

Ombudsman's Determination

Applicant	Mr N
Scheme	The Pension Protection Fund (PPF)
Respondent	The Board of the Pension Protection Fund (the Board)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Board.

Complaint summary

2. Mr N's complaint is that the PPF confirmed in writing and verbally his forecasted PPF compensation at age 55, but later told him that the amount was incorrect.

Background information, including submissions from the parties

3. 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.
4. Mr N is a former member of the Visteon UK Pension Plan (the **Plan**). The Plan entered a PPF assessment period on 31 March 2009 (the **assessment date**). At that time Mr N was an active member of the Plan. The Plan transferred to the PPF on 14 February 2012.
5. Mr N has two tranches of PPF compensation, respectively with a normal pension age of 60 and 65. Mr N indicated that he wished to retire at age 55 (20 January 2022). So, his PPF compensation is 90% of his accrued pension on the assessment date, revalued by inflation capped at 5% between the assessment date and the early retirement date, with an early retirement factor reflecting the period between the early retirement date and the NPA applicable to each tranche.
6. On 16 June 2020, Mr N complained to the PPF that no inflationary increases had been applied to his PPF compensation.
7. On 30 June 2020, the PPF issued its stage one response. The PPF explained that the compensation forecast and the retirement options on its website and on-line benefit modeller provided an estimated value of the PPF compensation payable on retirement. In Mr N's case, the forecast/benefit modeller calculations revalued both

parts of his PPF compensation and then applied the relevant early retirement factors for taking the two parts of his benefits respectively five and 10 years early.

8. The stage one response detailed the two forecasts on Mr N's record dated 14 November 2017 and 27 January 2020, which showed the total compensation and the applicable revaluation factors that had been applied. Namely:

Date of Forecast	Total Yearly Compensation	Revaluation Factor
14 November 2017	£9839.28	1.226421
27 January 2020	£9741.12	1.278258

9. Mr N reiterated his complaint that inflationary increases had not been applied to his PPF compensation. He submitted screenshots from the PPF's on-line benefit modeller, which showed forecasts for retirement at age 55 calculated in 2017 (£9,740 per year) and 2020 (£9,750 per year). Mr N requested confirmation of the inflationary increases that had been applied to his PPF compensation since the assessment date.
10. On 14 July 2020, Mr N received a further forecast for retirement at age 55 of £9,940 per year.
11. The next day, the PPF wrote to Mr N to explain in further detail the application of revaluation and early retirement factors to the forecasts of his PPF compensation.
12. On 10 August 2020, the PPF sent Mr N a table setting out the revaluation applied to his PPF compensation on each birthday since the assessment date to age 55 (the **August 2020 letter**). But, due to a formatting error, the table missed off a column detailing the PPF compensation after the application of the 90% restriction and early retirement factors.
13. On 19 August 2020, Mr N telephoned the PPF querying whether the forecasted PPF compensation of £13,024 per year was correct, as this was higher than the figure provided by the benefit modeller. The following day, Mr N emailed the PPF the same query. Receiving no reply, Mr N chased the matter by calling the PPF's Contact Centre on 25 August 2020. He was informed that the forecasted PPF compensation of £13,024 per year was correct. But, later that same day, an agent for the PPF's Member Services Team called Mr N to explain the correct forecasted compensation at age 55 was £9,949 per year.
14. Mr N complained to the PPF about the "shambolic" way he had been treated and misadvised. He said the agent was "rude". He said he wanted to know why his PPF compensation had not received any inflationary increases and said that he was now

“more confused than ever”. He asked the PPF to honour the entitlement of £13,024 that had been initially confirmed to him on 25 August 2020.

15. On 9 September 2020, the PPF sent Mr N its stage one response. The PPF apologised for its provision of incomplete information on 10 August 2020 and for the distress and inconvenience this had caused Mr N. It said details surrounding the telephone call with the agent on 25 August 2020 had been passed to its Quality and Assurance Team to review and feedback would be provided internally. The PPF again set out the increases that had been applied to Mr N’s PPF compensation since the assessment date and provided a forecast of Mr N’s PPF compensation at age 55 of £9,949.
16. In October 2020, Mr N requested that his complaint be reconsidered under stage two.
17. On 8 October 2020, the PPF’s Director of Member Services partially upheld Mr N’s complaint. She confirmed that Mr N’s PPF compensation had received revaluation increases since the assessment date and that it had calculated that the estimated PPF compensation due to him at age 55 was £9,949. She acknowledged that the August 2020 letter was potentially confusing and incomplete, and that Mr N had initially been given incorrect information on 25 August 2020. She accepted that the service provided was below the level that Mr N should have received and said his comments had been shared with the relevant teams to ensure that similar errors did not occur in the future. She noted Mr N’s comment that he could have potentially planned his retirement based on the misleading information if he had not queried the figures. She said while she understood the concern and inconvenience the matter had caused him, the mistake had been corrected as soon as the PPF became aware of it. The PPF could only pay Mr N the benefits that he was entitled to in line with the PPF’s governing legislation.
18. On 11 October 2020, Mr N referred his complaint to stage three.
19. On 26 October 2020, the Reconsideration Committee (the **Committee**) issued its stage three decision upholding the stage two decision. The Chair of the Committee said as Mr N had not taken any action in reliance on the 10 August 2020 letter, he had not suffered any injustice. However, Mr N had not received the level of service to which the PPF aspired. The Committee apologised and offered Mr N a consolatory payment of £250.
20. Mr N did not confirm his acceptance of the payment.
21. On 18 February 2021, Mr N emailed the PPF querying why a forecast he had obtained from the retirement modeller for retirement at age 55 had reduced from £9,990 per year in the previous week to £9,970 per year currently. Mr N repeated his request for confirmation of the inflationary increases that had been applied to his PPF compensation since the assessment date.
22. The PPF sent a stage one decision on 5 March 2021. The PPF explained that the benefit modeller used the Consumer Price Index (**CPI**) figure three months prior to

the month the forecast was produced. Normally, the PPF updated the CPI figure on the first working day of the month, but in February 2021 it was updated on 17 February 2021. So, the quote of £9,990 per year was based on the October 2021 CPI figure (109.1), while the quote of £9,970 per year used the November 2021 CPI figure (108.9). As the October 2021 CPI figure was higher than the November 2021 CPI figure, this explained the lower quoted amount. The PPF restated the revaluation increases that had been applied to Mr N's PPF compensation since the assessment date and provided additional information about the increases.

23. On 16 March 2021, Mr N requested that his complaint be reconsidered under stage two.
24. On 23 March 2021, the PPF wrote to Mr N that the grounds of his complaint were the same as his stage two and three complaints of October 2020, so the next stage was for him to take his complaint to The PPF Ombudsman (PPFO).

Mr N's position

25. Mr N says:-

- When he called the PPF on 25 August 2020 he was assured that his forecasted PPF compensation at age 55 of £13,024 was correct. He relayed this news to his wife and called his parents, and they were happy that they could now plan their early retirement.
- Later the same day, he received a call from a PPF employee who stated that the August 2020 letter was wrong. He was extremely shocked and stressed and, in the end, he put the phone down.
- The information on the PPF website is still incorrect and misleading and must be confusing many other PPF members trying to plan for their retirement.
- The length of time that this has dragged on shows that the PPF is a shambles. He believes the information the PPF provides is not fit for purpose and very misleading.

The Board's position

26. The Board says:-

- To pass the statutory test for maladministration, Mr N must show not only that there has been maladministration, but he has suffered injustice as a result¹
- It does not consider that Mr N sustained injustice resulting from maladministration in connection with an act or omission by it.
- It acknowledges that due to a formatting error the August 2020 letter did not indicate that Mr N's PPF compensation was at 100%, before the application of the

¹ Section 208 (2) of the Pensions Act 2004.

90% restriction and early retirement factors. It also acknowledges that when Mr N called on 25 August 2020 querying the forecast that he would receive PPF compensation of £13,024 per year it confirmed that was correct. But later that same day it corrected the mistake and confirmed to Mr N the correct PPF compensation forecast of £9,949 per year.

- As Mr N did not take any action in reliance on the August 2020 letter, he has not suffered any loss. Mr N was not able to take his pension until age 55, so he could not have elected to take early retirement based on the August 2020 letter.
- It apologises for the distress and inconvenience caused to Mr N by the August 2020 letter and in recognition of this offered Mr N £250.
- Mr N considers that the PPF employee who called him on 25 August 2020 was “extremely rude”. As confirmed to Mr N, details surrounding the telephone call have been passed to the PPF’s Quality and Assurance team to review, and feedback had been provided internally.
- Mr N considers that the forecasts provided by the benefit modeller do not include inflationary increases, although the website confirms that PPF compensation will receive inflationary increases during deferment. The PPF website includes a link to its ‘Welcome to the Pension Protection Fund’ booklet, which says:

“Before your retirement, your entitlement will increase each year in line with inflation, up to a limit set by government. But if inflation falls, your entitlement won’t change.”

The PPF Member website explains how compensation increases before retirement as:

“Your compensation will increase each year until you reach your Normal Pension Age (or Early Retirement Date if you retire early), and the increase will be in line with inflation, up to a limit set by the government. But if inflation falls below zero, your compensation will not change.

...

There are limits to the increases you’re entitled to as a deferred member. For compensation that’s derived from pensionable service before 6 April 2009, the amount of revaluation is capped at 5 per cent per year compound. The amount of revaluation for compensation related to service on and after that date won’t exceed 2.5 per cent per year compound.”

The forecasts produced by the benefit modeller include revaluation increases applicable up until the calculation date. Mr N has been provided with a breakdown of the revaluation increases applied to his PPF compensation on several occasions to evidence this is the case. So, it does not consider the explanation of revaluation increases provided on its website or the forecasts produced by the benefit modeller are “incorrect and misleading”.

- Since the outset of Mr N's complaint, he has been informed of the way that revaluation applies and that his PPF compensation is increasing. The PPF has responded promptly at every stage of the complaints process.

Adjudicator's Opinion

27. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Board. The Adjudicator's findings are set out in paragraphs 28 to 39 below.
28. The PPF's provision of incorrect information to Mr N amounted to maladministration.
29. The basic principle for negligent misstatement (in the absence of any additional legal claim) is that a scheme is not bound to follow incorrect information. A member is only entitled to receive the benefits provided for under the scheme; that is, those based on correct information accurately reflecting the scheme's regulations/rules.
30. For Mr N's claim to succeed certain circumstances had to be satisfied. Namely:-
 - The PPF had a duty of care, and it was reasonably foreseeable that Mr N would rely on the information.
 - Mr N must have acted in good faith; that is, he must not have been aware of the error. In cases where it was obvious that something was amiss or it would have been possible for the claimant to have discovered the mistake by making reasonable enquiries, a claim is unlikely to succeed.
 - There must be a causal link between the incorrect information and the loss claimed; that is, Mr N must have taken action he would not otherwise have done but for the incorrect information.
 - It must be reasonable for Mr N to have relied on the information provided.
 - Mr N has acted to his detriment in reliance on the incorrect information.
31. The fact that Mr N queried the forecasted PPF compensation of £13,024 suggested that he was aware that an error had been made. Nonetheless, later on the same day that Mr N was informed that the amount was correct, the mistake was explained and the correct PPF compensation confirmed to him. Moreover, Mr N took no action to his detriment on reliance of the incorrect information. So, the Adjudicator's view was that a claim for negligent misstatement could not succeed.
32. Although, a scheme could not usually be bound by incorrect information, there were circumstances where this might not be the case. This was where the PPF was estopped from going back on the incorrect information or where the information had given rise to a contract.

33. The effect of estoppel was that the PPF would be required to comply with the incorrect information and Mr N would be entitled to more than he was strictly entitled to receive under the scheme. The courts had said that, for the party in question to go back on the incorrect information, must be considered “unconscionable”; that was, shockingly or extremely unfair.
34. The first thing to consider was whether there was an unambiguous promise that Mr N would receive the higher amount. The Adjudicator did not consider such a promise could be said to have been made. The PPF compensation of £13,024 was a forecast and again, while the amount was confirmed to be correct, the same day the mistake was explained and the correct PPF compensation was confirmed to Mr N.
35. For a contract to exist, there must be an offer, acceptance, consideration and the intention to enter into legal relations. The Adjudicator did not consider that the August 2020 letter was an offer. Also, it could not be said that Mr N had given consideration; that was, something given in return for a promised benefit. Finally, there was no intention to enter into legal relations on the basis of the August 2020 letter. There was no contract requiring the PPF to pay Mr N the PPF compensation of £13,024 at age 55.
36. Mr N said the information on the PPF website was incorrect and misleading. But the PPF had explained and provided Mr N with the revaluation increases that had been applied to his PPF compensation since the assessment date.
37. Mr N said the PPF employee who notified him of the mistake was “extremely rude”. The PPF had apologised to Mr N and had given its assurance that the matter had been dealt with internally.
38. Mr N said the time the matter had taken showed that the PPF was a shambles. The Adjudicator’s view was that the PPF had responded to each stage of his complaint in a timely manner.
39. The Adjudicator noted that the Board had offered Mr N £250 for the poor service he had received. Given the short period of time it took the PPF to rectify its error, the Adjudicator’s view was that it did not merit my minimum award of £500 for significant distress and inconvenience
40. Mr N did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr N has provided no further comments and I agree with the Adjudicator’s Opinion.

Ombudsman’s decision

41. For the reasons given by the Adjudicator, I agree that the conditions for a successful claim for either negligent misstatement, or estoppel or contract are not met
42. For me to uphold a complaint, it is not simply the case that I must identify maladministration; I must also be satisfied that the individual has, as a result,

sustained injustice. Injustice may be financial and/or non-financial. The provision of incorrect information by the PPF clearly amounts to maladministration. But this was quickly corrected, and Mr N took no action in reliance on it.

43. The Board has offered Mr N £250 for its poor service. As the Adjudicator explained my awards for non-financial injustice start at £500 for significant distress and inconvenience. I do not consider that the threshold for an award of £500 is passed. If Mr N now wants to accept the Board's offer of £250, he should contact the PPF directly.

44. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Protection Fund Ombudsman
24 May 2022