

Ombudsman's Determination

Applicant	Mr R
Scheme	The Jaguar Pension Plan (the Scheme)
Respondents	Jaguar Land Rover Pension Trustees Limited (the Trustee) Mercer Limited (Mercer)

Outcome

1. Mr R's complaint against the Trustee and Mercer is partly upheld. To put matters right, the Trustee shall pay Mr R £1,000, and Mercer shall pay him £2,000, in recognition of the distress and inconvenience caused to him by the errors identified.

Complaint summary

2. Mr R has complained that he was given incorrect figures when considering his retirement. He says he relied on these figures when making his decision to take voluntary redundancy and retire early. He is seeking for either the Trustee or the administrator, Mercer, to make good the shortfall in income between that which was mistakenly stated to him and that which he has now been correctly quoted.
3. He is also generally unhappy that JLT Benefit Solutions Limited (**JLT**), now part of Mercer, made several errors in its handling of his retirement and subsequent complaint, and says that it has failed to provide a reasonable solution despite suggestions that it would.

Background information, including submissions from the parties

4. Mr R worked as a technical specialist for Jaguar Land Rover (**the Company**).
5. In August 2014, JLT wrote to Mr R to say that a recent pension benefit statement had incorrectly recorded the transfer-in credit he had recently received. It provided a re-printed statement with the correct credit recorded. Also in this statement, Mr R's accrued annual pension was projected to be £14,955.28 per annum. If he retired with a pension only, at 65, this would be a figure of £28,848.97.
6. On 5 April 2018, Mr R was sent an estimate of his pension benefits. This stated that his Normal Retirement Date (**NRD**) was in February 2028 when he would be 65. It said:-

- In terms of his pension earned to date, his total pension for service to 5 April 2018 was an amount of £21,028.88.
 - As he was over age 55, he could request an early retirement quotation. If he had retired on 5 April 2018, his pension would have been £11,962.93 a year.
 - If he were to retire at his normal retirement age, he would be entitled to a pension of £31,579.56 a year. Or, if he chose to take a lump sum, an amount of £142,617.37, he would receive a pension of £21,392.61.
7. In the 'Notes on Pension Benefits' section of this statement, the following is stated at the top:
- “This statement shows your pension benefits as they stood as at 5 April 2018. The figures are provided for information only and do not create any entitlement to benefit.”
8. On 10 January 2019, the Company notified employees about the Jaguar Land Rover Voluntary Redundancy Programme 2019 (**VR**). Employees were required to respond with their expression of interest by 25 January 2019 if this was something they were considering.
9. On the same date, Mr R emailed the company for information in respect to his pension. He said he wished to know the value of his pension funds within each section of the Scheme, the predicted pension he would receive if he retired in April 2019, April 2023, April 2028 and April 2029, and the transfer value should he transfer in 2019, 2023 and 2028.
10. On 11 January 2019, Mr R telephoned JLT. The call note records the following:
- “Member called as he is looking at redundancy with Jaguar and needs to know all his options.
- He would like a TV value for his DB DC and AVC and wants it confirmed if that includes his purchased years of service.
- Member would also like a retirement quote for 56 and 57, advised may not be able to get the quote for 57.
- Advised the 10-15WD SLA and by 2nd class post shortly after.
- Advised him with the TV value that because he had one previously they may deny his request and just provide a copy.”
11. For the above note, two separate tasks appear to have been raised. One in relation to retirement quotes and the other concerning transfer value quotes. It was noted that Mr R had a deadline of 25 January [2019] in respect to his redundancy.
12. Mr R says that on 18 January 2019, he telephoned JLT and was told that he would be entitled to a pension of £19,904.00 per annum, or £14,103.00 per annum plus a

cash lump sum of £94,032.00. Mr R says that these figures were based on his being 56 years of age and his pension commencing on 9 April 2019. Mr R says figures were also provided for alternative retirement dates. JLT says it does not have any record of this call.

13. On 25 January 2019, JLT wrote to Mr R saying:

“Thank you for contacting us with regard to your pension entitlement.

We are currently unable to provide you with the requested information. However, I can confirm that there are a number of sources of information available now and coming very soon which can help you to make your decision to apply for Voluntary Redundancy.

- Your Pension Statement issued in 2018 will show you your available benefits if you had taken your pension at 5 April 2018. If you were under 55 on 6 April 2018 then you can use your accrued benefits to estimate the pension benefit available to you.
- The new Defined Benefit Pension website BenPal will be available in the week commencing 4th February and you will be able to get up to date pension quotes, transfer values and lots more information about your pension plan.
- Transfer value illustrations are currently unavailable but will re-open on 1st February 2019. If you are considering transferring your benefits out of the scheme then the fastest way to get an accurate Transfer Value illustration is through BenPal once this is available.”

14. Also on this date, JLT sent Mr R a letter attaching a statement for his Additional Voluntary Contributions (**AVC**) benefits and said it could not provide values for transferring out as he was only entitled to one Statement of Entitlement in any 12 month period. It attached a copy from February 2018.

15. On 4 February 2019, Mr R called JLT to chase pension figures where BenPal was not working for him. The call note states:

“Called as Benpal link not working, was taking through to login page with out [sic] the verification process.

Two links sent, tried most recent one which was invalid and member only received one.

Sent new activation link and said to call back if same issue persists.”

16. On the same date, a later call is recorded as follows:

“Member called in regards to Benpal

Unable to get quotes for 09/04/2023 and 09/04/2019

Explained new system – high traffic at the moment.

Completed quotes over the phone.

No further updates.”

17. Mr R has said that the figure of £19,904 in regard to his pension was confirmed in this call.
18. On 11 February 2019, Mr R sent a spreadsheet (**the Spreadsheet**) detailing his finances to his brother, which he says he did by way of seeking some guidance on whether he had adequate finances to take redundancy and retire now. Within this spreadsheet is a tab on his retirement income, and the figure of £19,904 is given as the projection for the income he would receive should he retire at age 56.
19. Around this time, a ‘Leavers Questions & Answers’ document was available. Excerpts from this have been included below:

“1. My application for voluntary redundancy has been approved, what do I need to do next? If your application for voluntary redundancy has been approved, you will receive a letter via email confirming the approval and outlining the terms of your Voluntary Redundancy. You are required to sign and submit this to HR Direct by 7 March 2019 in order to confirm your acceptance of the Voluntary Redundancy arrangements. Please be aware, the Voluntary Redundancy offer is discretionary and the Company reserves the right to formally withdraw the offer if it is not accepted by this deadline.

...

2. What do I do if I no longer wish to accept voluntary redundancy? If you have reconsidered your application and no longer wish to accept voluntary redundancy, please contact HR Direct on [telephone number].”

20. On 1 March 2019, the Human Resources department of the Company wrote to Mr R in a letter headed “Jaguar Land Rover Voluntary Redundancy Programme 2019.” This said that Mr R’s application for VR had been approved and confirmed his total redundancy payment. The letter set out that Mr R must sign the attached Acceptance of Terms by 7 March 2019 to accept the arrangements set out.
21. On the same date, Mr R signed this agreement.
22. On 4 March 2019, Mr R called JLT and asked for a VR quote to be sent to him.
23. On 14 March 2019, JLT wrote to Mr R saying:

“I refer to your telephone call on 4 March 2019 in respect of your query regarding your benefits with the Plan.

According to our letter dated 25 January 2019 we are currently unable to provide you with the requested information. However, I can confirm that members below age 60 cannot apply for Voluntary Redundancy and also find the copy of letter [sic] issued to you on 25 January 2019.”

24. On 19 March 2019, Mr R called JLT and asked to speak to a Retirement Relationship Manager. This appointment was arranged for 3 April 2019.
25. This call went ahead. The call note states that Mr R said he had received a retirement quote over the phone quoting a full annual pension of £19,904. The note ended with the action point that the matter be investigated as a matter of urgency.
26. On 1 April 2019, JLT sent Mr R a retirement pack, which he received on 8 April 2019. The following options were provided as at 25 March 2019, which assumed that he was an active member until his date of retirement:-
 - Option 1: Tax free cash of £74,234.29 and an annual pension of £10,892.38.
 - Option 2: An annual pension of £15,351.51.
27. In the same documentation, options were provided for a retirement date of 8 April 2019. These were calculated assuming that he left the Scheme on 31 March 2019 and were as follows:-
 - A tax free cash sum of £74,207.40 and an annual pension of £10,889.05.
 - An annual pension of £15,352.44.
28. On 8 April 2019, JLT sent Mr R a letter saying that the early retirement quotation produced on BenPal was calculated assuming that he was an active member and contributing until 9 April 2019. His accrued pension would then amount to £19,904 with an early retirement factor not applied.
29. On 3 May 2019, JLT sent Mr R an early retirement quotation for 18 May 2019. The options given were:-
 - Option 1: Tax free cash of £109,626.55 and an annual pension of £16,128.26.
 - Option 2: Annual pension of £22,749.85.
30. On 14 June 2019, JLT wrote to Mr R saying that “the transfer value quoted in the letter 03 May 2019 is correct. However a typing error was made in the pack due to which transfer in pension was included in the Post 97 pension.” It provided a breakdown which confirmed that his Post 97 Pension included his transfer in, and stated that his deferred pension was an amount of £30,470.48.
31. On 19 June 2019, Mr R wrote to JLT and asked what his pension entitlement would be if:-
 - He took a £33,000 lump sum; or
 - His annual pension was to be reduced to £22,000.
32. On 5 July 2019, JLT sent Mr R an early retirement quotation for 28 June 2019 in respect to Mr R’s request of tax free cash of £33,000 and a specific reduced annual pension of £22,000 respectively. The options given were:-

- Option 1: Tax free cash of £110,622.57 and an annual pension of £16,252.26.
 - Option 2: Specific tax free cash of £33,000 and an annual pension of £21,053.55.
 - Option 3: Tax free cash of £17,698.78 and a pension of £22,000.
 - Option 4: An annual pension of £22,933.60.
33. On 19 July 2019, JLT wrote to Mr R saying it was unable to settle his benefits for backdated retirement as at 8 April 2019.
34. On 1 August 2019, JLT sent Mr R an early retirement quotation based on a retirement date of 8 April 2019:
- Option 1: Tax free cash sum of £94,662.08 and a pension of £14,199.31.
 - Option 2: An annual pension of £20,032.21.
35. On 9 August 2019, JLT wrote to Mr R saying that it had identified an error in the calculation relating to Mr R's two transferred in pensions. It apologised for the incorrect quotation it had sent and said it had enclosed a revised and accurate quotation for taking a pension from 8 April 2019. The following options were stated:-
- Option 1: Tax free cash sum of £78,960.35 and a pension of £11,493.82.
 - Option 2: An annual pension of £16,195.12.
36. On 4 October 2019, Mr R formally complained to JLT. His main points of complaint involved:-
- Loss of expectation.
 - Mismanagement of his case and unnecessary delay.
 - Incorrect written and verbal information provided by JLT.
 - Reliance on figures provided between January and March 2019 in his decision to accept VR.
 - Poor management of transferred in pension funds which were lost then found.
 - Poor management of transferred in pension funds which were placed in an incorrect fund when found.
37. On 11 October 2019, Mr R sent a letter summarising his concerns to the Company and referenced his formal complaint to JLT.
38. On 27 November 2019, the then Pensions Manager for the Company wrote to Mr R in her capacity as secretary to the Trustee board, under stage one of the Internal Dispute Resolution Procedure (**IDRP**). She said:
- “I am writing to provide a further update on your complaint.

Based on the information provided to me I am upholding your complaint and have been in discussion with JLT about how the situation might be rectified. As a result of those discussions, JLT have requested that a face to face meeting is arranged with yourself and the MD of the Employee Benefits Division to agree an appropriate course of action.

JLT will be contacting you in short order to arrange the meeting.

As a result of this development, I will suspend your complaint until the outcome of the meeting is known and it is clear whether a mutually acceptable outcome has been possible.

...I will be passing your papers to...who is taking over from me and is copied to this email and he will conclude the process at the appropriate time.”

39. On 3 January 2020, Mr R met with a Managing Director of JLT (**the JLT representative**). This meeting was held in an attempt to resolve Mr R's complaint and to agree a suitable way forward.
40. On 6 January 2020, JLT wrote to Mr R to confirm the retirement options available to him. An early retirement pension was quoted as follows from the following dates (the figures below relate to the option of a pension only and no cash lump sum):-
 - 1 April 2019 - £15,847.15
 - 1 February 2020 - £16,482.18
 - 6 April 2020 - £16,904.18
41. According to Mr R, also on 6 January 2020, he chased the JLT representative for a compensation offer as it was agreed in their meeting that this day was the deadline. He says he did not hear back until 9 January 2020 when he was told that the JLT representative could not make their scheduled meeting of 10 January 2020 but that this would be rescheduled for the next week. Mr R says this meeting was never rescheduled.
42. On 6 February 2020, Mr R's solicitors (**the Solicitors**) wrote to JLT, saying that they had been instructed to pursue Mr R's claim against JLT asking for damages arising out of its breach of duty by providing Mr R false pension rights figures on 18 January 2019. They said that Mr R relied on these figures in deciding whether to accept VR by 25 January 2019. They highlighted that Mr R's final pension figures provided on 6 January 2020 appeared to be grossly less. Finally, they asked JLT to confirm its proposals in relation to compensating Mr R, given that JLT had "accepted liability."
43. On 10 March 2020, the JLT representative replied. In summary, he said:-
 - JLT had no record of Mr R being issued with pension figures on 18 January 2019. It did however write to Mr R on 25 January 2019 to inform him that pension entitlement information would be available in early February. It said that until such

time, his most recent pension statement, issued in 2018, showed an estimate of £11,962 per annum.

- On 4 February 2019, a full pension quotation of £19,904 was produced (**the February Quotation**). Unfortunately, this was overstated due to an inaccurate calculation relating to the two transfers-in received. A revised quotation was issued on 9 August 2019, outlining Mr R's true entitlement to a full pension of £16,196 per annum (or a reduced pension of £11,493 plus tax free cash).
 - Following the 6 January 2020 meeting, Mr R was provided with retirement options. Again, these reflected his correct entitlement.
 - An overquote did not, in itself, create an entitlement to a higher quoted benefit. Further, JLT's alleged admission of liability was denied.
 - In the meeting, it was explained to Mr R that he would have to provide evidence of financial loss having reasonably relied upon the overstated quotation. Mr R had mentioned university expenses for his daughter but it was not accepted that this was payable presently. In the meeting, other examples of evidence that Mr R would need to have were outlined. There was insufficient evidence as it stood that Mr R had relied on the February Quotation or that he had suffered a financial loss.
 - In order to consider Mr R's assertion, it would require: (1) Details of the redundancy payment Mr R received; (2) copies of communications between Mr R and the Company prior to the February Quotation regarding his employment prospects and/or VR; and (3) copies of communications regarding his employment prospects and/or VR and any evidence of financial planning.
44. On 24 March 2020, the Solicitors wrote to JLT. They said that following the upholding of Mr R's complaint on 27 November 2019, it was Mr R's understanding that the purpose of the 3 January 2020 meeting had been to have a discussion about how the situation might be rectified. In terms of an admission of liability, the JLT representative had apparently apologised to Mr R saying that in his experience, he had not seen a case "as bad as yours." JLT had agreed to provide an offer by midday of the following Monday, which had not been received. It would assuage Mr R's concerns if JLT could clarify its position on admitting liability, as well as JLT's assurance that it would send him an offer.
45. On 7 May 2020, the JLT representative replied:-
- In respect to accepting liability, it assumed reference was being made to JLT's letter of 8 April 2019. This letter simply responded to Mr R's query regarding the calculation of his early retirement quotation and no admission was made therein.
 - At the January meeting, there was no admission of liability and there was no promise to make an offer within three days. JLT in fact promised the provision of three revised calculations, which was duly provided on 6 January 2020.

- Mr R had said that the former Pensions Manager for the Company had accepted liability on 27 November 2019. This person did not act for JLT and therefore had no authority to accept liability on JLT's behalf.
 - By way of reminder, it was for Mr R to establish that he detrimentally relied on the February quotation and that he suffered a financial loss. He must also demonstrate that he tried to mitigate any such loss.
46. Mr R subsequently voiced his concerns to the new Pensions Manager of the Company. In reply, the Company said it needed further evidence to establish if compensation was payable. For this reason, the decision made by the previous Pensions Manager to uphold Mr R's stage one complaint had been overturned.
47. On 17 June 2020, Mr R said he wished to formally complain under stage two of the IDR. He said:-
- He was disappointed that the original upholding of his complaint had been overturned on the grounds of a lack of information. The JLT representative had admitted liability in their meeting. An offer was made although not in writing. To make such an offer, the JLT representative would have needed all the relevant information. It was not right that his complaint was not upheld now.
 - During the meeting, the JLT representative had shared failings of the current system. The JLT representative had said that the system had not been set up to accept two incoming transfers. Although Mr R was the only one in this position, they had needed to offer compensation to other members too.
 - He was only asking for what was fair. The pension figure of £19,904, from April 2019, was given to him by JLT and it was this figure which he based his decision on when accepting VR. JLT had at the time refused to provide a written copy of these figures and it was not until 3 April 2019 that any errors became apparent. There was plenty of time for this all to be corrected before he left the Company on 31 March 2019.
 - The pension figure now being quoted to him was an amount of £15,847.15. The difference was therefore £4,056.86 per annum plus growth for the rest of his life. Using the percentage reduction figures provided by JLT and a cash conversion factor, his loss would be calculated as: $38.2 \times £4,056.86 = £154,972.05$. Plus, consideration for the loss of growth protection and other benefits would also need to be taken into account. He had also incurred additional avoidable costs during this period.
 - In terms of details of his redundancy payments, what he had done with this and his other financial circumstances (including bank details and mortgage statements), these were not relevant to his complaint.
48. On 28 July 2020, The Trustee responded saying that it could not uphold the complaint. It said:-

- In order for the complaint to be upheld, it would be necessary for Mr R to demonstrate that: (1) He had placed reliance on the quotations provided and that it was reasonable to do so; (2) He would have acted differently had the correct information been given at the time; and (3) He suffered a financial loss as a result and had taken steps to mitigate this.
- It noted that the deadline for Mr R initially indicating his acceptance of VR was 25 January 2019. He had referred to a quotation given over the telephone on 18 January 2019, but Mercer had no record of this and the BenPal facility did not go live until February 2019. JLT had advised in writing that pension entitlement information would be available by early February and that in the meantime, he should refer to his most recent pension statement issued in 2018.
- Mr R had already indicated his acceptance of voluntary redundancy by the time the February indicative quotation was generated via BenPal. As this was done through BenPal, it was not provided in writing so JLT did not have access to these figures.
- Between April and August 2019, Mr R received a number of written quotations which JLT had acknowledged to be incorrect. It apologised for this. However, it was important to note that Mr R had already formally accepted VR from the Company on March 2019 before any of the incorrect quotations were provided.
- In any event, the quotations did contain caveats. One of these said the final benefits payable will always be subject to the Scheme's deed and rules and in the event of conflict, the deed and rules prevail. Another caveat highlighted that if unchangeable financial decisions were to be made based on the quotations, they were an estimate of benefits only and clarification should be sought on the extent to which the details contained within could change.
- In light of these points, it believed that Mr R could not have relied on the incorrect written quotations in reaching a decision to take VR. He had already indicated a willingness to accept VR on 25 January 2019 and had then formally accepted VR on 5 March 2019 [sic – 1 March 2019] before any of the written quotations were provided. Hence, it did not consider that Mr R would have acted differently had correct information been provided earlier.
- There was no causal link between the quotations provided and any financial loss suffered as a result of accepting VR. With regard to potential future loss of earnings, it assumed that Mr R had weighed up the consideration of his redundancy payment against his future loss of earnings. The Company had confirmed there was no record on his HR file of any discussions around promotion or employment prospects, so any reference to future speculative earnings could not be relied upon.

- In terms of mitigation of losses, it noted Mr R had confirmed he was claiming jobseeker's allowance while he searched for work. He had also still not drawn his pension, which he may do notwithstanding his complaint.

49. Mr R made the following points in response to the Trustee's stage two decision:-

- The Trustee had not addressed why the JLT representative had accepted liability in their January meeting. This meeting had been set up following the upholding of his complaint by the then Pensions Manager, to address compensation and rectify the error. The JLT representative had said his team had made multiple errors, had used the phrase "woefully inaccurate" and said they would be putting this right. The response from the Trustee ignored the fact that his complaint was investigated and upheld twice. Nothing was being said about these events now and he felt that they were being conveniently forgotten like his call on 18 January 2019.
- The basis for not upholding his complaint was that the Trustee had no record of this conversation and because the BenPal facility did not go live until February 2019. Firstly, having no record of a conversation is not the same as a denial that the conversation took place. If the investigation was conducted properly, his call should have been found. The Company's helpdesk then advised JLT to call him back the same day to discuss specific figures on the implications of retiring at various ages respectively. The figures given for retiring at age 56 in April 2019 were £19,904 or £14,103 plus £94,302. He was told the BenPal system would go live on 4 February 2019.
- When the Benpal system did not work on 4 February 2019, he spoke with JLT directly and they confirmed these figures over the phone. The £19,904 figure was further confirmed in a subsequent letter.
- The position that BenPal had not gone live (prior to 4 February 2019) did not mean that the figures were unavailable. The Trustee's letter of 25 January 2019 stated that there were "a number of sources of information available now." It was hard to believe that the Trustee was unable to provide pensions information at all times when this was a fundamental part of their role. Further, if a system isn't "live", this does not mean that information cannot be accessed from elsewhere.
- The Trustee had said that he had already indicated his acceptance of VR by the time the February quotation was generated by BenPal. This statement was not true. Staff were asked to consider VR and if they were interested to find out more, they were to let their managers know before 25 January 2019. This was done by many employees who did not leave and was an expression of interest only. From this date, the individuals who had expressed an interest were able to access previously unavailable specialist information/advisors.
- Individuals had to then confirm their intention to apply for VR and early retirement. Anyone that had done so could still withdraw and remain an employee if they

rescinded their application by 31 March 2019. Some who applied were not accepted.

- The Trustee should have refused to give any details by telephone or in writing if it was unsure or if there was room to doubt the accuracy of the information being provided. The Trustee would have been well aware of the Company's redundancy programme, so it was obvious that the information would be relied upon. Had he known before 31 March 2019 that he had been given incorrect information, he would have rescinded his VR application.
- Before the announcement of the VR package, he was happy working at the Company. He was running an exciting new project and had also been informed that his manager and director were taking early retirement. This meant there was a real possibility of promotion. He was paid very well as an experienced technical specialist manager and finding similar employment had not been possible to date.
- It was not difficult to show that he would have acted differently had he been told in time that the £19,904 figure was wrong and should have been £15,847. His spreadsheet showed his intentions and thoughts at the time.
- JLT had said the figures were only an estimate and clarification should be sought on the extent to which the details within could change. He did ask for clarification on 4 February 2019 when he sought confirmation of the figures supplied to him. This was confirmed as £19,904 and was also confirmed subsequently by JLT in their letter of 10 March 2020. While these figures were said to be estimates, JLT were the paid professionals and a change of £19,904 to £15,847 was no small adjustment.
- During this period, he had not been able to draw a pension and was living off savings far more than planned which had resulted in a loss of funds for the future. He had also incurred additional legal advice costs, which were ongoing. He and his family had suffered worry, stress and anxiety.

50. Mercer's position (formerly JLT) is as per previous letters. In summary, this is as follows:

- It has no record of Mr R being issued figures on 18 January 2019.
- On 4 February 2019, a quotation was produced by JLT citing a full pension of £19,904 per annum or a pension commencement lump sum of £94,032 with a reduced pension of £14,103 per annum. The quotation was overstated due to an incorrect calculation relating to Mr R's transferred in pensions. A revised quotation was issued on 9 August 2019 outlining Mr R's true entitlement.
- In its view, Mr R would still have chosen to retire had he been provided with correct figures from the outset.

- In order for a defence of detrimental reliance to succeed, Mr R needed to provide more information. Specifically:

“(a) Details of the redundancy payments [Mr R] received from the Company and confirmation of what he has done with those sums;

(b) Copies of communications between [Mr R] and the Company prior to the February Quotation regarding his employment prospects and/or voluntary redundancy, including notes of meetings (including any performance reviews/appraisals) or calls;

(c) Confirmation (together with any supporting evidence) of the steps [Mr R] took as a result of his stated reliance on the February Quotation, including (but not limited to):

(i) Any evidence of financial planning he carried out based on the February Quotation, including notes of meetings or calls; and

(ii) Confirmation (together with any supporting evidence) of the factors he took into consideration when deciding whether to accept voluntary redundancy.

3.2 We have also previously requested details of [Mr R's] financial circumstances, including available capital and income. This includes copies of bank statements, details of savings accounts, regular bills, rent/ mortgage payments and anything else documenting [Mr R's] financial commitments.

3.3 We ask that [Mr R] be forthcoming on these points in order to enable the parties to move forward.”

51. Mr R made the following novel comments in response:-

- Mercer/the Company were already aware that he had taken mitigating action. These included his wife going back to work post-retirement, his daughter cancelling her university accommodation and now travelling from home, and the adoption of a reduced lifestyle to reduce living costs further.
- In terms of Mercer's request for unnecessary private information, the information listed was not needed to enable it to calculate the cost of their failure to deliver the service that they had been professionally paid to undertake.
- He expected them to put him in a fair position that was equal to where he should have been before the error was found.

52. The Trustee's position is largely as per its stage two IDR response. The main and additional points are:-

- There was no evidence of Mr R being issued figures on 18 January 2019. On 4 February 2019 via BenPal, Mr R generated a pension quotation of £19,904 per

annum or a pension commencement lump sum of £94,032 with a reduced pension of £14,103 per annum.

- The purpose of BenPal is to produce only an indication of a member's pension entitlement. The member's true pension entitlement is as set out in the Scheme's deed and rules. The BenPal website includes the following disclaimers:
 - (i) before a quotation is generated, there is a statement that "Retirement may be subject to employer and/or trustee approval and scheme rules"; and
 - (ii) after a pension illustration is generated, the following wording appears:

"The benefits quoted are estimated, based on the information available at the time of the quote. The benefits payable may be higher or lower than that stated if any information changes.

In preparing the estimate, care has been taken to reflect the most accurate and up to date information available at the time of preparation. The final benefits payable will always be subject to the Trust Deed and Rules of the pension arrangement, any discretion exercisable by the Trustees, all prevailing legislation, up to date earnings information and, where relevant, any restrictions necessary to comply with State pension requirements (such as the amount of cash sum).

Importantly, if any parts of the benefits are based on financial conditions at the time benefits are actually payable (such as investment market conditions and annuity rates), it should be recognised that the final benefits could be reduced from those shown. If unchangeable financial decisions are to be made based on this illustration you are reminded that this is an estimate of your benefits only and you should seek clarification as to the extent to which the details contained in the estimate could change."
- In respect of incorrect quotations:
 - (iii) Figures in the 1 April 2019 quotation were understated as an early retirement factor was applied to a transfer-in value from 65 rather than 60.
 - (iv) Figures in the 3 May 2019 statement were overstated as they were based upon incorrect accrued pension.
 - (v) Figures in the 5 July 2019 quotation were overstated as these were also based upon incorrect accrued pension.
 - (vi) Figures in the 1 August 2019 quotation were overstated as these were based upon incorrect accrued pension and an incorrect early retirement factor was applied.
- The fact that Mr R had been provided with several incorrect written pension quotations by Mercer in a 4 month period between April and August 2019 was regrettable. However, the written quotations contained the following caveats:

- (i) the final benefits payable will always be subject to the Scheme's deed and rules and in the event of conflict, the deed and rules prevail; and
 - (ii) if unchangeable financial decisions are to be made based on benefit illustrations, members are reminded that they are an estimate of benefits only and they should seek clarification as to the extent to which the details contained in the benefit illustrations could change.
- It was not present at the meeting between Mr R and the JLT representative and so it could not comment on whether any admission of liability was given or compensation offer made. It was not for it to interfere in any proposals made by Mercer in relation to this complaint.
 - It would continue to work with Mercer to ensure processes were in place to prevent incorrect pension quotations being issued. Aside from the £1,000 offered, it was not in a position to make any other settlement offer.

53. Mr R's comments in reply were:-

- The Trustee's response missed off key information and was inaccurate in parts.
- The Trustee's statement was incorrect; online tools were not working on 4 February 2019, so a JLT staff member confirmed the figures over the phone.
- When he received the new figure of £22,749 from JLT who confirmed on several occasions that this was now the correct figure, he did rely on this to agree that he would support his daughter with a £3,000 annual allowance to enable her to study to become a paramedic. This was discussed in the 3 January 2020 meeting and he was promised that this would be taken into consideration.

54. Mr R also made the following further comments:-

- His daughter had completed a year of university – he had promised to pay £3,000 a year to support her – but she is now transferring to an apprenticeship due to the lack of funding. He found this upsetting.
- He is unhappy that JLT/Mercer has suggested that he lied about the initial figures he was given. He is also upset that that the 3 January 2020 meeting has been misrepresented.
- The fact that BenPal was coming into existence on 4 February 2019 suggests that JLT had two systems up and running at the same time. He logged in on 4 February 2019 as suggested and the system did not work. He understood six months later that he had a legal right to a written fund value in February.
- Errors had also been made some years before when he transferred funds into the Scheme. It had been suggested that these transfers in had caused confusion to JLT and contributed to the misquotes he had received.

- In regard to settlement, he was only expecting Mercer to put him into a fair position that is equal to the figure they promised of £19,904, plus annual growth, that he used to make his decision to accept VR. This figure came with benefits including the guarantee of Retail Price Index (**RPI**) growth, life cover and a dependence pension, amongst other things, that would apply as part of the Scheme's terms.

55. Most recently, Mr R confirmed that in respect of redress, he was specifically seeking the following:-

- Funds to replace JLT/Mercer's mistake: £19,904 - £15,847 = £4,057 per annum plus growth of RPI each year. Applying JLT's own conversion factor (which it used when reducing a pension) and drawing the cash free amount for 38.2 years, his calculations equated to £154,977.40 plus growth of RPI (lump sum).
- "The following is what would be needed to buy back the equivalent lost right.
 - (i) If a RPI average growth factor of 2% pa was used this would equate to £227,658 lump sum.
 - (ii) If a RPI average growth factor of 3% pa was used this would equate to £280,579 lump sum."
- Pension payments reinstated back to his leaving date, £15,847 per annum times two years and a number of months (to be confirmed).
- Reimbursement of all costs incurred by him directly related to pursuing this claim. This included legal advice, stationery, postage and recorded mail charges.
- Compensation for extreme stress and anxiety for him, his wife and his two daughters. They had all had to change their way of life directly because of JLT's failure to carry out its duties and responsibilities correctly and because of the unnecessary and avoidable delays it caused.
- Other consequences included loss of bank interest and the lifetime tax free status on their savings ISAs, that had been cashed in to live on.
- Compensation for the commitment that he made to his daughter that was as a direct result of JLT's pension offer made in May 2019 of £22,749 per annum, resulting in a commitment to his daughter for university support of £3,000 for three years (£9000).
- Costs incurred by the Ombudsman service, which were to be confirmed.

56. In response to an information request made to the Trustee by the Adjudicator, it said:-

- Once the application for VR was made by Mr R in March 2019, the decision was irreversible.

- The estimate provided on 14 June 2019 would have been incorrect; it appeared that the first set of correct figures was provided in August 2019.

57. Mr R in response said that employees were told by their managers that they could rescind their application to take VR. He said he had heard that several people had done this including one person that left on Friday 29 March 2019, changed their mind on 30 March 2019 and returned to work on 1 April 2019.

The Pensions Ombudsman's position on the provision of incorrect information

58. Where an applicant brings a complaint based upon having been given incorrect information, the Ombudsman will usually consider two legal concepts: 'negligent misstatement' and 'estoppel'. The Ombudsman will also consider whether there has been 'maladministration'.
59. This section sets out the Ombudsman's views very generally on the application of negligent misstatement, estoppel and maladministration. It is for guidance only; every case depends upon its own facts. The facts of this particular complaint are considered in the sections which follow.
60. The starting point where incorrect information has been provided is that a scheme is not generally bound to follow incorrect information, a member is only entitled to receive the benefits provided for under the scheme rules. For example, if trustees have given inaccurate early retirement quotes, the quotes would not generally be binding.
61. Broadly, the Ombudsman will provide redress from a negligent misstatement if it can be shown that financial loss has flowed from the incorrect information given that the member reasonably relied on that incorrect information. For example, the member may have acted differently in the expectation of receiving the higher benefits, such as retiring early.
62. As to estoppel, the Ombudsman will not allow either party to rely on a fact contrary to that which they have previously represented, or contrary to a common assumption that something is accurate, if it would not be fair to do so. This may mean that a respondent will be prevented from arguing that something that they said before was wrong and will, instead, have to give benefits as if what was said were accurate.
63. Regardless of whether compensation is awarded for negligent misstatement or estoppel, the Ombudsman may award some compensation for distress and inconvenience, if what was done amounted to maladministration. Maladministration covers various different types of problems or failings in how a scheme is administered or how members are dealt with.

Adjudicator's Opinion

64. Mr R's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee and Mercer (referred to here as JLT where past actions are discussed and then maintained thereafter for consistency). The Adjudicator's findings are summarised below.
65. With regard to negligent misstatement and estoppel, Mr R's complaint centred on his claim that JLT provided incorrect retirement figures to him while he was considering whether to take VR. Specifically, he said he was told on 18 January 2019 that he would be entitled to a pension of £19,904 per annum from April 2019, and that these figures were re-confirmed on 4 February 2019. Mr R said he proceeded with early retirement on this basis, for which he gave his agreement on 1 March 2019. The material information for consideration therefore was that imparted in the period between January 2019, when redundancy was first communicated, and 1 March 2019, the date Mr R agreed to VR. Mr R said that he could have rescinded his agreement until 31 March 2019 but the Trustee said this was not the case. As there were no material communications in the period between 1 March 2019 and 31 March 2019, 1 March 2019 would be regarded as the relevant date.
66. In considering the principles for negligent misstatement, the first consideration was whether a representation was made. Specifically, whether JLT made a representation to Mr R that his pension would be £19,904 if paid from April 2019.
67. Mr R had said he was first provided this figure in a telephone call of 18 January 2019. The Trustee and JLT said there was no record of this telephone call. On 4 February, Mr R called JLT again for his pension figures as BenPal was not working. There were two call notes for this day. The first concerned technical issues Mr R was experiencing. In the second, it was noted that quotes were completed over the phone. The note did not detail the figures given, however, Mr R said that the same £19,904 figure previously quoted to him was given. In the Adjudicator's view, whether or not the 18 January 2019 telephone call did occur did not matter for her purposes as the Trustee and JLT appeared to both agree that Mr R was provided with the figure of £19,904 on 4 February 2019 (although the Trustee's stage two response did not make its position entirely clear on this point at that time).
68. On 11 February 2019, Mr R sent the Spreadsheet to his brother with his financial projections for retiring at different ages. The specific £19,904 figure was stated in respect of retiring at age 56, which in the Adjudicator's view, reinforced that Mr R was using this figure as part of one of the projections for his future financial planning.
69. On 8 April 2019, JLT sent Mr R a letter referring to a quotation produced on BenPal, which stated that his accrued pension would amount to £19,904 with an early retirement factor not applied. Despite the lack of evidence for January 2019, it did not appear to be in dispute that Mr R was provided this figure in February 2019 and the subsequent events highlighted supported this. Therefore, in the Adjudicator's view, it was more than likely that Mr R was provided with incorrect information. JLT and the

Trustee consistently provided, what they confirmed to be, the correct figure from January 2020.

70. As administrators for the Scheme responsible for providing information to members, JLT owed Mr R a duty of care to provide him with accurate information regarding his benefits. JLT failed to do this and these misquotations fell below a reasonable standard of care.
71. Given the points above, the next consideration was whether Mr R relied on the information he was given, and whether any such reliance was reasonable.
72. The Trustee had argued that the information given on 4 February 2019 was provided with caveats which were a standard feature of the BenPal system. However, crucially, Mr R had said he was not provided these figures through BenPal but over the telephone. The call notes for this date supported this position. Therefore, in the Adjudicator's view, the Trustee could not rely on the caveats given through BenPal. Further, considering the calls of 4 February 2019, the corresponding call notes did not provide extensive detail, so these did not support that caveats were given.
73. On 25 January 2019, JLT wrote to Mr R saying that it was unable to provide him with the information requested but that he could refer to his previous year's statement as a source of information while BenPal was being set up. His last statement, dated 5 April 2018, contained a caveat which said: "This statement shows your pension benefits as they stood as at 5 April 2018. The figures are provided for information only and do not create any entitlement to benefit."
74. In the Adjudicator's view, as the figures which Mr R was formally provided in writing in 2018 contained the caveat stated, it would have been reasonable for Mr R to assume that the same, if not a more stringent, caveat applied to the information he was provided over the phone on 4 February 2019. Additionally, the benefit value quoted to Mr R in the 5 April 2018 statement, of £11,962 per annum, was considerably lower than the updated figure of £19,904 provided to him less than a year later over the phone in February 2019. Such a large increase in the projected benefit value ought to have raised concerns by Mr R that the figure may be incorrect. Therefore, in the circumstances, Mr R ought to have been aware that he could not wholly rely on the updated figures provided to him over the telephone in February 2019 as an absolute representation of his benefits. Although Mr R was provided with incorrect information, it was not reasonable that he relied on the figures he was given when he decided to retire and take VR, so a claim for negligent misstatement could not be established.
75. When considering a claim for estoppel, the representation made to the member must be a clear statement or promise and reasonable reliance was again a key element. In the Adjudicator's view, for the same reasons as those given in respect of Mr R's negligent misstatement claim, the figures provided to him in February 2019 were not promises and Mr R ought to have been aware that they were subject to a caveat equivalent to that in the 5 April 2018 statement, so could not be relied upon. Therefore, his claim did not satisfy the criteria for a successful estoppel defence.

76. In respect of maladministration generally, and incorrect written statements specifically, between April and August 2019, Mr R was sent a series of incorrect written estimates (this misinformation was in addition to the verbal misinformation he was given in February 2019). These estimates were provided on: 1 April 2019, 3 May 2019, 5 July 2019 and 1 August 2019.
77. JLT also sent Mr R a letter on 14 March 2019, in response to his benefit enquiry, which incorrectly stated that members below age 60 could not apply for voluntary redundancy. Finally, JLT sent a letter to Mr R on 8 April 2019 confirming the basis of the £19,904 pension it said was provided through BenPal, which it transpired was incorrect.
78. Mr R was provided with erroneous information for a period of seven months (February to August 2019). In the Adjudicator's view, this would have caused a high degree of confusion at a time when he was keen to follow through on taking redundancy and an early pension.
79. In regard to the matter of complaint handling, on 3 January 2020, Mr R met with the JLT representative. Mr R had said that JLT accepted responsibility for the errors discussed and was intent on providing a near immediate solution.
80. However, JLT's subsequent correspondence took a different stance. While in the meeting it appeared that a settlement offer was being worked on, instead JLT only provided Mr R correct estimates for his retirement options. In the Adjudicator's view, this would have caused Mr R disappointment, confusion and frustration.
81. To this end, the Solicitors had to write to JLT to confirm the latter's proposals relating to compensation, given that it had "accepted liability." JLT at this stage said it had no record that Mr R was issued with pension figures on 18 January 2019. This comment was at odds with some of the comments from, and the general tone of, the 3 January 2020 meeting.
82. Considering the Trustee's actions in this regard, the Trustee was using a disingenuous starting point in saying that as Mr R had decided on VR in March 2019, the erroneous statements he received between April and August 2019 were immaterial. The crux of Mr R's complaint concerned, and always had concerned, the information he was given in January and February 2019. In its stage one response, although the information Mr R had mentioned receiving in January 2019 was acknowledged, little was said of the 4 February 2019 information. Instead, the Trustee dismissed this saying it did not have access to these figures and that in any case, Mr R had indicated his acceptance of VR by the time this indicative quotation was issued. This was not correct, Mr R had only provided an expression of interest in response to the Company's offer at this stage. Further, as briefly mentioned, the Trustee initially dismissed/provided little comment on the 4 February 2019 figures at stage two of the IDRPs but appeared to have accepted these figures later. The Trustee's response at stage two was therefore not complete.

83. Also, in the Adjudicator's view, it was not helpful to Mr R, as a complainant, that his complaint was upheld at stage one of the IDR (to the extent that the Pensions Manager arranged a face to face meeting for Mr R and a senior member of JLT) but that this was reversed very soon afterwards by JLT, the Trustee and indeed the Company itself. Although the Company was not party to this complaint, so it would not be appropriate to comment on its actions, it was clear, however, that the Trustee failed to ensure that a more holistic approach was provided on the matter. This was also evident in the fact that Mr R had to inform JLT that the former Pensions Manager had upheld his complaint or accepted liability in November 2019, a fact which appeared to surprise JLT. JLT's response was that this person did not act for it, which left Mr R unsure of his position between the different parties.
84. Also, given that the Trustee arranged the 3 January 2020 meeting with JLT for Mr R, although both companies are separate entities, there was a lack of cohesion on important facts and the timeline of events. This meant that it was difficult for Mr R to bring about/defend his complaint as it was often unclear what was accepted and still in dispute. Overall, these actions caused Mr R unnecessary confusion in an already complex and frustrating situation.
85. In conclusion, in the Adjudicator's opinion, Mr R's respective negligent misstatement and estoppel claims failed because his reliance on the incorrect information given was not reasonable. Additionally, in respect of estoppel, the figures quoted were not clearly promised to him. As Mr R had not succeeded in these claims, it followed that he would not be awarded the costs he had put forward.
86. Nonetheless, there were a series of administrative errors on the part of the Trustee and Mercer, such as misquoted information, misrepresentation and poor complaint handling, which ought to be recognised and redressed. These errors would have caused Mr R a severe level of distress and inconvenience.
87. The Trustee ought to pay Mr R £1,000 for the distress and inconvenience caused to him by its actions. Mercer ought to pay him £1,500 in recognition of the distress and inconvenience caused to him by its errors.
88. The Trustee and Mercer accepted the Adjudicator's Opinion. Mr R did not accept the Adjudicator's Opinion and made the following comments:-
- 88.1. He did not agree his claim should fail where he should have relied on the 5 April 2018 statement for the following reasons. Firstly, the track record for JLT's handling of his pension over the years had been far from standard and poor at best. Multiple mistakes had been made prior to January 2019 that had resulted in his lack of trust of their figures or their ability to carry out work that should be day-to-day business for this experienced professional team.
- 88.2. He thought and believed that when the day came to seek retirement, due diligence would be required to work out his final retirement pension figure.

- 88.3. All statements, including the 2018 one and those prior to this, made it clear that they could not be relied on. In his mind, these were not worth the paper they were written on especially when JLT was aware that there were still unresolved issues that rendered the 2018 figures inaccurate.
- 88.4. This was why when he was asked to consider early retirement, he raised concerns and sought accurate updated figures that he could rely upon and he followed the process given by the VR/retirement team.
- 88.5. When JLT's new system failed, he transferred his reliance to the key people who were put in place to support and advise him and he therefore relied on the £19,904 figure that he was initially given which was confirmed again on 4 February 2019.
- 88.6. It was very reasonable that he relied on this figure as this would also include all additional payments and adjustments that JLT needed to make to address previous failures.
- 88.7. On the 5 April 2018 statement front sheet, directly below the words 'Statement of Pension Benefits...' it says: "for information on terms used in this statement, please see the "Notes on Pension Benefits" on the last page."
- 88.8. On turning to this page, the first information printed in an outlined box and in bold says "...The figures are provided for information only and do not create any entitlement to benefit." This was important as it told him not to trust these figures and also any previous statements. It also informed him that he must seek confirmation of final figures.
- 88.9. This is what he did starting on 10 January 2019 and in receiving a retirement figure on 18 January 2019 of £19,904, which was confirmed on 4 February 2019. He also proceeded to seek further written confirmation but all of his efforts to chase written confirmation were thwarted. This was despite the fact that under JLT's rules, he was entitled to one written guaranteed valuation every year and this was due in February 2019. He continued to chase written confirmation up to 31 March 2019.
- 88.10. The 2018 statement also talked about growth, so he understood that the figures would change and increase, not decrease.
- 88.11. Several fundamental and costly mistakes were made by JLT prior to his 10 January 2019 request for accurate figures. JLT had previously attempted to rectify errors back in 2014 in respect to transferred in funds being placed in the wrong retirement pot. This resulted in additional penalties being applied to all early retirement statement figures back to their original transferred in date and resulted in a larger retirement penalty factor being applied over five years, rendering the 2018 figures useless.

- 88.12. After being told in 2014 by JLT that all errors had been put right, he was informed further errors had taken place where his funds had not been transferred properly between Friends Life and the Scheme. This was a surprise as he had previously been told by Jaguar Pensions that the transfers had been completed in 2006.
- 88.13. He found out about the error because Friends Life could not get any response from the Trustee/JLT/Mercer. He emailed JLT and was told it could not help and that the transfer window was shut; no apology was given. He was left wondering why JLT had not spotted and dealt with this when the original transfers came across and why they missed this in 2014 when they supposedly had found errors. This added to his doubt that all was well and left him believing that nothing was to be trusted until final due diligence was done.
- 88.14. Also, employees were informed that the Company would be making an additional financial contribution in support of the changes they planned to make to the Scheme's terms and conditions. This resulted in both personal and company pension contributions being increased. This additional payment, he believed, was to enable terms to be changed. Further, the additional payment was made to address the company payment shortfall and meant his funds would grow further.
- 88.15. He also made a large additional contribution in 2018/19 over and above the original monthly amount and this was not shown in JLT's figures.
- 88.16. On 4 February 2019, JLT's system failed and the default advice was to call the office which he did. He had today checked on the BenPal system again; it did not work and offered the same response that it had been unable to calculate his quote. A follow-up email was then received with the advice to look at the BenPal website or call or email the Jaguar support team. So, one would go around in the same loop.
- 88.17. This left him with one question: if the advice was to contact them and he followed this advice, and this advice was the same today, who or what system should he have relied on for accurate retirement figures?
- 88.18. When the £19,904 figure was given to him to retire, he was not surprised after JLT's past performance. He thought JLT had revisited all six of his separate funds and following their previous errors, had found other adjustments that were needed to be made before this final figure could be given. He believed and trusted in this figure. To be sure, he followed the guidance and requested written confirmation but this was continuously thwarted by JLT.
- 88.19. Had JLT provided the written annual valuation he was entitled to, it would have exposed the error and enabled him to make a better-informed choice.
- 88.20. For any decision to be unbiased and fair, both parties should be treated equally. If it was so obvious that he should have relied on the 2018 figure,

notwithstanding all of the above, then equally it would be far more reasonable, in light of previous mistakes, to expect JLT, the paid professional with access to the 2018 statement, to have referred to this on the day when they quoted him £19,904. It was reasonable to expect that had JLT done so, it would have easily spotted that something was wrong.

- 88.21. JLT failed to act in a reasonable professional way and it did not operate with the necessary checks and balances.
- 88.22. Retiring was not something he or anyone else took lightly. He had shown that JLT, was one of the largest and most experienced pension fund holders in Europe, had failed him multiple times and that it was not reasonable for him to have relied on the 2018 statement. He could not understand why its failure should become his.
- 88.23. JLT had agreed that £19,904 was the figure that was given to him on 4 February 2019 and that this was their error. Was it then fair and balanced to say he should have known better?
- 88.24. JLT had said calls were recorded for training and monitoring purposes. It had not however, produced the call recordings in question and he still felt this was important.
- 88.25. In reference to the 11 January 2019 call, he was very focused and wanted to confirm his purchased years of service and that nothing was missing. This should have been a cue for JLT to pay particular attention to this area of his pension. It was worth remembering and noting that JLT's system was not designed to take more than one transferred in pension. This was confirmed in the meeting of 3 January 2020.
- 88.26. Further to this meeting, if the JLT representative's opinion was that his team had made compounded errors and mistakes, then why should he be expected to trust a piece of paper that clearly he already knew was not up to date?
- 88.27. His case was far from ordinary. From the point he transferred two pensions into the Scheme, the figures had never been correct.
- 88.28. In respect of an estoppel by representation claim, the representation made to the member must be a clear statement or promise with reasonable reliance against key elements. He had shown this.
- 88.29. His case was far from standard so it was not reasonable for him to have relied on figures in the 2018 statement. He had shown that it was reasonable following the above circumstances, that he should, as advised, speak to the JLT pension professionals and rely on the quoted figures they gave in answer to the specific question he asked, which was to confirm the exact figure he could expect to receive if he retired and started drawing his pension in April 2019.

- 88.30. He was in possession of Mercer's official early retirement figures and using these, he could show why he did not trust the 2018 figure and that of £11,962.93. This showed how wrong these were and why he sought confirmation of these.
- 88.31. The information he had provided showed that the true figure, based on Mercer's own early retirement factor (**ERF**) for 2018 should have been approximately £15,964. This was considerably different from what was said in the 2018 statement (£11,962.93).
- 88.32. Considering a date in April 2019 and using the same ERF, he had calculated that the retirement figure that should have been offered to him on the call in February 2019 should have been £17,276. This was based on the same factors and included the additional payments in.
89. At this stage, the Adjudicator, for completeness, asked Mercer if it could search again for the January and February 2019 call recordings. She also referred to a previous request she had made to it where she asked if any phone script was in place during these calls. The Adjudicator also responded to Mr R's comments:-
- The starting point for a complaint regarding incorrect information would be the two legal concepts of 'negligent misstatement' and 'estoppel.'
 - In respect of negligent misstatement, I would look to provide redress if it could be shown that financial loss had flowed from the incorrect information given, that the member reasonably relied upon. However, she did not consider that Mr R had reasonably relied on statements made by JLT.
 - Mr R had argued that the 2018 statement could not be relied upon (contrary to her Opinion). He had said that multiple mistakes had been made causing a lack of trust in JLT's administration. He also said that all the statements received made clear that they did not create any entitlement to benefit.
 - Considering this matter in a strictly legal sense, the above would suggest that Mr R was not entirely justified in relying on the information given to him by JLT (and in the January and February 2019 calls in question). Further, it could be argued that he would have also considered that any benefit statement provided over the phone would have been subject to the same caveats as written statements, so again he ought not to have reasonably relied on it.
 - With regard to estoppel, Mr R had said that a clear promise was made to him by JLT in the figures provided in the January and February 2019 calls. However, it was not apparent that figures were provided to Mr R as promises. Further, as figures provided to him in written statements contained caveats, it was arguable that he would have been aware that similar caveats applied to the information provided over the phone.

- This however was not to say that JLT and the Trustee acted in an acceptable manner. However, their respective failures would lead to a finding of maladministration, which was addressed in the distress and inconvenience amount recommended in her Opinion.
90. Mercer subsequently confirmed that it was not able to trace the January 2019 and February 2019 calls. It attached a copy of a Frequently Asked Questions document (the **FAQ document**) that its call agents use as a guide in answering member's questions.
91. Mr R provided his comments on the FAQ document as well as his dispute generally, highlighting that it was poor that Mercer had not been able to find the call recordings and that it appeared to have deviated from its own procedure as set out in this document. He added that Mercer had continually delayed my Office's investigation of his complaint.
92. Mr R's additional final comments on the matter were:-
- He was disappointed but not surprised that Mercer had lost these valuable records as it had lost other mandatory documents before.
 - He wished to ensure that no one else suffered in the way he had over the last three years and wished to understand if there were any avenues through my Office where his experience could be used to help improve pension trustee services and processes for others.
 - The FAQ document clearly showed that the conversations he had with Mercer in January and February 2019 must be recorded and that all figures plus workings must be placed on file.
 - Mercer having lost important documents, key evidence and its denial of the truth was convenient for them as the law allowed it to "get away with a small token fine of £1,500."
93. The complaint has now been passed to me to consider and I agree with the Adjudicator's Opinion, except I am going to increase the award for the gross maladministration in respect of the woefully inadequate service provided by Mercer. I will also respond to the additional points made by Mr R.

Ombudsman's decision

94. I have carefully considered the additional arguments which Mr R has made, however, my view is that the circumstances of Mr R's case are such that it is not possible to achieve a successful claim in negligent misstatement and estoppel respectively.
95. Starting first with negligent misstatement, I would direct redress if it can be shown that financial loss has flowed from the incorrect information given, which the member reasonably relied upon.

96. However, I do not consider that Mr R's additional comments demonstrate that he reasonably relied on statements made by Mercer and fundamentally changed his financial position to his detriment. Mr R has said he does not agree with the Adjudicator's argument that his claim should fail because he should instead have placed reliance on the 5 April 2018 statement as a benchmark of his correct pension entitlement.
97. He has referred in his correspondence to the fact that the track record of JLT's handling of his pension over the years has been poor. He states that multiple mistakes were made prior to January 2019 that resulted in his "lack of trust of their figures" or their ability to carry out routine work. Mr R has highlighted that the 2018 statement and those prior to this made it clear that these could not be relied upon and also, he and JLT had been aware that there were unresolved issues that rendered the 2018 figures inaccurate. Mr R has further said that he was aware that the figures did not create any entitlement to benefits so he knew he must seek confirmation of his final pension figures.
98. However, these comments are in contrast to his assertion that he was justified in relying on the information provided by Mercer shortly prior to his retirement. I consider that the anomalies Mr R has alluded to instead support that he should have been cautious in relying on the information provided as a definitive account of his benefit entitlement. It is a well-established principle that a member is only entitled to receive benefits from a pension scheme as provided for under the scheme's Trust Deed and Rules. The benefit statements provided to Mr R expressly stated that the information contained within was provided for information only and was not to be taken as a definitive statement of entitlement. In addition, Mr R should have considered any benefit statement given over the telephone to be subject to the same caveat.
99. In regard to reliance, Mr R's complaint centred on his claim that Mercer provided incorrect retirement figures to him while he was considering whether to take voluntary redundancy. He says that he was told on 18 January 2019 that he would be entitled to a pension of £19,904 per annum from April 2019, and that these figures were re-confirmed on 4 February 2019. He has stated that he proceeded with early retirement on this basis. However, I am not persuaded that there was any clear evidence of reasonable reliance placed on these figures leading to a fundamental change of position by Mr R in his original or further submissions.
100. Nonetheless, it is extremely unfortunate that Mercer perpetuated the problem. As administrators for the Scheme, responsible for providing information to members, Mercer owed Mr R a duty of care to provide him with accurate information regarding his benefits. It failed to do this, and these misquotations fell far below a reasonable standard of care amounting to maladministration, which warrant an award for non-financial injustice rather than financial loss.
101. In respect of Mr R's claim for estoppel, when considering such a claim, a representation made to the member must be a clear statement or promise with reasonable reliance being a key element. I do not consider that any of the figures given to Mr R were provided as promises. Mr R ought to have been aware that

benefit statements were subject to a caveat as expressly stated therein. Therefore, Mr R does not satisfy the test for a successful estoppel claim.

102. Mr R has said that both parties should be treated equally in this matter and that the same burden should be placed on Mercer, at the point he requested retirement figures, to realise that the information being imparted was incorrect. I have acknowledged that Mercer has a duty of care to provide members with accurate information, however, it is Mr R bringing about a legal defence to Mercer/the Trustee's claim and reasonable reliance is a component for the defendant to demonstrate.

103. In reaching the conclusions I have, I appreciate that Mr R has understandably questioned which system he ought to have relied upon for accurate retirement figures if Mercer's advice was to contact it for final confirmation, which he did, but to no avail. However, although I have considerable sympathy for Mr R, he does not satisfy the legal tests for a successful claim as I have outlined.

104. Mr R has made some additional comments on the FAQ document that Mercer had provided. It is unclear when exactly the procedures in this document applied, however, any deviation from procedure on Mercer's part, although regrettable, would not change my overall conclusions on this matter.

105. Therefore, I partly uphold Mr R's complaint.

Directions

106. Within 28 days of the date of this Determination:-

- (i) The Trustee shall pay Mr R £1,000 for the distress and inconvenience its actions have caused him.
- (ii) Mercer shall pay Mr R £2,000 in recognition of the severe distress and inconvenience caused to him by its appalling repeated failings.

Anthony Arter

Pensions Ombudsman
27 June 2022