

## Ombudsman's Determination

Applicant	Mrs N
Scheme	University of Edinburgh Staff Benefits Scheme ( <b>the Scheme</b> )
Respondents	Trustees of the University of Edinburgh Staff Benefits Scheme ( <b>the Trustees</b> ) Hymans Robertson ( <b>the Administrator</b> )

## Outcome

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

## Complaint summary

3. Mrs N's complaint, against the Trustees and the Administrator, is about the incorrect retirement statement she received in July 2015, prior to her retirement in December 2015. Mrs N says she based her decision to retire on the higher lump sum amount stated on the July statement and she has now received less than she expected to receive.

## Background information, including submissions from the parties

4. Mrs N had two sets of benefits from the Scheme - from her previous deferred membership and her recent active membership. Her complaint is in relation to her deferred benefits accrued between 14 September 1998 and 31 July 2005.
5. On 16 July 2015, the Administrator issued a retirement statement to Mrs N, based on a retirement date of 31 October 2015. (Her NRA was 10 October 2015). It said Mrs N could choose an annual pension of £7,382.22 or, a reduced annual pension of £2,379.84 with a lump sum of £47,222.50. It also said 'Please be aware that these figures are estimate only and are in no way guaranteed.' Mrs N returned her retirement options form in August 2015, opting for the second option, with a retirement date of 31 December 2015.

6. Mrs N retired on 31 December 2015. The Administrator issued a revised retirement quotation to Mrs N on 22 January 2016. It said her options were an annual pension of £6,381.90 or a reduced annual pension of £3,849.96 with a lump sum of £25,666.23. The lump sum had reduced by over £21,500 from the July statement. The cover letter accompanying the revised statement said that her benefits had been recalculated due to the change in the retirement date. It had been discovered that the previous statement did not reflect her entitlement from the Scheme. Mrs N was asked to confirm whether she wished to proceed with taking her benefits on the basis of the revised amounts. Mrs N returned her retirement options form asking for the second option but disputing the amounts stated and reserving her rights to pursue the financial discrepancy. She also complained to the Administrator about the lower amounts under the Scheme's internal dispute resolution procedure (**IDRP**).
7. The Trustees issued a stage one IDRP decision on 28 January 2016. They apologised for the error and said they could only pay the benefits that are due and that despite the substantial difference in the lump sum amounts, the Trustees cannot augment the benefits in anyway. Mrs N asked that her complaint be reconsidered under the second stage of the IDRP. She said that she gave extensive consideration to the initial incorrect statement, and based her decision to retire on the amount of the lump sum. She said she would not have retired if she had known that the lump sum would only have been around £26,000. She said the mistake had had an adverse effect on her health since it came to light.
8. In the Trustees' stage two decision, they accepted that the lump sum had been overstated in the July statement. They considered whether Mrs N was entitled to the benefits shown in the incorrect statement and whether she might be entitled to any compensation for the error made. As the incorrect statement did not reflect Mrs N's benefit entitlements under the Scheme, the Trustees concluded that she was not legally entitled to them. In relation to the second question, the Trustees considered that as Mrs N had reached the Scheme's normal retirement age, it was not unusual that she would have retired. Mrs N had not provided any information that she would have remained in work if she had been provided with the correct information, or that she had suffered financially as a result. Further, the Trustees said earlier deferred statements issued to Mrs N had consistently showed the correct level of lump sum so Mrs N ought to have reasonably cast doubt on the figure of £47,000, shown in the incorrect statement. They offered Mrs N £500 compensation. She accepted it but did not agree that it was sufficient in the circumstances.

On 4 May 2016 Mrs N complained to The Pensions Ombudsman. She says that in October 2015 she reached 65 and asked for a retirement quote. She says she 'signed and accepted a quote of a lump sum of £47,222.50.' When she had not received payment by mid-January, she contacted Hyman Robertson who evaded her questions and eventually contacted her to advise they had made an error and the lump sum was £25,666.23. Her position is had she known she would receive a lump sum of around £26,000 instead of £47,000, she would not have left her job and she cannot now be reinstated into her old position.. In considering her financial circumstances, she had

depended on the higher amount in planning to pay off her mortgage and other financial liabilities. Now she will have to keep up mortgage payments for the next two and a half years. Mrs N says this matter is having a severe impact on her life and she is receiving medication for stress and depression. In support, she produced a doctor's letter confirming that she had attended the surgery very stressed on 29 June 2016. She would like to receive the full amount of £47,000 or at least a substantial and realistic amount, far in excess of the £500 she has been offered by the Administrator. She also said had no recollection of receiving earlier quotations from the scheme. This point was repeated in a letter of 29 June 2016 'no previous quotes were received' and a request was made for production of copies.

9. The Trustees maintain that they are legally bound to follow the Scheme's rules in line with pensions legislation. They are not able to pay Mrs N the benefits shown in the incorrect statement as she is not legally entitled to them. The Trustees accept that a mistake occurred and have apologised to Mrs N for the distress and inconvenience caused. The impact of the mistake was recognised by the Trustees and she was offered £500.
10. The Trustees do not consider that Mrs N should receive the incorrectly calculated benefits. They do not believe there is sufficient evidence to show that Mrs N acted in reliance on the incorrect statement, or that she has suffered financial loss as a result of reasonable reliance. They say that Mrs N should have been aware that there was potentially an error in the calculations. They produced copies of the benefit statements issued between 2011 and 2014 which show a steady increase in the lump sum payable from £32,796.42 in 2011 to £33,847.64 in 2014, followed by a jump to £59,628.97 in the quotation issued on 31 October 2015. They say that a phone call took place on 24 June 2015 ie before the incorrect benefit quotation had been issued, in which Mrs N indicated that she wished to retire at her normal retirement date. Their position is that Mrs N had reached normal retirement age and was likely to retire in any event.

## **Adjudicator's Opinion**

11. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees or the Administrator. The Adjudicator's findings are summarised briefly below:
  - The provision of the incorrect retirement quotation statement amounts to maladministration.
  - A finding of maladministration is not enough to establish detrimental reliance. To succeed, it will be necessary to establish that it was reasonable for Mrs N to have relied on the incorrect information and that she suffered a loss as a result.
  - The Trustees took account of the fact that earlier deferred benefit statements issued to Mrs N consistently showed the correct level for the lump sum.

Accordingly, it would have been reasonable for Mrs N to note that the amount of £47,000 was much higher and potentially incorrect. Mrs N disputes ever receiving these previous statements.

- After an extensive search with the previous administrators, copies of the previous statements issued to Mrs N's home address from 2006 to 2015 have been provided. There is no reason to conclude that these were not sent to Mrs N.
  - The information contained in the recent statements (from 2011 - 2015) differed significantly from the retirement statement issued to Mrs N in July 2015. The lump sum amount was noticeably higher and the annual pension amount was lower. Given the fact that the majority of Mrs N's benefits were made up of her deferred benefits, it should have been apparent that the amounts stated in the retirement statement in July 2015 could not be believed. Consequently, Mrs N should have noticed the incorrect amounts and it is not unreasonable to expect that she would have queried the amounts.
  - In light of this, it was not reasonable for Mrs N to rely on the incorrect information contained in the retirement statement and she cannot claim detrimental reliance.
  - It is an established legal principle that the provision of incorrect pension benefits does not, in itself, create a legal entitlement for the recipient to receive those higher (incorrect) benefits. On the basis of this principle, Mrs N has no entitlement to the amounts stated in the incorrect statement of July 2015. Her benefits in the Scheme can only be calculated using the correct method. Therefore, the Trustees cannot increase her pension benefits to take account of the Administrator's mistake.
  - Although there was maladministration, it cannot be said that Mrs N has suffered an actual loss as she was never entitled to the incorrect lump sum quoted. However, Mrs N has suffered a loss of expectation as a result of the mistake and she should be compensated. The Administrator offered Mrs N £500 for the distress and inconvenience caused. In the circumstances of this case, this offer is reasonable.
12. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her 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 Mrs N for completeness.

### **Ombudsman's decision**

13. Mrs N did not accept the findings in the Opinion. Her disagreement can be summarised as follows:
- The bulk of the previous benefit statements issued were inaccurate and misleading. This was confirmed by the Trustees in their email to the Adjudicator

dated 8 August 2016. Mrs N queried them in 2010-2011 and she was told to ignore the quotes as the discrepancies would be sorted out.

- Given that the previous statements issued between 2010 and 2014 were inaccurate due to a technical error, the finding in the Opinion that Mrs N should have noticed the errors in the July 2015 statement is negated.
  - The Adjudicator ignored the Trustees offer to provide further comment in relation to Mrs N's mortgage situation and her ability to return to work for the university.
  - Mrs N was informed when she initially complained to the Trustees that she was wasting her time in contacting The Pensions Ombudsman. She was told that the £500 offered to her was the maximum payment she would receive. Mrs N says this makes her uncomfortable as it implies that there is an unfairly close relationship with the pensions industry where The Pensions Ombudsman (as an organisation), just rubber stamps their opinions.
14. The starting point for my decision is the principle that issuance of a retirement benefit statement is not a contractual offer which can be accepted in the sense set out in the original complaint. The entitlement to benefit remains that provided for by the scheme rules unless the member can prove that there has been reasonable reliance on an incorrect statement which has caused financial loss.
15. I accept that the benefits statements from 2010 to 2014 contained discrepancies as they failed to take account of the Guaranteed Minimum Pension element of Mrs N's pension. Nevertheless, the statements in question showed that Mrs N's tax free lump sum was very substantially lower than the figure stated in the July 2015 statement. I find that this discrepancy should have put her on notice that the figure shown in the July 2015 statement might be wrong. Accordingly, I agree with the Opinion that it was not reasonable for Mrs N to have relied on the incorrect amount to make a decision whether to retire.
16. In relation to the assertion that Mrs N queried the statements received in 2010/2011. This is the first time she has mentioned this. She had previously said she had not received any statements prior to the July 2015 statement. I find it more likely than not that the series of earlier statements showing the lower lump sum were sent and were overlooked. . Even if Mrs N did query earlier statements, in my view knowledge that mistakes had been made in 2010/11 would have underlined the need to check the accuracy of the figure in the July 2015 statement before making significant decisions based upon it.
17. I would only need to consider what losses Mrs N suffered as a direct result of the mistake, if I found that she relied on the misstatement when deciding to retire and her reliance was reasonable. I have not reached that conclusion. Consequently, I do not consider there is a need to seek further comment from the Trustees in relation to Mrs N's mortgage situation or whether she was able to return to work In any event, not

being able to repay a mortgage is not a financial loss. The mortgage was a pre-existing financial responsibility that Mrs N would have been liable for, prior to her reliance on the incorrect statement. In the circumstances, I would not direct compensation to be paid so that the mortgage can be repaid.

18. Our service is impartial and we do not take sides. We do not receive any incentives or inducements from schemes or pension providers to make outcomes that are favourable to them. Whilst I cannot comment on what Mrs N may have been told about bringing her complaint to our service, she was not discouraged from doing so. Further, it is not unusual for schemes and administrators to refer to our published guidance and previous decisions when making recommendations for compensation. Mrs N's complaint was independently reviewed.
19. I have reviewed the level of compensation offered to Mrs N for non-financial injustice bearing in mind the disappointment at the realisation that she would have to continue to make mortgage payments after retirement. Such disappointment is entirely foreseeable. However I am satisfied that the scheme investigated properly and made its offer of compensation promptly. In the circumstances I agree with the Adjudicator's finding that the £500 paid to Mrs N, is reasonable. I make no further award.
20. Therefore, I do not uphold Mrs N's complaint.

**Karen Johnston**  
Deputy Pensions Ombudsman

3 October 2016