Ombudsman's Determination

Applicant	Mr N
Scheme	Bradford & Bingley Staff Pension Scheme 1991 (**Bradford & Bingley Scheme**)
Respondent	The Trustee of the Bradford & Bingley Staff Pension Scheme 1991 (**the Trustee)**

Complaint Summary

1. Mr N has complained that the Trustee failed to comply with the directions made by the Deputy Pensions Ombudsman in her Determination dated 11 May 2020 when calculating the additional deferred pension available to him from a transfer of pension rights into the Bradford & Bingley Scheme.

Summary of the Ombudsman's Determination and reasons

2. The complaint is upheld against the Trustee because I consider that the method which it used to determine the additional deferred pension and retirement options available to Mr N from the Bradford & Bingley Scheme, as shown in the letter to him dated 6 July 2020, was not compliant with the directions made by the Deputy Pensions Ombudsman in her Determination dated 11 May 2020.

Detailed Determination

Material facts

3. In her Determination dated 11 May 2020 of Mr N's complaint (PO-25899), the Deputy Pensions Ombudsman concluded that:-

    3.1. Mr N's deferred pension rights in the Yorkshire & Clydesdale Bank Final Salary Scheme (**Clydesdale Scheme**) had, on the balance of probabilities, been transferred to the Bradford & Bingley Scheme.

    3.2. The Trustee had failed to allow for the additional benefits available to Mr N from this transfer-in when calculating the cash equivalent transfer value (**CETV**) of £25,476.58 which was paid to the HSBC Pension Scheme on 20 April 1995.

4. The Deputy Pensions Ombudsman consequently upheld Mr N's complaint and directed the Trustee in her Determination to:

    4.1. reconstruct the transfer of pension rights from the Clydesdale Scheme;

    4.2. calculate the additional deferred pension available to Mr N from the Bradford & Bingley Scheme;

    4.3. inform Mr N accordingly; and

    4.4. if Mr N elected to receive a backdated retirement pension and lump sum from the Bradford & Bingley Scheme, to also calculate and pay simple interest on the payments due.

5. Deloitte Total Reward and Benefits Limited (**Deloitte**) sent on behalf of the Trustee a letter dated 6 July 2020 to Mr N which said that:-

    5.1. The Trustee had granted him in the Bradford & Bingley Scheme a deferred pension of £1,164.14 per annum, calculated as at 28 March 1986, of which £142.70 per annum revalued during deferment.

    5.2. The Trustee had assumed in its calculations that: (a) his pensionable service from 6 April 1978 to 28 March 1986 plus service credits was 9 years 285 days; (b) his final pensionable salary was £8,146.16 per annum; and (c) a Guaranteed Minimum Pension (**GMP**) of £163.80 per annum as at 28 March 1986 was being paid to him in another scheme.

    5.3. If he chose to take this additional benefit from the Bradford & Bingley Scheme on his 60th birthday in September 2018, he would be entitled to a full pension of £1,407.44 per annum.

    5.4. He also had the option of either: (a) taking a tax free cash sum and a reduced annual pension; or (b) transferring his additional pension rights to another pension provider.

6. When Mr N sought clarification on how the Trustee had calculated the figures, Deloitte replied that:-

   6.1. The deferred pension of £1,164.14 per annum was based upon his estimated final pensionable salary and pensionable service at his date of leaving (**DOL**) the Clydesdale Scheme on 28 March 1986 and took into account that he was already in receipt of his Clydesdale Scheme GMP.

   6.2. Revaluation was applied to his deferred pension at DOL, less the GMP, to determine the pension available from the Bradford & Bingley Scheme if he chose to retire on his 60th birthday.

   6.3. "Actuarial equivalence" is used when calculating the benefits to be granted within a scheme following a transfer-in. This meant that the value of the transferred-in benefits must be reflected in the benefits awarded in the receiving scheme. It is not usually the case that the same number of years of service are credited in the receiving scheme as those transferred from the previous scheme.

   6.4. Details of Mr N's salary history at Clydesdale Bank and Bradford & Bingley were limited. The Trustee was consequently unable to test actuarial equivalence for Mr N and calculate a service credit for him in the Bradford & Bingley Scheme.

   6.5. The Trustee decided to replicate the benefits, less the GMP, available to Mr N at DOL the Clydesdale Scheme and for the Bradford & Bingley Scheme to pay these going forward. It believed that this approach complied with the Deputy Pensions Ombudsman's directions to provide Mr N with his pension rights from the Clydesdale Scheme.

7. Mr N was unhappy with this response and made a complaint under the Bradford & Bingley Scheme's Internal Dispute Resolution Procedure (**IDRP**). His complaint was not upheld at both stages of the IDRP in July and September 2020.

8. In its Stage One IDRP decision letter dated 30 July 2020 to Mr N, Deloitte said that:

   > "You are currently in full receipt of your pension earned whilst in the Bradford & Bingley Scheme and the HSBC (HBOS) Scheme, via the HBOS Scheme. You are also receiving the GMP that was accrued during your period at Clydesdale Bank, via the HBOS Scheme. The missing element, being the Clydesdale Scheme benefits, will now be paid by the Bradford & Bingley Scheme as determined by the Ombudsman…Being provided with this benefit completes your entitlement across all of your pension arrangements…"

9. Mr N subsequently referred his complaint to The Pensions Ombudsman and one of my Adjudicators provided Deloitte with his opinion on it in October 2021 as follows:-

   9.1. According to Deloitte's document entitled "Deferred Pension Calculation", Mr N's deferred pension as at 28 March 1986 was 1/60 x 8,146.14 x 9 285/365 =

£1,327.94 per annum. Excluding the GMP of £163.80 per annum, it was £1,164.14 per annum.

9.2. What the Trustee offered to pay was therefore the excess over GMP element of the deferred pension available to Mr N from the Clydesdale Scheme as at 28 March 1986, revalued during deferment to his 60th birthday in September 2018.

9.3. The Trustee had not fully complied with the Deputy Pensions Ombudsman's directions because it failed to calculate the service credit available to Mr N in the Bradford & Bingley Scheme from the CETV of his Clydesdale Scheme deferred pension of £1,327.94 per annum, including the GMP of £163.80 per annum.

9.4. It was the additional deferred pension available to Mr N from the Bradford & Bingley Scheme calculated using: (a) this service credit; (b) his final pensionable salary of £19,090 per annum at DOL the Bradford & Bingley Scheme, 17 July 1992; and (c) a scheme accrual rate of 1/60 which the Deputy Pensions Ombudsman had instructed the Trustee to determine.

9.5. The Trustee should not have deducted the GMP accrued in the Clydesdale Scheme of £163.80 per annum in its calculations. The cash equivalent of this GMP was clearly not included in the CETV of £25,476.58 paid to the HSBC Pension Scheme in April 1995. The receiving scheme would have used part of the CETV attributable to Mr N's excess over GMP to cover the shortfall.

9.6. HMRC records showed that the HSBC (HBOS) Scheme was responsible for paying this GMP only because the Assistant Secretary (Membership) of Bradford & Bingley Pensions Limited had incorrectly notified HMRC in April 1995 of a change in responsibility paying this GMP liability.

9.7. It should still be possible for the Trustee to determine the service credit available to Mr N by asking: (a) the Clydesdale Scheme actuary to calculate the CETV of Mr N's deferred pension from the Clydesdale Scheme as at the date of transfer in October 1986; and (b) the Bradford & Bingley Scheme actuary (**the Scheme actuary**) to calculate the resulting service credit available from this CETV.

10. Deloitte informed the Adjudicator on 17 November 2021 that the Clydesdale Scheme actuary had said that he was unable to calculate Mr N's CETV because:-

10.1. There was a lack of clarity over the appropriate financial/mortality assumptions and methodology to use at the calculation date in October 1986.

10.2. The cost to produce a heavily caveated figure would be very expensive and disproportionate in Mr N's case.

11. The Adjudicator was dissatisfied with this reply and informed Deloitte that his opinion of Mr N's complaint had not changed.

12. On 10 December 2021, Deloitte notified the Adjudicator that the Trustee had asked the Scheme actuary to investigate whether he could: (a) carry out the calculation requested of the Clydesdale Scheme actuary, with caveats around the calculation methodology and assumptions; and (b) determine the service credit in a way that would be fair to Mr N.

13. Deloitte provided the Adjudicator with details of the Scheme actuary's calculations of Mr N's service credit in an e-mail dated 18 January 2022 as follows:

> ”**Transfer-out calculation**
>
> Revaluing XS*: revaluing pension x S52a** x transfer factor (revaluing pension)
>
> 142.70 x 2.705 x 0.9655 = 372.69
>
> Non-revaluing XS: non-revaluing pension x transfer factor (non-revaluing pension)
>
> 1,021.44 x 1.0543 = 1,076.90
>
> Total = 372.69 + 1,076.90 = 1,449.59
>
> **Transfer-in calculation: Service credit**
>
> Transfer value / (1/60 x projected salary@60 x transfer factor) = 1,449.59 / (1/60 x 8,146 x 1.0625^33 x 0.9655) = 1 year 6 months
>
> **Value for money underpin**
>
> Transfer value / transfer factor (non-revaluing) = 1,449.59 / 1.0543 = 1,374.93 payable from age 60.”
>
> *XS = excess
>
> **S52a = section 52a orders issued each year specifying the rate of increase to be applied to excess over GMP benefits during the deferment period from DOL.

14. Deloitte said that:

> “The CETV from the Clydesdale Scheme has been calculated by the Scheme actuary using various assumptions regarding the factors that would have applied in 1986 and is based on our understanding of Mr N's benefits under the Clydesdale Scheme…given the passage of time, it is not possible to calculate this amount exactly, but the Scheme actuary is comfortable that the estimate is reasonable, based on all the information available.
>
> In relation to the calculation of the resulting service credit in the Bradford & Bingley Scheme, the Scheme actuary has used the transfer-in calculation model that appears to have been used…since around 1997. The Scheme actuary does not have any information to indicate the exact transfer-in

calculation model that applied in 1986 but, again, is comfortable that it would be reasonable to use this method for the purposes of these calculations.

The service credit calculated in the Bradford & Bingley Scheme assumes that the member stays in service until age 60 and assumes salary growth during that time of 6.25% per annum.

Mr N's salary actually grew by more than the assumed salary growth assumption, but he left service before age 60. As at the DOL the Bradford & Bingley Scheme, the deferred pension would have been calculated as follows: 1.5 / 60 x 19,090 = £477.25 per annum at 17 July 1992.

This pension would then revalue up to age 60 in line with statutory revaluation orders. Therefore, at age 60, the pension in respect of the service credit would have been £915.37 per annum.

Under the Bradford & Bingley Scheme, a "Value for Money" underpin applies in respect of transfers-in…the purpose of this is to ensure that members get reasonable value from their transfer-in if they were to leave the Bradford & Bingley Scheme before age 60 (as is the case in respect of Mr N). The Scheme actuary is of the view that the Value for Money underpin would apply in respect of Mr N's deemed transfer in 1986. This would result in a figure only slightly lower than the previously calculated figure of £1,407.44 per annum from age 60. Therefore, the Scheme actuary is comfortable that a deferred pension of £1,407.44 p.a. is a reasonable assessment of Mr N's deferred benefit in the Bradford & Bingley Scheme."

15. Deloitte subsequently told the Adjudicator that the Scheme actuary had:

    15.1. used the prescribed valuation basis for the Minimum Funding Requirement (**MFR**) which came into force on 6 April 1997, as detailed in "GN 27: Retirement Benefits Schemes – MFR" in its calculations; and

    15.2. complied with "GN 11: Retirement Benefits Schemes – Transfer Values" when calculating Mr N's service credit in the Bradford & Bingley Scheme.

16. The Adjudicator informed Deloitte that:-

    16.1. In accordance with the MFR regulations, the long term financial assumption for the rate of statutory revaluation for deferred benefits was 4% per annum.

    16.2. It appeared that the Scheme Actuary had used an actual S52a factor which would not have been available back in October 1986 to calculate Mr N's service credit. The appropriate S52a factor calculated using the MFR financial assumption for the rate of statutory revaluation was larger.

    16.3. It was still his opinion that the Trustee should not have excluded Mr N's GMP of £163.80 per annum accrued in the Clydesdale Scheme in its calculations.

17. Deloitte responded in its letter dated 10 March 2002 to the Adjudicator as follows:-

17.1. The Trustee had correctly reconstructed the transfer of Mr N's pension rights from the Clydesdale Scheme and calculated the deferred pension available to Mr N in the Bradford & Bingley Scheme in accordance with the Deputy Pensions Ombudsman's directions.

17.2. If the Trustee is required to recalculate Mr N's benefits in the manner suggested by the Adjudicator, then it would require a fresh Determination from me.

17.3. For illustrative purposes only, if the Scheme actuary had included the GMP of £163.80 per annum in the calculation of the CETV available to Mr N from the Clydesdale Scheme, the resulting service credit in the Bradford & Bingley Scheme would be 3 years and 5 months.

17.4. The revised Value for Money underpin would then be a pension of £2,688.42 per annum payable from age 60.

17.5. The Scheme actuary allowed for actual revaluation orders which had applied up to September 2018 in his calculation of the S52a factor. If the MFR assumption for the rate of statutory revaluation had been used instead, Mr N's service credit and the Value for Money underpin would be 1 year and 7 months and a pension of £1,479.87 per annum payable from age 60 respectively.

18. In his e-mail dated 6 April 2022 to the Adjudicator, Mr N requested that his backdated pension payments from the Scheme be treated as "compensation for lost benefits" and not as income. He said that the cumulative amount of these payments would disproportionately affect his tax position, taking him into the next tax bracket.

19. The complaint was considered by one of our Adjudicators who agreed with Mr N that it should be upheld, and further action was required by the Trustee. The Adjudicator's findings are summarised in paragraphs 9 and 16 above.

20. As the Trustee was not prepared to recalculate Mr N's service credit from the Bradford & Bingley Scheme in the way suggested by the Adjudicator the complaint was passed to me to consider.

Conclusions

21. I have carefully examined the Trustee's explanation on how it originally calculated the deferred pension and retirement options available to Mr N from the Bradford & Bingley Scheme. I find that its approach did not comply with the Deputy Pensions Ombudsman's directions, for essentially the reasons given by the Adjudicator.

22. I consider that the Trustee satisfactorily reconstructed Mr N's deferred pension at DOL the Clydesdale Scheme based on the limited information available. However, in order for the Trustee to determine the deferred pension available to Mr N following a transfer of these pension rights into the Bradford & Bingley Scheme, it would have had to calculate a service credit for him beforehand.

23. The benefits which the Trustee granted Mr N in the Bradford & Bingley Scheme, as detailed in Deloitte's letter dated 6 July 2020, was the excess over GMP element of the deferred pension available from the Clydesdale Scheme as at 28 March 1986, revalued during deferment to his 60th birthday in September 2018.

24. I do not consider that the deferred pension available to Mr N at DOL the Clydesdale Bank, irrespective of whether the GMP of £163.80 per annum is taken into account, represents his additional deferred pension from the Bradford & Bingley Scheme. This can only be calculated from Mr N's service credit and his final pensionable salary at DOL the Bradford & Bingley Scheme on 17 July 1992 of £19,090 per annum.

25. Consequently, I find that the Trustee's failure to calculate this service credit and use it to determine Mr N's retirement options from the Bradford & Bingley Scheme constitutes maladministration on its part.

26. I note that the Trustee subsequently did try to put matters right for Mr N by asking the Scheme Actuary to calculate the service credit available to him from the Bradford & Bingley Scheme in a way that would be fair, as recommended by the Adjudicator.

27. It is unfortunate, but not surprising, that the methods and assumptions used back in October 1986 for transfer calculations in the Clydesdale Scheme and the Bradford & Bingley Scheme are no longer readily available.

28. The Scheme actuary decided to select the prescribed method and assumptions of calculating the MFR that came into force in April 1997 as a proxy:

    28.1. to calculate the CETV of Mr N's Clydesdale deferred pension at the date of transfer in October 1986; and

    28.2. to determine the service credit available to Mr N in the Bradford & Bingley Scheme with this CETV.

29. I see no reason to doubt the Scheme actuary's professional view that it was reasonable to use this methodology for the purposes of these calculations.

30. However, I agree with the Adjudicator that it was incorrect for the Trustee and the Scheme actuary to: (a) disregard Mr N's Clydesdale Scheme GMP of £163.80 per annum; and (b) use an actual S52a factor which would not have been available in October 1986 when calculating Mr N's service credit.

31. The Trustee accepts that:-

    31.1. The CETV of £25,476.58 which was paid to the HSBC Pension Scheme in April 1995 only represented the cash equivalent of Mr N's deferred pension accrued directly in the Bradford & Bingley Scheme.

    31.2. No allowance was made for the cash equivalent of the transferred in benefits, including GMP, from the Clydesdale Scheme in the calculation of this CETV.

32. Despite this, the Trustee believes that it is no longer responsible for paying this GMP because it is already being paid to Mr N in the HBOS Scheme.

33. However, HMRC records show that payment of Mr N's Clydesdale Scheme GMP is the responsibility of the HBOS Scheme only because the Trustee, through the Assistant Secretary (Membership) of Bradford & Bingley Pensions Limited, had incorrectly notified HMRC in April 1995 that it had been transferred to the HSBC Pension Scheme when, in fact, it had not.

34. Because of this mistake, the HSBC (HBOS) Scheme would presumably have used part of the CETV attributable to the excess over GMP benefits that Mr N accrued in the Bradford & Bingley Scheme to cover the cash equivalent of the Clydesdale Scheme GMP which was not paid. As a result, the excess over GMP benefits available to Mr N from the HBOS Scheme would be lower than they should have been.

35. What is evident is that the cash equivalent of Mr N's Clydesdale Scheme GMP was not paid into the HSBC Pension Scheme, and this represents an actual loss to Mr N for which he should be compensated by the Trustee. I therefore consider that the Scheme actuary should allow for this GMP in the calculation of Mr N's service credit which can then be used to provide additional pension in excess of GMP for him in the Bradford & Bingley Scheme.

36. The Scheme actuary chose the method and assumptions for calculating the MFR as a proxy to those used for transfer calculations in the Clydesdale Scheme and the Bradford & Bingley Scheme in October 1986. According to the MFR regulations, the long term financial assumption for the rate of statutory revaluation for deferred benefits was 4% per annum. In order to perform the service credit calculation in 1986, I find that the Scheme actuary should have used this assumption to calculate the S52a factor rather than the actual one which would not have been available until some 32 years after the calculation date.

37. I uphold Mr N's complaint and make the appropriate directions below.

Directions

38. Within 28 days of the date of this Determination, the Trustee, with the assistance of the Scheme actuary, shall:-

    38.1. Recalculate the service credit available to Mr N in the Bradford & Bingley Scheme from the CETV of his Clydesdale Scheme deferred pension of £1,327.94 per annum, including the GMP of £163.80 per annum.

    38.2. Use the method and assumptions of calculating the MFR in its calculations which stipulate that the long term financial assumption for the rate of statutory revaluation for deferred benefits is 4% per annum.

39. If Mr N decides to receive the retirement benefits available to him from the Bradford & Bingley Scheme backdated to his 60th birthday, the Trustee should pay him simple

interest for late payment of his benefits calculated at the base rate for the time being quoted by the Bank of England. If the payment of this sum results in an additional tax liability on Mr N, then the Trustee should pay Mr N the equivalent amount.

Anthony Arter

Pensions Ombudsman
23 May 2022