redress for the financial injustice that Mr D claims he has suffered. I have seen no evidence of any attempt on the part of Mr D to correct his tax position with HMRC. Mercer offered its assistance to Mr D in this respect; I have seen no evidence that Mr D took up that offer or that he persued the matter directly with HMRC.

46. I will now consider whether Mr D has suffered any non-financial injustice in connection with this matter. Mercer provided incorrect pension figures to Mr D on 17 September 2018 and 17 December 2018, before corrected figures were provided on 28 January 2019. In addition, some of its responses to Mr D's enquiries were not provided within reasonable timescales.

47. I note that the Trustee has offered Mr D £500 for the significant distress and inconvenience that he has suffered. I am satisfied that the offer is sufficient in the circumstances and in line with what I would award for non-financial injustice in similar circumstances. Mr D should contact the Trustee if he wishes to accept the offer.

48. It is open to Mr D to inform the Trustee whether he would prefer the overpayments to be offset against the distress and inconvenience award or recovered from future instalments of his pension.

49. Should Mr D wish to take Mercer up on its offer of assistance, he should contact Mercer directly.

50. I do not uphold Mr D's complaint.

Anthony Arter

Pensions Ombudsman
24 November 2021