CAS-57216-C1M4

Ombudsman's Determination

Applicant	Mrs E
Scheme	Ford Salaried Contributory Pension Fund (**the Fund**)
Respondents	Ford Pension Fund Trustees Limited (**the Trustee**)
	Mercer Limited (**Mercer**)

Outcome

1. I do not uphold Mrs E's complaint and no further action is required by the Trustee or Mercer.

Complaint summary

2. Mrs E has complained that she was provided with incorrect information by Mercer.

3. Mrs E has said she only received the corrected information one day prior to her actual retirement and then she had to change her original decision to elect for a variable pension option due to the tax liability.

Background information, including submissions from the parties

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

5. On 1 April 2019, Mrs E received a salary increase from £88,318.32 to £92,279.88.

6. In April 2019, Mrs E's employer, Ford Credit Europe (**FCE**), announced a Voluntary Separation (**VS**) and Early Retirement (**ER**) Programme.

7. Mrs E elected to leave FCE under the terms of the VS and ER programme subject to the production of her retirement details. Her initial early retirement date was set as 31 December 2019.

8. On 31 October 2019, Mercer sent Mrs E a Pensions Savings Statement (**the October 2019 PSS**) for the 2019/20 Tax year which contained the following information:

- Annual Allowance (**AA**) £40,000

- Pension Input Amount (**PIA**) excluding Additional Voluntary Contributions (**AVCs**) paid since 5 April 2019:

  - Accrued Pension at 5 April 2019 £45,716.26
  - Accrued Pension at 5 April 2020 £51,656.37
  - Total PIA for 2019/20 £77,486.72
  - Amount exceeded AA in 2019/20 £37,486.72
  - Unused AA carried forward from previous three years £9,945.58
  - PIA above available AA £27,541.14

9. The document also contained a disclaimer which said:

   "Importantly, if unchangeable financial decisions are to be made on the basis of this illustration you are reminded that this is an **estimate of your benefits only** and you should seek clarification to the extent to which the details contained in the estimated statement could change."

10. Mercer also sent Mrs E a Retirement Statement (**the October 2019 Retirement Statement**) based on a retirement date of 31 December 2019 and a final pensionable pay of £88,318.32. Mrs E was provided with five retirement options to choose from:

    - Option one – a fixed pension of £46,989.92 a year.
    - Option two – a fixed pension of £30,747.29 a year and cash lump sum £204,981.95.
    - Option three – a pension up to State Pension Age (**SPA**) of £51,656.37 a year. A pension after SPA of £45,106.97 a year.
    - Option four – a pension up to SPA of £33,800.72 and a cash lump sum of £224,338.19. A pension after SPA of £27,251.32 a year.
    - Option five – a partial transfer value. A pension from retirement of £15,373.66 a year, a cash lump sum of £102,490.98 and a transfer value of £521,023.00.

11. Mrs E confirmed to Mercer that her preferred selection was Option four.

12. On 9 December 2019, Mrs E agreed to extend her leaving date to assist with the wider department handover process and knowledge transfer. Her leaving date was revised to 31 March 2020.

13. On 20 January 2020, FCE's Human Resources department (**HR**) sent a letter to Mrs E with her revised VS calculations based on her new retirement date.

14. On 30 March 2020, Mrs E received a new Pension Savings Statement (**the March 2020 PSS**) for the 2019/20 tax year which contained the following information:

- PIA excluding AVCs paid since 5 April 2019
- Accrued Pension at 5 April 2019 £45,716.26
- Accrued Pension at 5 April 2020 £54,376.91
- Total PIA for 2019/20 £121,018.14
- Amount exceeded AA in 2019/20 £81,018.14
- Unused AA carried forward from previous three years £9,948.30
- PIA above available AA £71,069.84

15. On 31 March 2020, Mrs E sent an email to Mercer and said:-

- She had received both the October 2019 and the March 2020 PSS.
- The March 2020 PSS must be incorrect. Her own calculations based on a presentation by Mercer in April 2019 were much closer to the October 2019 PSS.
- Could Mercer complete the calculation with her correct salary for the year ending 1 April 2019 and her actual retirement date of 31 March 2020.
- She had based her retirement option decision on the October 2019 PSS and selected Option four accordingly.
- In view of the discrepancies in the calculation she required the following as a matter of urgency: an updated retirement statement with options one, two, three and four reflecting her new retirement date of 31 March 2020 and her annual salary of £92,279.88.
- Confirmation that she could select to pay any tax due on PIA for 2019/20 above the available AA as part of her annual tax return.
- She wished to confirm that subject to the provision of correct information she still wished to take Option four.

16. On 31 March 2020, Mrs E retired from FCE.

17. On 27 April 2020, Mercer sent Mrs E a final Pension Savings Statement which contained the same figures as the March 2020 PSS.

18. Mrs E also received a revised Retirement Statement (**the April 2020 Retirement Statement**) based on a retirement date of 31 March 2020 and a final pensionable pay of £92,279.88. The four options provided were:

- Option one – a fixed pension of £49,541.34 a year
- Option two – a fixed pension of £32,416.79 a year and cash lump sum of £216,111.89
- Option three – a pension up to SPA of £54,376.91 a year. A pension after SPA Pension of £47,658.50 a year
- Option four – a pension up to SPA of £35,580.88 a year and a cash lump sum of £237,205.88. A pension after SPA of £28,862.47 a year

19. On 2 May 2020, Mrs E sent a letter to Mercer. She said that in view of finally receiving the correct information reflecting her final year's salary and retirement date she now had no alternative but to elect for pension Option two on the assumption that it did not crystallise any PIA above available AA tax liability in the 2019/20 tax year.

20. On 6 May 2020, Mercer confirmed that electing for Option two would result in no PIA above the available AA tax liability charge for the 2019/20 tax year. Mrs E elected for Option two.

21. On 4 June 2020, Mrs E sent a letter to Mercer and said:-

- Her salary increase in April 2019 was not reflected in the October 2019 PSS or the October 2019 Retirement Statement.
- She received the March 2020 PSS on 30 March 2020, one day prior to retirement and the April 2020 Retirement statement 29 days post-retirement. The Pension Advisory Service guidelines stated that up to date and correct information should be provided two months prior to retirement.
- Electing to take Option four in accordance with her original intention would have resulted in a significant increase in her 2019/20 tax liability versus her own calculations.
- Had she been provided with the correct information in October 2019, she would have been aware of the impact to her 2019/20 tax liability position, and she would only have agreed to extend her FCE service subject to a leaving date early in the 2020/21 tax year. Had FCE refused her request she would have elected to retire in 2019, as originally planned and agreed.
- She had been significantly, financially disadvantaged by having no option other than to change her position and elect for a non-variable pension option. This was not her intention when she accepted the VS and ER.
- This situation had resulted in considerable stress since her financial position in retirement had detrimentally changed because of the admitted errors by Mercer.

22. On 9 June 2020, Mercer sent a letter to Mrs E and said:-

- The information that was issued to Mrs E in October 2019 was correct. The reason for the difference in the values in the PSSs was due to a change of her retirement date.

- AA benefits were the value of the benefits for the Pension input period (**PIP**) that occurred when the benefits come into payment. These were based on the pension at the beginning of the PIP which would always be 6 April. Then the pension that would be payable either at the end of the PIP, 5 April, or the date of retirement, if earlier. The benefits at the beginning of the PIP were the opening pension and the benefits at the end of the PIP/date of retirement were the closing pension.

- The pension figures used were always the pension before any benefits are commuted for taking a tax free cash lump sum. A formula set by HM Revenue and Customs (**HMRC**) was then applied to these benefits. The formula was:

  Opening balance x 16 x consumer price index as at September prior to opening balance less Closing balance x 16

- The difference between the two figures was the AA for the year. The maximum AA that can be accrued in any one PIP is £40,000. If the AA exceeds this amount, then any unused allowance that has been accrued for the previous three years could be offset against the excess figure. If the AA was still over the combined values, then a tax charge would be due.

- Normally most members do not exceed their AA, however where members are able to take enhanced variable pensions, this did create an AA charge as the benefits awarded at retirement were a lot higher than they would have been for normal accrual.

- The October 2019 PSS was upon request and was for a retirement date of 31 December 2019. The opening pension was £45,716.26 and the closing pension to be used in the AA calculation, if Mrs E had taken Option three or Option four, was £51,656.37. The calculation was:

Opening pension	£45,716.26 x 16 x 1.024 (**CPI**)*	= £749,015.20
Closing pension	£51,656.37 x 16	= £826,501.92
AA	£826,501.92 - £749,015.20	= £77,486.72
Excess over AA of £40,000		= 37,486.72
Unused AA carried forward		= £9,948.30
Tax due on	£37,486.72 - £9,948.30	= £27,538.42

*(Consumer Price Index)

- When Mrs E left the Fund, her retirement date and final pensionable salary had changed. This meant that her benefits had to be recalculated. Mercer could only conduct a final AA calculation once all forms had been submitted and the final option selected. At the point of final recalculation, a revised AA statement was prepared and issued based on the new pension figures. The calculation was:

Opening pension	£45,716.09x 16 x 1.024 (CPI)	= £749,012.42 *
Closing pension	£54,536.91 x 16	= £870,030.56
AA	£870,030.56 - £749,012.42	= £121,018.14
Excess over AA of £40,000		= £81,018.14
Unused AA carried forward		= £9,948.30
Tax due on	£81,018.14 - £9,948.30	= £71,069.84

*(pence difference due to rounding)

The difference was due to the Option three pension increasing by an additional £2,720.54 between 31 December 2019 and 31 March 2020.

23. On 12 June 2020, Mrs E sent an email to Mercer and reiterated her previous points and, in addition, said:-

- The reason for the difference in the values of the PIA above AA were due to the October 2019 statement being based on her previous salary and did not consider her increase in salary which came into effect in 1 April 2019. The incorrect October 2019 PSS was based on the period 5 April 2019 to 5 April 2020.

- The corrected March 2020 PSS was based on the period 6 April 2019 to 31 March 2020. The comments that the values of the AA changed due to a change in retirement date were incorrect. The significant increase in PIA in the March 2020 PSS was due to a salary increase from 1 April 2019, and it was this which had driven the £2,720.54 increase and not because of her working an additional three months.

- She selected Option four based on the incorrect October 2019 PSS and October 2019 Retirement Statement.

- Her VS application pension forms were completed and submitted in July 2019. FCE’s request that she extended her retirement date was made and accepted before December 2019. At the time of the initial consultation in May 2019 the response to a frequently asked question about the VS said:

  “As an employee taking voluntary separation with a deferred special early pension can I change the option I have selected before my pension begins?

> Yes, approximately three months before your pension begins you will be contacted to confirm your pension options."

- She received no contact, further information, or update from Mercer until she received the March 2020 PSS. Due to the significant increase in tax liability outlined within the March 2020 PSS, that now reflected her correct salary details versus previous incorrect information provided, she had no option than to change her position and elect to take Option two.

24. On 30 June 2020, the Trustee sent a letter to Mrs E and said it was responding under Stage one of the Fund's Internal Dispute Resolution Procedure (**IDRP**). It said:-

- Mrs E's fundamental complaint was that the October 2019 PSS and Retirement Statement sent to her were incorrect and did not take account of her April 2019 salary change.

- The Scheme Rules set out the definition of Final Pensionable Pay:

> "Your total basic salary for the best 12 months ending on the 31 March prior to retirement".

- Mrs E's retirement on 31 December 2019 took account of her salary from 1 April 2018 to 31 March 2019. This correctly based the December retirement figures on a Final Pensionable Pay figure of £88,318.32. The AA figures that were provided to her at that time were based upon these retirement options and were correct.

- When Mrs E's retirement date moved to 31 March 2020, the definition in the Scheme Rules meant that the calculations were based on her salary from 1 April 2019 to 31 March 2020. The March 2020 PSS was correctly calculated using a Final Pensionable Salary of £92,279.88.

- It was the increase in Mrs E's pension benefit that has driven the increase in AA not any miscalculation of the options.

- The completed retirement pack for 31 March 2020 retirement was submitted to the Mercer team at the end of February 2020. Once it had received Mrs E's completed forms, with confirmation of her chosen option, it confirmed her updated AA position.

- The tax consequence of wishing to choose Option four in March 2020 was greater than it would have been in December 2019, but this was a result of the significant increase in her pension benefit, and the way in which the Government required Mercer to calculate AA. It was not because of any incorrect calculations.

25. On 1 July 2020, Mrs E sent a letter to the Trustee and reiterated that she had been provided with inaccurate information by Mercer in October 2019. She said that the October 2019 PSS referred to accrued pension at 5 April 2020 which was incorrect as

it should have referred to the correct date of 31 December 2019 which was when she was due to retire.

26. On 11 September 2020, the Trustee sent a letter to Mrs E and said:-

- Both sets of AA figures were correct at the respective retirement dates. At no point had incorrect statements been issued.

- The three-month period she referred to in the frequently asked questions related to deferred members. As an active employee retiring directly from service, Mercer could only provide figures once FCE confirmed her actual retirement date. It understood from HR that Mrs E's revised retirement date of 31 March 2020 was confirmed to Mercer at the end of February 2020.

- The October 2019 PSS figures were based on the Option three figures which increased due to the change in retirement date:

  - At 31 December 2019, the Option three pension was £51,656.37 per annum.

  - At 31 March 2020, the Option three pension was £54,376.91 per annum, which was a £2,720.54 per annum increase in pension entitlement.

  - Multiplied by the AA factor of 16, this produced an increase in the AA for the year of an additional £43,528, which was in addition to the accrual Mrs E had already made during April to December 2019.

Mrs E's position

- The Trustee has said that the completed documentation was sent to Mercer at the end of February 2020. This is an internal FCE HR issue. FCE asked if she would extend her retirement date until end of March 2020 due to the technical nature of her position and the requirement for a handover to the broader departmental team. The request was formally made and agreed on 9 December 2019.

- She was provided with incorrect information in October 2019, and she only received the correct information 29 days after she retired. This gave her no option but to change her choice from Option four to Option two or incur unnecessary tax charges.

The Trustee's position

- The Fund provided a very generous level of benefits with future service accrual at a rate of 52^{nds}. Together with the long service of employees and the pensionable salary definition, this led to significant increases in accrued pension year over year, and for Mrs E an increase over the three months between the respective retirement dates.

- It was aware that due to the generosity of the benefit accrual, and the potential option to receive a higher variable pension on early retirement, members could be subject to AA as a result. To alert members to this it printed the following in bold in its retirement pack:

  > "Should you choose the variable pension Option, three or four, this will be deemed as an increase to pension saving during the current tax year and will mean that you are likely to exceed the £40,000 Annual Allowance. This could result in a tax charge being imposed. If you are interested in this option, you are strongly advised to take financial advice from an Independent Financial Adviser, or from your accountant or other suitable adviser If you choose this option, we will provide the PIA you will be required to review your position, please note that it is your responsibility to calculate your Annual Allowance Charge and pay the tax due."

- Mrs E's retirement date moved to 31 March 2020, and this increased her pension significantly. It was this increase in pension entitlement that drove the AA calculation and the higher resulting figure.

- HR was responsible for agreeing retirement dates with employees, arranging for the signature of documentation, and sending it onto to Mercer. HR has said that there were a large number of employees leaving at the same time as Mrs E and retirement dates for a number of them were moved to meet business needs and this would have been discussed with Mrs E. In Mrs E's case the completed documentation was provided to Mercer on 27 February 2020, at the same time that the documentation was provided for a number of employees.

- When the completed documentation from Mrs E was provided to Mercer, it produced the updated AA information and provided this to Mrs E. It noted that this caused Mrs E to consider whether the option she had chosen continued to be appropriate considering the AA charge it would generate. However, any AA tax position is due to the application of HMRC requirements and the way in which it must be calculated and was not related to any error.

Adjudicator's Opinion

27. Mrs E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or Mercer. The Adjudicator's findings are summarised below:-

    - The Adjudicator reviewed the AA calculations provided by Mercer. The October 2019 PSS reflected Mrs E's total basic salary for the 12 months to the 31 March prior to retirement as set out in the Fund Rules. As Mrs E's retirement date was originally 31 December 2019 then, in the Adjudicator's view, it was correct and in accordance with the rules of the Fund to use her salary to the 31 March 2019 which did not reflect the increase she received on 1 April 2019.

- The Trustee also provided the formula that HMRC expects schemes to use when calculating pension benefits for AA purposes and the underlying calculation that supported the October 2019 PSS. In the Adjudicator’s opinion, the information provided to Mrs E in the October 2019 PSS was based on Mrs E’s position at that time and was correct.

- The March 2020 PSS was issued for a retirement date of 31 March 2020 and used a different basic salary. Once the definition of Final Pensionable Pay in the Fund Rules was applied this meant that Mrs E’s salary was taken as her basic salary to 31 March 2020. This change in salary together with the delay in her retirement date caused the change in her AA. In the Adjudicator’s view, the information provided to Mrs E in the March 2020 PSS was also correct and so there had been no maladministration.

- The Adjudicator considered the timing of the information that was provided to Mrs E. Mrs E said that the March 2020 PSS and the April 2020 Retirement Statement were only provided after she had begun her retirement and so she could not make an informed choice regarding her retirement options. The Trustee said that the information regarding Mrs E’s change in retirement date was only provided to Mercer in February 2020 and not in December 2019, when Mrs E decided to remain in post for a longer period.

- The Adjudicator appreciated that Mrs E had said that this was an internal HR issue but, in the Adjudicator’s view, Mercer could not have provided updated information until it had been informed of the change in retirement date. In the Adjudicator’s opinion, the fact that Mrs E only received the March 2020 PSS after her retirement was not the fault of Mercer. In addition, Mrs E was aware that the October 2019 PSS was issued based on retirement on 31 December 2019 and the letter contained a disclaimer that the statement was an estimate of her benefits only and could change. Mrs E could have requested updated information herself at an earlier stage to reflect the change in retirement date and to provide clarity before she made the decision to delay her retirement.

- The Adjudicator also considered what Mrs E would have done had she received the updated information regarding her retirement benefits at an earlier stage. In the Adjudicator’s opinion, Mrs E may have asked to move her retirement date so that she could have ended her employment in the next tax year, and then she could reconsider the pension options available. However, this was something she would have needed to have discussed with her employer. Mrs E retired as part of a group VS and ER programme operated by her employer. The retirement date of 31 March 2020 had been selected to meet business needs. There was no guarantee that a different date would have been agreed had Mrs E requested. The Trustee and Mercer were not party to any discussions regarding Mrs E’s retirement date.

28. Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs E submitted further comments in response to the Opinion. In summary, she said:-

- Her complaint revolved around the fact that the stated 'Accrued Pension at 5 April 2020' was £51,656.37 which was categorically incorrect as this figure was only ever valid until 30 March 2020. It was correct to state that the 'Accrued Pension at 5 April 2020' was £54,376.91.

- It was on the basis of the incorrect information regarding her Accrued Pension at 5 April 2020 that she agreed to extend her retirement date to 31 March 2020. She did not think there would be any change to the Accrued Pension figure of £51,656.37 as it would expire on 5 April that was five days after she retired. The Adjudicator's opinion made no reference to this key date error and the consequences that it had on her decision.

- It was this date of 5 April 2020 that resulted in her not asking for an updated statement since it was after her revised retirement date of 31 March 2020. She received an updated statement on 30 March 2020 which only then correctly stated the 'Accrued Pension at 5 April 2020' figure of £54,376.91. This was received one day before her actual retirement so was impossible to change her retirement date at that time.

- Had the October 2019 PSS contained correct date information, she would have retired either at 31 December 2019 or any date up to and including 30 March 2020 or after 6 April 2020. The worst date she could have and did retire on, through no fault of her own, was 31 March 2020 as a result of the incorrect '5 April 2020' figure of £51,656.37.

- In addition, the FCE HR department confirmed that had she requested either to retire on 30 March 2020 or after 6 April 2020 the company would have agreed to a revised date given her years of service. The extension from 31 December 2019 to 31 March 2020 was at their request and that she was a top performing employee.

29. I note the additional points made by Mrs E, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

30. Mrs E has complained that she had been provided with incorrect information by Mercer and this meant she needed to change the pension option she had originally selected.

31. Mrs E has said that the basis of her complaint is that the October 2019 PSS contained an incorrect salary figure as at 5 April 2020. This salary figure was not valid after 30 March 2020 and so she based her retirement decision on flawed information.

32. I do not agree with the argument that Mrs E has put forward. The October 2019 PSS was based on a retirement date of 31 December 2019 and its purpose was to provide information about Mrs E's pension benefits based on this retirement date. The information provided was correct based on a 31 December 2019 retirement date and the salary to 31 March 2019 was correctly used in the calculation as set out in the Fund Rules. The fact that a different salary amount was used when Mrs E changed her retirement date does not make the October 2019 PSS incorrect. I note that there are some small discrepancies in the figures provided to Mrs E by Mercer, but this does not have an impact on the outcome of the complaint.

33. Mrs E has said that she relied on the October 2019 PSS when she changed her retirement date as the new date was still before 5 April 2020. She assumed the information she had been provided with about her pension would not change. The fact that Mrs E made this assumption is not as a result of any fault by the Trustee or Mercer. It would have been prudent for Mrs E to check if her pension benefits would be affected before agreeing to change her retirement date – particularly as the October 2019 PSS included a clear disclaimer reminding the reader that "if unchangeable financial decisions are to be made on the basis of this illustration you are reminded that this is an estimate of your benefits only". Indeed, in those circumstances, the reader is also asked to "seek clarification as to the extent to which the details contained in the estimated statement could change". On that basis, I agree with the Adjudicator that Mrs E could, and indeed should, have requested updated information herself at an earlier stage to reflect the change in retirement date and to provide clarity before she made the decision to delay her retirement.

34. I note that Mrs E has said that she had clarified with HR that she could have used a different retirement date that would have had more favourable tax consequences for her. It is unfortunate that Mrs E did not discuss the date of retirement and the impact on her pension before she made the decision to retire on 31 March 2020. This was not the fault of the Trustee or Mercer who were only aware of the change to Mrs E's retirement date once FCE HR informed them in February 2020 and the March 2020 PSS was then produced.

35. I do not uphold Mrs E's complaint.

Dominic Harris

Pensions Ombudsman
10 April 2024