

Ombudsman's Determination

Applicant	Mr A
Scheme	Ford Hourly Paid Contributory Pension Fund (the Fund)
Respondents	Ford Pension Funds Administration Limited (the Administrator) Ford Pension Fund Trustees (the Trustee)

Outcome

1. Mr A's complaint against the Administrator is partly upheld. To put matters right, the Administrator shall pay Mr A £500 for the significant distress and inconvenience caused.

Complaint summary

2. Mr A complained that he was misinformed by the Administrator that he could take his pension benefits as a one-off lump sum.
3. He also complained that the Administrator told him he could transfer his benefits but when he asked to do this, he was informed that he was too late.

Background information, including submissions from the parties

4. On 6 June 1978, Mr A joined the Fund which was a defined benefit arrangement set up by his employer, Ford.
5. On 1 October 1983, Mr A left Ford and became a deferred member of the Fund.
6. On 3 January 2019, following a request from Mr A in December 2018, the Administrator issued a CETV quotation to Mr A showing a value of £38,399.00.
7. On 22 February 2019, Mr A was sent a letter by the Administrator (**the February Letter**). It stated: -
 - Mr A's retirement date was in June 2019, and this meant that he needed to make a decision about how he would like to take his benefits from the Fund.
 - The benefits quoted in the February Letter were estimated and based on the information it currently held and were not guaranteed.

- As the value of Mr A's benefits were less than £30,000, he may be able to exchange his pension for a one-off lump sum, known as a trivial commutation lump sum.
 - If Mr A provided details on the enclosed retirement information form that confirmed that the total value of his benefits, including benefits from any other pension arrangements, did not exceed £30,000 then a trivial commutation lump sum would be payable. It also stated that a lump sum value was provided in the enclosed information.
8. The February Letter also provided an estimated Retirement Option Statement as at Mr A's Normal Retirement Date (**NRD**) in June 2019. And included a single option: -
- Estimated Retirement Benefits
- Option one
- A Fund Pension £2,187.12 per annum
9. On 12 March 2019, Mr A telephoned the Administrator and asked whether he would be eligible for ill health retirement. The Administrator explained the process and said that the Administration team would give him details of the nearest Ford doctor and that it would be up to Mr A to arrange an appointment with the doctor.
10. On 25 March 2019, the Administrator wrote to Mr A and explained that:-
- Mr A's pension consisted solely of Guaranteed Minimum Pension (**GMP**) earned prior to 6 April 1988. GMP is payable from age 65 for men and cannot be paid early. There were no provisions in the Fund that would allow him to take his pension early on the grounds of ill-health.
 - It could put Mr A's pension of £2,187.12 a year into payment with effect from June 2019.
 - In order to set up his pension, he needed to complete and return all of the documentation supplied with the February Letter.
11. On 14 January 2020, Mr A telephoned the Administrator and said he wanted to retire with immediate effect. He also requested an illustration of the Cash Equivalent Transfer Value (**CETV**) of his pension benefits.
12. On 27 January 2020, the Administrator wrote to Mr A and enclosed a copy of the estimated Retirement Option Statement and form that it had previously provided with the February Letter.
13. On 30 January 2020, Mr A completed the retirement option form. The form stated:
- "Please tick the option you would like to take.
- Option one

An annual pension of £2,187.12”

14. As “Option one” was the only option provided, Mr A did not tick the accompanying box but instead wrote the following underneath:

“Commute as per page 9 option”

15. Mr A also completed the retirement information form. The information at the top of the form stated:

“As the value of your benefits within the Fund is less than £30,000 it may be possible for you to commute your benefits from the Fund into a one-off lump sum. For this to be an option the total value of all your arrangements must be less than £30,000 at Nominated Date.”

16. Mr A indicated in the retirement information form that he wanted to commute all of his benefits to a one-off lump sum. He confirmed that his “selected Nominated Date” was 1 March 2020.

17. Mr A also confirmed that:-

- He did not have any pension benefits in other arrangements that had not yet come into payment.
- He did not have any pension benefits currently in payment and had not already taken benefits as a one-off lump sum.
- He did not have any pension benefits, or one-off lump sums, in other arrangements coming into payment on or around June 2019.

18. On 25 February 2020, the Administrator sent a letter to Mr A stating that it was unable to provide a CETV as the retirement forms had already been completed.

19. On 13 March 2020, the Administrator sent a further letter to Mr A. The letter stated that his annual pension of £2,187.12 would be paid to him in monthly instalments. His first pension payment, including any arrears, would be made on 6 April 2020.

20. On 18 March 2020, Mr A telephoned the Administrator and said that he was unhappy that his pension had been put into payment. The Administrator advised that it was too late to stop the pension payment as the payment authorisation had been sent to payroll. Mr A said that he did not tick the option for an annual pension, so the Administrator could not insist that he take this option. His concerns should be treated as a formal complaint.

21. On 26 March 2020, the Administrator responded to Mr A’s complaint. It said in summary:-

- For Mr A to be entitled to a trivial commutation lump sum, his benefits needed to have a value of less than £30,000. Under pensions legislation, a final salary is valued as 20 times the annual rate of the pension. Unfortunately, the letter Mr A

received in 2019 should have said, "IF your benefits are less than £30,000, rather than your benefits ARE less than £30,000."

- The value of Mr A's benefits was in excess of the trivial commutation lump sum limit. So, the fact that he changed his date of retirement to 1 March 2020, made no difference as he was not entitled to take a trivial commutation lump sum.
 - As Mr A's pension consisted solely of the GMP his date of retirement remained his 65th birthday, the date that the GMP came into payment.
 - It apologised for the error in the February Letter. However, it could only settle benefits in line with pensions legislation and the Fund Trust Deed and Rules (**the Rules**). Consequently, payment of Mr A's full pension was the only option open to him.
22. On 27 November 2020, the Administrator offered Mr A £150, in recognition of the distress and inconvenience caused to him by this issue.
23. On 25 January 2021, the Administrator increased the offer to £250.
24. On 1 October 2021, Mr A raised a complaint under stage one of the Fund's Internal Dispute Resolution Procedure (**the IDR**P). He stated:-
- He did not think the £250 the Administrator had offered him was sufficient.
 - At no point did he send paperwork indicating that he wanted a Fund pension to be put into payment.
 - The only paperwork he sent was a signed form indicating that he wanted the option of a trivial commutation lump sum.
 - He would never have signed the retirement paperwork if he had known that in doing so, he would be prevented from receiving a trivial commutation lump sum or from transferring his benefits.
 - He had numerous conversations with the Administrator before his NRD and had been reassured that he had time to make an informed decision about his options.
 - He was under severe financial pressure which he had planned to alleviate by taking a lump sum. His financial planning had been based on "cashing out" his pension from the Fund. Through no fault of his own this option had now been taken away from him.
 - His health has suffered over recent times, made worse by having to pursue this matter.
 - The Administrator should pay him compensation equivalent to the lump sum he was expecting to receive, minus any amount that had already been paid to him. He would have transferred out his benefits if he had not been wrongly advised that the option of taking a trivial commutation lump sum was available to him.

25. On 11 November 2021, the Trustee issued its response under the IDR. It acknowledged that the Administrator had misinformed Mr A that the option of taking trivial commutation was available to him in lieu of his pension entitlement. The Administrator had also suggested that he could transfer his benefits to an alternative scheme. The Trustee explained that:-
- The conditions for paying a trivial commutation lump sum are set out in legislation. A trivial commutation lump sum is only permissible if the value of the member's pension benefits is less than £30,000. As the value of Mr A's entitlement was greater than £30,000, he should not have been offered the option of taking trivial commutation.
 - The Rules only permit a CETV up to 12 months prior to NRD. So, he had no entitlement to a CETV after age 64. This is in line with pensions legislation.
 - The only benefit payable from the Fund at his NRD was a pension.
26. Mr A responded to the Trustee and said that he should be offered the option of a trivial commutation lump sum.
27. On 7 January 2022, the Trustee issued a response under stage two of the IDR. It explained that it was required to follow the provisions set out in the Rules and pensions legislation. It had no discretion in the matter.

Adjudicator's Opinion

28. Mr A's complaint was considered by one of our Adjudicators who concluded that further action was required by the Administrator. The Adjudicator's findings are summarised below:
- The Administrator and the Trustee agreed that Mr A was provided with incorrect information regarding his entitlement to a trivial commutation lump sum and whether he could transfer his benefits. The provision of incorrect information amounted to maladministration. However, this did not mean that the Trustee or the Administrator should pay Mr A a benefit that he was not entitled to. For the complaint to have succeeded, Mr A must have been able to demonstrate that it was reasonable for him to have relied on the misinformation and that he suffered a financial detriment as a direct result.
 - In the Adjudicator's view it was not reasonable for Mr A to have relied on the February Letter as the basis for his retirement planning. The February Letter stated that as the value of Mr A's benefits was less than £30,000, he "may" be able to exchange his pension for a one-off lump sum. As a figure in respect of the one-off lump sum was not quoted at the time, the Adjudicator expected Mr A to have queried this with the Administrator and to check whether he was eligible for a trivial commutation lump sum.

- Furthermore, as the retirement information form that Mr A completed only gave him the option of an annual pension, in the Adjudicator's opinion it was not reasonable in the circumstances for Mr A to assume that he would be entitled to take a trivial commutation lump sum.
 - The Adjudicator noted that when Mr A returned his completed form to request a trivial commutation lump sum, she would have expected the Administrator to contact him. It should have explained the situation to Mr A so that he was aware that the pension was the only option available to him from the Fund. Instead, the Administrator ignored his request and put the pension into payment.
 - Mr A has said that the Administrator initially informed him he could transfer his benefits so that he could take a lump sum. He has also said that he would have requested a CETV had he not been incorrectly informed that he could take a trivial commutation lump sum. In the Adjudicator's opinion as the incorrect information was provided to Mr A less than a year before his NRD so at that point he was already outside the time limit for initiating a transfer, Mr A should, instead, have been provided with clear information so that he was aware that the option to take a CETV was no longer available to him as he was within 12 months of his NRD.
 - In the Adjudicator's opinion Mr A had not suffered a financial loss. He had instead suffered a loss of expectation in that he believed he would receive a lump sum rather than an annual pension. In recognition of this the Administrator should pay Mr A £500 for the significant non-financial injustice it had caused him.
29. Mr A did not accept the Adjudicator's Opinion. In response he said that there had been earlier instances of misinformation from the Administrator regarding whether he could transfer his benefits, and this had stopped him requesting a CETV at an earlier date.
30. As Mr A did not accept the Adjudicator's opinion, the complaint was passed to me to consider. Mr A provided some additional comments which are summarised below:-
- He made financial decisions based on a lump sum being paid after being assured by the Administrator that this could happen.
 - He was always reassured he had time to take a lump sum from his pension pot.
 - He had a transfer value quote in January 2019 and was in discussions with a financial adviser to prepare to move to another scheme that accepted defined benefit pensions. Everything was put on hold as the Administrator made it clear to him he still had time and could transfer out.
 - He wanted to transfer his pension prior to receiving the Administrator's letter indicating that he could have a trivial commutation lump sum. When he received the February Letter it seemed a better option to keep everything in house.

31. The Administrator accepted the Adjudicator's opinion but provided the following additional information in response to Mr A's comments:-
- On 5 July 2018, Mr A telephoned the Administrator to say that he was considering taking early retirement and could it issue an early retirement quote.
 - On 13 July 2018, the Administrator wrote to Mr A to say that he could only take his pension from the Fund at age 65.
 - On 19 December 2018, Mr A telephoned the Administrator to ask if he could be issued with a CETV as he had previously requested one in July 2018. There is no record of this being previously requested however it did act on his instructions.
 - On 3 January 2019, a CETV was issued to Mr A for £38,399.00. Mr A could have acted on this quote and transferred his benefits had he so wished.
32. I have considered the additional comments provided by both parties but I agree with the Adjudicator's opinion.

Ombudsman's decision

33. Mr A complained that he was misinformed by the Administrator that he could take his pension benefits as a one-off lump sum. In addition, he said he lost the opportunity to transfer out of the Fund.
34. 34. Mr A received the February Letter on 22 February 2019 indicating that he may be entitled to a trivial commutation lump sum as his benefits were less than £30,000. The Administrator accepts that this information was incorrect as the letter should have said that Mr A was entitled to a one-off lump sum "if" his benefits were less than £30,000. It contends that Mr A could have acted on the January 2019 CETV quote and transferred his benefits had he so wished.
35. Mr A said that after receiving the incorrect information in the February Letter he decided not to act on the CETV quotation he had received in January 2019 but instead opt to receive a lump sum from the Fund.
36. Given that the CETV quotation had valued Mr A's benefits at £38,399, I would have expected Mr A to have queried why the February Letter indicated that his benefits were now below £30,000 before he took the decision not to transfer his benefits out of the Fund. Further, the February Letter did not provide a figure for the lump sum and the annual pension amount was the only option that could be selected. I would also have expected Mr A to have queried whether the information about the trivial commutation lump sum was correct before relying upon it. Had he done so it would have come to light that trivial commutation was not an option for him and also that the January 2019 CETV quotation had been issued in error as he was by that time within one year of his NRD.

37. While I note Mr A's suggestion that he made financial decisions after being assured by the Administrator that a lump sum could be paid, there is no clear evidence that he was told this, or that he was told at any point that he had plenty of time to transfer out of the Fund at a later date.
38. There was however clearly some confusion on the part of the Administrator, regarding whether or not, Mr A still had the option to transfer his benefits out of the Fund when the January 2019 CETV quotation was issued. The Administrator should have made clear to Mr A that the option to take a CETV was no longer available to him as he was within 12 months of his NRD. I find its failure to do so amounts to maladministration.
39. In summary, I find that it was not reasonable for Mr A to have relied on the incorrect information in the February Letter without verifying the information provided. However, the provision of the incorrect information on the part of the Administrator, and its failure to be clear that there was no longer an option to transfer out of the Fund, will undoubtedly have caused Mr A significant non-financial injustice which should be recognised.
40. I partly uphold this complaint.

Directions

41. Within 28 days of the date of this Determination, the Administrator shall pay Mr A £500 in recognition of the significant non-financial injustice it caused him.

Anthony Arter CBE

Deputy Pensions Ombudsman
22 August 2023