

Ombudsman's Determination

Applicant	Ms T
Scheme	IBM Pension Plan (the Scheme)
Respondents	IBM UK Pensions Trust Ltd (the Trustees) and IBM United Kingdom Ltd (the Employer)

Outcome

1. I do not uphold Ms T's complaint and no further action is required by the Trustees or the employer.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms T's complaint is that she and her husband have lost out financially, as a result of relying on incorrect pensions statements for their retirement planning.

Background information, including submissions from the parties

4. Originally, Ms T was a member of the Scheme. Over the years, the Trustees sent her benefits illustrations, showing how much tax-free cash she might receive as follows: -
 - 2010: £132,000.
 - 2011: £136,000.
 - 2014: £145,000.
5. After receiving the 2014 statement, Ms T estimated that she would receive about £140,000 tax-free cash. On the basis of this information, she says her husband decided to retire early. Briefly, this was because the amount of tax-free cash would be enough for him and Ms T to pay off their mortgage by July 2017 and supplement their joint retirement income to the level they wanted.
6. Ms T's husband retired on 31 July 2014.
7. In June 2015, Ms T requested another statement. This showed she could expect to receive £116,000 tax-free cash. She complained to the Trustees saying the reduction had caused her and her husband distress and inconvenience. She said it would also

cause them a financial loss. If the statements had been correct, her husband would have continued working for another 12 months, thereby earning about £32,000 more.

8. Ms T says she and her husband attempted immediately to mitigate their losses. She tried to return to work but was advised against doing so for medical reasons. Ms T's husband tried to return to work but his former employer had replaced him.
9. In August 2015, the Trustees responded to Ms T's complaint under Stage 1 of their Internal Dispute Resolution Procedure (IDRP). The main points are set out below: -
 - They had discovered an error in the calculation of benefits statements for members, like Ms T, on the Disability Plan. They acknowledged they had sent incorrect statements in 2010, 2011 and 2014.
 - However, the value of her overall benefits was unaffected by this error, and they could only pay her the correct benefits. So they could not pay her the incorrect amount of tax-free cash shown on the statements.
 - However, in recognition of the distress and inconvenience caused, they offered her £1,000 compensation.
10. Ms T rejected the Trustees' offer. Briefly, she said: -
 - It was reasonable for her to believe that her entitlement to tax-free cash was increasing every year.
 - She had changed her position, as she and her husband had decided he would retire on the basis that she would receive about £140,000 tax-free cash.
 - There was no possibility of mitigating their losses. They had tried and failed to return to their jobs.
11. After corresponding further about Ms T's husband's job and salary, the Trustees sent their Stage 2 IDRP response in which they referred to two cases decided by this Office which they considered relevant to Ms T's complaint, as follows: -
 - In 'Jackson' and 'Brown', the applicants had claimed financial loss as a result of incorrect statements. The Ombudsman upheld the complaints in part; but, he did not agree compensation should be paid as a result of decisions made by the members' spouses. It was not foreseeable that the spouses would retire early, or change their work patterns, on the basis of this information.
 - However, in recognition of the distress and inconvenience this had caused Ms T, the Trustees agreed to increase their offer of compensation to £3,000.
12. In October 2015, Ms T responded to the Trustees. The main points were: -

- She went into some detail about the income her husband would have received, had he remained in work, and how they would have added it to the tax-free cash to meet their joint financial goals.
- She did not agree her husband's loss was 'too remote'. On the contrary, their finances had been interdependent since an accident at work some years ago had left her receiving a lower level of income under the Disability Plan.
- It was reasonable for her to rely on the figures the Trustees had provided. She had been prudent in not assuming that she would receive the full amount. And they now found themselves unable to pay off their mortgage and supplement their joint retirement income to the level they wanted.

13. Dissatisfied with the Trustees' response, Ms T referred her complaint to this Office.

Adjudicator's Opinion

14. Ms T's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees or the Employer. The Adjudicator's findings are summarised briefly below: -

- The provision of incorrect information to Ms T was maladministration by the Trustees, but that did not give her the right to receive those benefits as she was only entitled to the correct benefits under the Scheme.
- In such cases, the Ombudsman would seek to put Ms T back into the position she would be in now had the maladministration not occurred. Ms T says she relied on the incorrect statements in her retirement planning.
- Ms T said she and her husband relied on the information to their detriment as they agreed he would retire early. The Adjudicator thought that the complaint turned on the fact it was Mr T, not Ms T, who retired early. And the Trustees could not have known that Mr T would retire early. In addition, whilst they were responsible for Mrs T with accurate information, this did not apply to Mr T.
- The Ombudsman had followed this approach in Brown and Jackson. Whilst the respondents had given incorrect information to the members, it was the members' spouses who had suffered the losses, so the losses were too remote, meaning the respondents did not have to make good those losses.
- There was no evidence that Ms T had told the Trustees that Mr T would retire early.
- If the Employer had informed the Trustees Ms T was on the Disability Plan, the Trustees would have discovered (1) that her benefits under the plan were worth less than her husband's salary (2) that she was thus vulnerable and financially reliant on him and (3) that she would be unable to defer her pension

beyond 65. However, had the Trustees known all that, it would have been no more foreseeable that her husband would retire early.

- The Trustees' offer of £3,000 was fair in the circumstances, being as high as this Office would normally recommend.

15. Ms T did not provide any further evidence in support of her case, however she asked the Ombudsman to make a determination, and asked that particular attention be paid to financial vulnerability and dependence on her husband.

Ombudsman's decision

16. I have considered carefully what Ms T has said about her financial dependence. I do not doubt she was dependent. However, the Trustees did not know about Mr T's financial situation or his retirement plans and I do not consider that they could have foreseen that the information they gave to Ms T would be relied upon by her to advise Mr T to retire early.

17. Therefore, I do not uphold Ms T's complaint.

Karen Johnston

Deputy Pensions Ombudsman
20 March 2017