

Ombudsman's Determination

Applicant	Mr N
Scheme	Procter & Gamble Pension Fund (the Fund)
Respondent	The Trustees of the Procter & Gamble Pension Fund (the Trustees)

Outcome

1. Mr N's complaint against the Trustees is not upheld.

Complaint summary

2. Mr N has complained that the Trustees provided him with retirement packs in 2017 and 2018 which did not specify that part of the pension would cease at his State Pension Age (**SPA**) in November 2019.
3. Mr N says that he relied on these retirement packs to his financial detriment. Consequently, the temporary pension should be payable to him for life.

Background information, including submissions from the parties

4. Mr N joined the Max Factor Staff Pension Scheme (**the MF Scheme**) in March 1989. His normal retirement date (**NRD**) was his 65th birthday in April 2019.
5. Prior to 6 April 1997, contracted out final salary related schemes, such as the MF Scheme, had to promise to pay a pension equivalent to the Guaranteed Minimum Pension (**GMP**). This reduced the employee's State Earnings Related Pension Scheme (**SERPS**) pension. In return, both the employer and employee paid National Insurance contributions at a lower rate.
6. Following the acquisition of Max Factor by Procter & Gamble, the MF Scheme was merged with the Fund in 1997. The Fund was a contracted in arrangement. Consequently, it provided benefits in addition to SERPS. The Trustees decided to pay state scheme premiums to HM Revenue and Customs (**HMRC**) to reinstate the former members of the MF Scheme back into SERPS.
7. As a consequence of the "buy back," SERPS pensions will be payable to former members of the MF Scheme when they reached SPA. To ensure that the members

were not disadvantaged if they retired prior to SPA, a bridging pension, equivalent to the GMP, is payable from the Fund between retirement date and SPA.

8. In June 2015, Mr N became a deferred member of the Fund.
9. Mr N received a preserved benefit statement which showed that:-
 - The deferred pension at date of leaving the Fund was £84,997.40 per annum. This was inclusive of a Post 1988 GMP of £1,238.93 per annum.
 - The GMP would be revalued by 4.75% per annum until the end of the last tax year prior to his GMP age.
 - This GMP would no longer be payable from the Fund when he reached his SPA.
10. The statement also included the following proviso:

“All entitlement to benefits are subject to the Trust Deed and Rules governing the Fund (**the Fund Rules**) and also the requirements of current and future legislation.”
11. In 2016, Capita, the administrators of the Fund, sent Mr N a retirement pack at his request. The pack included a benefit quotation (**the 2016 Quotation**). It showed that the estimated benefits available to him if he retired on 31 July 2016 were as follows:
 - a full pension of £85,056.91 per annum; or
 - a restricted pension commencement lump sum (**PCLS**) of £375,000 plus a residual pension of £62,595 per annum.
12. The 2016 Quotation also showed that the full pension of £85,056.91 per annum consisted of: (a) a “P & G Life Pension” of £69,605.80 per annum, and (b) a “Max Factor Pension” of £15,451.11 per annum that included a temporary pension of £1,492.40 per annum which would cease at SPA.
13. Capita sent Mr N a further retirement pack in December 2017. The enclosed quotation (**the December 2017 Quotation**) showed that he was entitled to the following estimated benefits from the Fund if he retired early on 1 February 2018:
 - a full pension (with a Lifetime Allowance excess taken as pension) of £83,681.46 per annum, or
 - a full pension of £75,000 per annum plus a Lifetime Allowance excess lump sum of £91,237.05; or
 - a reduced pension of £61,802.35 per annum (with a Lifetime Allowance excess taken as pension) and a PCLS of £375,000; or

- a reduced pension of £56,250 per annum plus a PCLS of £375,000 and a Lifetime Allowance excess lump sum of £58,351.89.

14. The December 2017 Quotation included the following provisos:

“The enclosed pension and lump sum amounts are based on the assumption that you have not used up any Lifetime Allowance elsewhere...Your benefits will be subject to recalculation if this assumption is not true.

If you have applied to HMRC for protection against the Lifetime Allowance, please forward a copy of the protection certificate if you have not already done so as this may affect the benefits quoted.

All entitlements to benefits are subject to the Fund Rules and also the requirements of current and future legislation.

The benefits provided by the Fund are subject to overriding tax and pensions legislation.”

15. In August 2018, Capita sent Mr N a further retirement pack at his request. This included a benefit quotation (**the August 2018 Quotation**). It showed that the estimated benefits available to him if he retired on 1 September 2018 were as follows:

- a full pension (with a Lifetime Allowance excess taken as pension) of £83,866.12 per annum, or
- a full pension of £75,000 per annum plus a Lifetime Allowance excess lump sum of £92,608.85, or
- a reduced pension of £61,781.68 per annum (with a Lifetime Allowance excess taken as pension) and a PCLS of £375,000; or
- a reduced pension of £56,250 per annum plus a PCLS of £375,000 and a Lifetime Allowance excess lump sum of £57,649.75.

16. The August 2018 Quotation also included the provisos quoted in paragraph 14 above.

17. In October 2018, Mr N completed the “Retirement Option Form” (**the Form**) and selected a reduced pension of £61,781.68 per annum and a PCLS of £375,000.

18. The Form stated that Mr N’s benefits, in excess of the Lifetime Allowance taken as pension, would be subject to a tax charge of 25%. The Form also stated that a Lifetime Allowance charge of £40,396.35 would be deducted from his benefits and paid to HMRC. The charge had been allowed for in the calculation of his benefits, as shown in the August 2018 Quotation.

19. It later transpired that Mr N had already used 21.16% of his Lifetime Allowance. So Capita had to recalculate the retirement benefits available to him from the Fund.

20. In November 2018, Mr N selected a reduced pension of £61,454.78 per annum (with a Lifetime Allowance excess taken as pension) and a tax free PCLS of £295,650. A Lifetime Allowance charge of £124,929.80 was applied to the benefits.
21. Mr N has alleged that he incurred the higher tax charge of £124,929.80 because of poor administration on the part of Capita. He will make a separate complaint about this issue.
22. In December 2018, Capita sent Mr N a letter to inform him that his pension of £61,454.78 per annum included a temporary bridging pension of £1,424 per annum payable until his SPA in November 2019.
23. Mr N was unhappy that part of his pension was temporary and made a complaint under the Fund's Internal Dispute Resolution Procedure (**IDRP**).
24. In the Stage One IDRP decision letter dated 29 July 2019, the independent adjudicator said that:-
 - The Trustees were bound by law to pay benefits to members of the Fund in accordance with the Fund Rules.
 - Capita's failure to include information about the bridging pension in the retirement packs sent to Mr N in 2018 was an oversight for which the Trustees had already apologised.
 - Mr N had been a trustee of the MF Scheme. He attended a meeting in September 1996 during which the decision to buy GMP liabilities back into SERPS for members of the MF Scheme was made. Consequently, he was aware that the members would be entitled to SERPS pension at SPA.
 - Mr N received a letter dated 25 February 2004 that was sent to all the former members of the MF Scheme. The letter said that if a member retired before SPA, he/she would be paid a temporary pension equivalent to his/her GMP from the Fund until SPA. This would then be replaced by his/her SERPS pension.
 - Mr N received a preserved benefit statement which showed that his GMP would not be payable from the Fund on him attaining SPA.
 - Mr N received the 2016 Quotation which stated that a temporary pension relating to the MF Scheme would cease at SPA.
 - In limited circumstances, the principle of estoppel by representation might bind the Trustees so that they had to act in accordance with a representation rather than the Fund Rules.
 - The three requirements which must be met to establish estoppel by representation were:

1. a clear representation or promise made by the defendant on which it is reasonably foreseeable that the claimant will act;
 2. an act on the part of the claimant that was reasonably taken in reliance on the representation or promise; and
 3. the claimant is able to show that he/she will suffer detriment if the defendant is not held to the representation or promise.
- Arguably, there was sufficient evidence to satisfy the first limb of the test of estoppel by representation as specified above.
 - There was, however, no clear evidence of Mr N having detrimentally relied on the representation by making irreversible commitments based on the expectation that he would continue to receive the bridging pension of £1,424 per annum beyond SPA. So, the principle of estoppel by representation had not been established and Mr N's complaint could not be upheld.
25. Mr N did not accept this decision and his complaint was considered by the Trustees at Stage Two of the IDRP.
26. In their decision letter dated 8 November 2019, the Trustees informed Mr N that they did not uphold his complaint for essentially the reasons given by the independent adjudicator. They also said that:-
- They were not necessarily convinced that the first limb of the test of estoppel by representation had been fulfilled.
 - Mr N had received correct information about the bridging pension up until 2016. In particular, the 2016 Quotation said that the bridging pension would cease at his SPA. So, Mr N had been "on notice" of the correct position and could have asked why the retirement packs sent to him in 2018 did not mention the bridging pension.
 - Irrespective of whether a clear representation had been made to Mr N, he had not satisfied the second and third limbs of the estoppel test.
 - "The case of Steria v Hutchison expressively rejects the argument that not obtaining the "promised" benefit is sufficient detriment in itself; some additional form of detriment, which is more than hypothetical, must be proved."
 - If Mr N could supply evidence to show that the expectation of receiving an additional £1,424 per annum for life was a significant factor in his financial commitments, the Trustees would be prepared to reconsider his claim. The Trustees had noted that this included assisting his son with the cost of his university degree and accommodation and paying nursing home costs for a parent.

- However, if Mr N would have made these financial commitments, regardless of the representation, then the requirements for estoppel by representation would not have been met.
- The Trustees would take into account the fact that the bridging pension was a relatively small percentage of Mr N's overall pension and would be replaced by his SERPS pension from SPA.

Mr N's position

27. Mr N says that:

- The principle of estoppel by representation does not require him "to demonstrate irreversible commitment or reliance but simply to show a detrimental impact."
- The reduction in his annual pension of £1,424 per annum amounts to a loss of approximately £28,000 over the lifetime of the pension. This is more than sufficient to show a significant detrimental impact on his financial circumstances.
- The key issue is not the decisions taken in reliance on the incorrect information provided in the retirement packs. Rather, it is the decisions that have not been made based on that incorrect information.
- When considering retirement an individual must: (a) consider his/her current personal circumstances; and (b) determine what changes need to be made (if any) based on his/her "known future income" and available budget.
- Using "financial modelling", the information shown on the 2017 and 2018 retirement packs, and "known additional state pension income", he calculated the level of his expenditure that could be sustained on an ongoing basis.
- Any reduction in his pension benefit, irrespective of the amount, would have a significant detrimental impact on him and his dependants.

Adjudicator's Opinion

28. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustees. The Adjudicator's findings are summarised below.

Negligent misstatement

29. A complaint of negligent misstatement must be based on an inaccurate statement, usually called a 'representation.' That statement is usually made by spoken or written words, but it can also be made by conduct. The representation must be a statement of past or present fact or, in some circumstances, of the law. It must be clear and unequivocal.

30. In this case, Mr N has complained that the Trustees, through Capita, provided him with retirement quotations during 2017 and 2018 which did not specify that part of the pension available to him from the Fund was temporary and would cease at his SPA.
31. As these quotations were statements about Mr N's pension entitlement they were, in the Adjudicator's opinion, representations made by Capita on behalf of the Trustees.
32. In the Adjudicator's view, the quotations were not clear and unequivocal representations because they included a disclaimer which stated that:-
- The pension and lump sum figures shown were calculated assuming Mr N had not used up any of his Lifetime Allowance. Consequently, they would be subject to recalculation if this assumption was not true.
 - If Mr N had applied to HMRC for protection against the Lifetime Allowance and had not forwarded a copy of the protection certificate to Capita, this could affect the benefits quoted.
 - Entitlement to benefits under the Fund were subject to the Fund Rules and the requirements of current and future legislation.
 - The benefits provided by the Fund were subject to overriding tax and pensions legislation.
33. Consequently, if Mr N had decided to enter into financial commitments based on the figures shown in the quotations, which he received during 2017 and 2018, he would do so at his own risk.
34. The fundamental duty of trustees is to give effect to the provisions of the trust deed. Failure to do so would amount to a breach of trust. The Trustees' duties are many and include: (a) paying out the right benefits at the right time, and (b) keeping accurate records of members and their dependants.
35. In practice, trustees can delegate many of these duties such as the day-to-day responsibility of administering a pension scheme to a third-party administrator or an in-house administration team. The responsibility for ensuring that these duties are carried out ultimately remains with the trustees.
36. The Trustees owed a duty of care to ensure that any information provided to Mr N concerning the benefits available to him from the Fund was accurate. The erroneous statements were false representations and not something that could have been made by somebody who was exercising reasonable care.
37. For the reasons given above, it was the Adjudicator's view that there had been a negligent misstatement by the Trustees.
38. Although Mr N received incorrect details of the benefits available to him from the Fund, it did not, however, confer on him a right to these benefits quoted by mistake. If

he had acted to his financial detriment, based on the reasonable belief that the figures were correct, then he may be compensated for the harm.

39. The Adjudicator considered the extent to which Mr N would likely have acted differently had he known the correct figures at the point when he made his financial commitments without using the benefit of hindsight.
40. He could not, however, see a direct causal link between what Mr N was told about the early retirement benefits available to him from the Fund and the specific financial decisions which he made. It was always difficult for a person to prove what they would have done differently had they believed something different to what they did in fact believe. The Adjudicator had seen no unequivocal evidence that Mr N would have acted differently if he had received the correct benefit figures.
41. Mr N contended he could be financially worse off by almost £28,000 over the life of his pension from the Fund. The Adjudicator's view was that this perceived loss did not amount to an actual financial loss because the calculation was based on the additional pension he expected to receive but was not entitled to.
42. If Mr N suspected that he might have suffered a loss, he had a responsibility to take reasonable steps to mitigate his loss by attempting to return himself, as near as possible, to the position he would otherwise have been in. Mr N could not claim that he had suffered a loss as a result of the mistakes made by the Trustees if he could have mitigated his financial position. The Adjudicator had seen no evidence that Mr N attempted to address the shortfall in the misquoted figures, for example, by returning to work and earning some additional recompense.
43. Moreover, the evidence was clear that Mr N had received correct information about the bridging pension up until 2016 and so had been "on notice" of the correct position. In the Adjudicator's view, it was reasonable to expect that Mr N should have noticed the errors in the retirement quotations which he received during 2017 and 2018 and brought them to the attention of the Trustees. If Mr N had done so, he would not be in the unfortunate situation he now found himself in.
44. Consequently, it was the Adjudicator's view that Mr N had not suffered any actual financial loss for which he should be compensated. The Trustees could only pay him the correct pension calculated in accordance with the Fund Rules.

Estoppel

45. Like negligent misstatement, a complaint of estoppel must be based on an inaccurate statement, usually called a "representation."
46. The three requirements which must be met to establish estoppel by representation are set out in paragraph 24 above.
47. It was the Adjudicator's opinion that the retirement quotations issued in 2017 and 2018 were inaccurate representations made by Capita on behalf of the Trustees. It

was his view that the quotations were not clear and unequivocal. They contained a warning that all entitlement to benefits would be subject to the Fund Rules.

48. In the Adjudicator's opinion, it was foreseeable that Mr N would use the quotations for general planning purposes. However, the Adjudicator was not persuaded from the available evidence that Mr N had demonstrated that he relied on the quotations when making the financial commitments that form the basis of his claim for financial loss. The Adjudicator was also not persuaded that the quotations were a significant factor in his decision making.
49. Consequently, in the Adjudicator's view, Mr N had not met all the requirements for a successful estoppel defence.
50. The Trustees were consequently not estopped from paying the correct benefits in accordance with the Fund Rules and ignoring the incorrect overstated figures.

Maladministration

51. The Adjudicator also considered whether the incorrect information constituted maladministration which had resulted in any non-financial injustice such as distress and inconvenience. Even where it was recognised that maladministration had occurred this did not always result in a payment for non-financial injustice.
52. There was no dispute that the Trustees, through Capita, provided Mr N with incorrect information about the early retirement benefits available to him from the Fund during 2017 and 2018. Mr N should have been given the correct figures. The failure on the part of the Trustees to provide Mr N with correct quotations amounted to maladministration on the part of the Trustees.
53. Although it was the Adjudicator's opinion that Mr N had not suffered any actual financial loss as a direct consequence of the maladministration identified above, it was clear that he had experienced significant distress and inconvenience.
54. The Adjudicator noted that the Trustees had apologised to Mr N for Capita's shortcomings but had not offered Mr N any goodwill award for the distress and inconvenience which he had suffered.
55. The Pensions Ombudsman's awards for non-financial injustice were modest and not intended to punish a respondent. In the Adjudicator's view, the non-financial injustice that Mr N had suffered was significant enough to warrant the minimum award of £500 that the Ombudsman would direct.
56. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome.
57. Mr N said that:
 - It was reasonable for him to believe that a bridging pension did not apply when there was no reference to it in the quotations which he received in 2017 and 2018.

- It was inconceivable that the same mistake could be made several times for which he was now being financially penalised.
- Both his primary residence and a second home which he purchased in 2013, are still mortgaged. He has also helped: (a) his son pay his university degree and accommodation fees, and (b) his father pay his nursing home costs.
- These substantial costs, along with his day-to-day living expenses have been “factored into his future income requirements”.
- He recognised his need for additional income by incorporating his consultancy in 2015 and continuing to work.
- All his decisions were taken and built around careful financial management. They were based on known pension income plus projected earnings and savings. Any reduction to his pension benefits, no matter how small, has a direct negative impact on his financial circumstances.

58. I note the additional points raised by Mr N, but I agree with the Adjudicator’s Opinion in respect of the complaint but not with regard to an award for maladministration. In the circumstances, I do not believe the maladministration was such that it warrants an award of £500, an apology is sufficient in this case.

Ombudsman’s decision

59. While there is no dispute that there has been maladministration on the part of the Trustees, the starting point is that Mr N is only entitled to the benefits provided by the rules of the Fund. Exceptionally, in cases where incorrect information has been given redress will be provided if it can be shown that financial loss or non-financial injustice has flowed from reliance on that incorrect information. For example, the member may have taken a decision in reliance on the accuracy of the information, which they would not otherwise have taken. However, they must be able to prove both that they relied on the accuracy of the information provided and that it was reasonable to do so.
60. I have considered carefully whether it was reasonable for Mr N to have accepted the figures shown on the benefit quotations issued in 2017 and 2018, as correct. I fully appreciate Mr N’s points of view on this matter, but I have concluded it was not reasonable, for essentially the same reasons given by the Adjudicator.
61. Mr N is a former trustee of the MF Scheme. He had to act in accordance with the trust deed and rules of that scheme and within the framework of the law. I note that he also attended a meeting in September 1996 during which the decision to buy GMP liabilities back into SERPS for members of the MF Scheme was made. I consequently

agree with the Trustees that Mr N ought reasonably to have known that his bridging pension would cease when his SERPS pension became payable at SPA.

62. Furthermore, it is incumbent upon any member of a pension scheme to ensure that, if fundamentally flawed data is displayed in benefit statements, the relevant person be notified so that corrections could be made.
63. I consequently consider that Mr N: (a) should have noticed the errors in the quotations which he received during 2017 and 2018; and (b) informed the Trustees accordingly so that the mistakes could be rectified.
64. In any event, Mr N cannot claim for a loss that he could have mitigated, either by increasing his income or reducing his expenditure. I acknowledge that he has continued to work and it is unfortunate that he feels the additional income which he has earned by working has so far been inadequate to mitigate his perceived financial loss. However, this does not mean that his circumstances will not change for the better in the future which would enable him to do so.
65. Although, I do not consider that Mr N has suffered any actual financial loss, it is clear to me that he has experienced some distress and inconvenience because of the maladministration identified but an apology is sufficient taking all the circumstances into account.
66. Mr N is a former Trustee of the MF Scheme and had attended a meeting in September 1996 when the decision to buy GMP liabilities back into SERPS for members of the MF Scheme was made. The 2015 and 2016 quotations clearly showed the deduction, I do not accept that it is reasonable for him to declare no knowledge of the change, he should have contacted Capita or the Trustees to query the 2017 quotation and no doubt the 2018 quotation would have been correct.
67. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
27 October 2022