

Ombudsman's Determination

Applicant	Mr D
Scheme	Napier Brown Retirement Benefits Plan (the Plan)
Respondents	The Trustees of the Napier Brown Retirement Benefits Plan (the Trustees)

Outcome

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

Complaint summary

3. Mr D has complained he is not receiving the same benefits that were quoted in statement received in 1991. Mr D is unhappy that the annual pension he is now receiving is lower, and that the benefits he transferred from a previous scheme have not been increased.

Background information, including submissions from the parties

4. Mr D was a member of the Plan from 01 November 1989 to 17 January 1992, accruing two years and two months service. In April 1991 Mr D was sent a benefits statement (**the 1991 statement**), which said he would receive an annual pension of £25,817.60 on retirement. The statement said it was based on pensionable service of 34 years, which assumed he would be a contributing member of the scheme until his retirement date of 21 November 2023. The statement also stated that in addition to his Plan pension he would receive an annual pension of £7,515.54, transferred from his previous employer's scheme.
5. Mr D started receiving his pension benefits early in 2015, which were significantly lower than those stated on the 1991 statement. Mr D is unhappy as he believes the statement should be honoured in full.
6. The Trustees have said that as Mr D left the Plan after two years and two months, he was not entitled to the benefits on the 1991 statement as these are based on 34 years' service. As such Mr D is in receipt of his correct benefits under the Plan Rules.

7. Mr D believes the pension transferred from his previous employer has been frozen, as no increases have been applied to the amount of £7,515.54. The Trustees have said the terms of the transfer from his previous employer did not provide for additional increases. They have said that based on a transfer value, the Trustees calculated the fixed amount of pension they would agree to provide to Mr D on his retirement, which took in to account inflationary increases. In order for the transfer to have proceeded, Mr D would have needed to agree to this amount.
8. Due to the passage of time, there is unfortunately very little information available on the terms of the transfer. The Trustees have supplied screen shots of the information they hold on the system. This shows that on 11 December 1989, Napier Brown received a transfer of £4,272.57 from Tesco, and that Mr D has a “PUP” (paid up pension) of £7,515.54 as a result.
9. During the course of the investigation Mr D has also raised additional arguments which he would like addressed. The first is that he believes the word of the Trustees and his employer is being taken over his word, as his written testimony is not being followed. The second complaint is that Mr D would like access to the Pensions Ombudsman legal team for advice on his complaint, which has been denied.

Adjudicator’s Opinion

10. Mr D’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator’s findings are summarised briefly below.
 - Mr D is only entitled to the benefits he has accrued under the Plan Rules. The 1991 statement was based on Mr D working until retirement and accruing 34 years’ service. As Mr D only accrued 2 years and 2 months service, he is not entitled to the benefits quoted, and he is currently in receipt of his correct entitlement.
 - The 1991 statement is not misleading as it stated clearly the pension benefits were based on 34 years’ service. It was not reasonable for Mr D to have believed he would receive the same benefits after just two years and two months service.
 - There is little information available from either Mr D or the Trustees on the agreed terms of the transfer, but the transfer would have needed agreement from Mr D in order to proceed. Therefore, based on the screenshot supplied by the Trustees; the 1991 statement; and the absence of any evidence of an agreement that Mr D’s pension would receive increases, it appears most likely that a fixed pension sum was agreed. Therefore, Mr D is in receipt of the correct amount of additional pension.
 - Neither Mr D’s testimony, nor his employers, can be taken at face value. Both have been considered in the context of the available evidence. Therefore, even though Mr D has said his employer gave him verbal assurances, there is no

evidence to support that an agreement was reached with the Trustees to provide benefits above those provided for in the Plan Rules. As such the Trustees must administer Mr D's benefits in accordance with those Rules.

- The Pensions Ombudsman legal team do not provide personal legal advice to complaint parties. If Mr D is unhappy with this, he must raise a separate service complaint as this point does not concern the merits of this complaint.

11. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr D for completeness.

Ombudsman's decision

12. Mr D is only entitled to receive the benefits he has accrued under the Plan Rules. In this case, Mr D left the Plan with two years and two months service accrued, which the Trustees have used to calculate his benefits. Therefore, I am satisfied Mr D is in receipt of his correct benefits.
13. The 1991 statement did show a higher pension amount, but this was based on Mr D working with his employer and contributing to the Plan for 34 years until retirement. The 1991 statement is not incorrect or misleading as it clearly states this, but as Mr D did not work for this length of time it is clear this projection does not apply.
14. Mr D transferred a pension from his previous employer to the Plan. Under the Plan Rules, the Trustees determined the benefits Mr D was entitled to based on the transfer value provided by Tesco. Mr D he was given an additional fixed annual pension of £7,515.54 payable at his retirement date. The Plan Actuary calculated this based on projected inflationary increases and other factors, to establish the pension the transfer value would give Mr D. As the transfer proceeded and no complaint was raised on receipt of the 1991 statement, it appears Mr D consented to this.
15. This is a difficult case due to the lack of evidence from the point of transfer, so I have to reach an outcome based on the available evidence. I do not believe there is a reason to doubt that at the time of the transfer Mr D accepted the fixed pension amount. The Trustees have supplied their internal records to show a fixed pension sum recorded. Mr D is unable to produce any information or evidence that he was told further increases would be applied. Although, he has said that he was given verbal assurances during the recruitment process, there is no evidence of an agreement with the Trustees supporting his testimony. As such I am satisfied that Mr D is receipt of the correct amount of fixed pension, as agreed at the point of transfer.

16. Mr D has said the Trustees must provide the calculations for the additional pension to show they included increases. This information was requested, however, due to the passage of time, the Trustees no longer hold this data, which is not unreasonable.
17. Mr D believes the 10 years' service he accrued with his previous employer has been overlooked, and he believes that 12 years and 2 months service should be considered when calculating his benefits rather than 2 years and 2 months. The 10 years' service Mr D accrued with his previous employer entitled him to benefits in their scheme. When Mr D opted to transfer his pension, he agreed to a transfer value that was given by his previous scheme in lieu of the benefits his service provided. If Mr D had wanted to retain the 10 years' service, he did not have to proceed with the transfer. As Mr D opted to proceed, the transfer value bought an amount of pension in the Plan, not service, which Mr D agreed to. Mr D has still received an equivalent benefit in respect of this service and the contributions made; the transfer value bought him an additional annual pension of £7,515.54 in the Plan.
18. Mr D has said the Trustees have declined his requests to meet with Mr Ridgewell, who Mr D says recruited him. The Trustees have dealt with Mr D's complaint in accordance with the Plan Rules and relevant legislation, neither of which give Mr D a right to meetings with Trustees. I have, reviewed Mr D's complaint to ensure it was dealt with fairly, and I believe the Trustees have taken a reasonable approach. I do not think there was a necessity for Mr D to meet with Mr Ridgewell, and as such the Trustees are acting reasonably in declining this request.
19. Mr D disagrees that the Trustees and his employer are two separate entities. Whilst there are employer representatives on the board of Trustees, they are legally two separate entities. So, for Mr D's employer to provide increased pension benefits that go beyond those provided for in the Plan Rules, this would need to be agreed and documented with the Trustees. Mr D's employer did not have the authority to promise Mr D increased benefits without the Trustees consent. Also, the employer would have been required to meet the additional costs. The Trustees are bound to administer Mr D's benefits in accordance with the Plan Rules.
20. It appears that Mr D's frustration stems from his belief that he was promised certain benefits verbally, which are now being reneged on. Unfortunately, I think this situation may be due to Mr D's misunderstanding of the assurances he was given. Mr D's pension from his previous employer has been protected and his service and contributions taken into consideration, on being provided with a fixed pension amount. The Trustees have said he is likely to have further benefitted from this, as in 1991 the projections of annual inflation were much higher (usually 5% per annum) than has been borne out. Further, Mr D is being provided with a comparatively good pension based on his two years and two months service compared with other occupational pensions.

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21. Therefore, I do not uphold Mr D's complaint.

Anthony Arter

Pensions Ombudsman

23 January 2017