

## Ombudsman's Determination

Applicant	Mr H
Scheme	Solvera Pension Scheme ( <b>the Scheme</b> )
Respondents	20-20 Trustee Services Limited ( <b>the Trustee</b> ), Berkeley Burke Group Limited ( <b>Berkeley Burke</b> )

## Outcome

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

## Complaint summary

3. Mr H says that he received incorrect information about the value of his benefits under the Scheme, in an email dated 22 July 2014.

## Background information, including submissions from the parties

4. Mr H was a deferred member of the Scheme. In April 2012, he received a circular from the Trustee. The purpose of the circular was to update members about the funding position of the Scheme. It confirmed that the Scheme had qualified for assistance from the Financial Assistance Scheme (**FAS**). The circular explained that the Trustee will continue to work with FAS' advisors to complete the transition to the FAS and that the Trustee remained responsible for the Scheme until the transfer has been completed.
5. The circular also explained that the Trustee was unable to confirm at that stage when the transfer would be finalised and the Scheme's funding level would need to be assessed to see if the benefits could be paid partly by the Scheme and partly by FAS. Further information about the level of benefits provided by FAS was detailed in Appendix 1 of the circular. Appendix 1 included the following:

"In most cases the FAS will pay you 90% of the pension you accrued (built up) in the Scheme before it started to wind up (30/06/1999). If you left the Scheme before wind up commenced, your pension will increase in accordance with the Scheme Rules up to the date of wind up.

From the wind up date to the date you reach your Scheme's normal retirement age (NRA), any part of your pension entitled to increase in accordance with the Scheme Rules will be increased by FAS. From wind up date to 30 March 2011 increases will be in accordance with the Retail Prices Index (RPI) up to a maximum of 5% per year.

From 31 March 2011 to your NRA, increases will be in accordance with the Consumer Prices Index (CPI) up to a maximum of 5% per year..."

6. In July 2014, Mr H asked the Trustee for confirmation of the value of his pension benefits. The Trustee then requested this information from the Scheme administrator, Berkeley Burke. In an email dated 22 July 2014, Berkeley Burke provided the following information to the Trustee:-

"Pre 88 GMP @ DOL - £958.36

Post 88 GMP @ DOL - £219.96

Pre 97 XS @ DOL - £1,658.97

Ex- GED @ DOL (Fixed) - £10.00

TOTAL - £2,847.39

Based on current statutory revaluation and the current GMP increases, the pension is £9,376.89 (this figure does not take into account any reduction that may be applied at the date of retirement)."

7. Mr H says that he was considering early retirement and relied on the information contained in Berkeley Burke's email of 22 July 2014, which he received via the Trustee. Based on the figure of £9,376.89 stated in Berkeley Burke's email and his understanding that the FAS' reduction would be a maximum of 10% depending on the solvency of the Scheme, he calculated that he would receive an annual pension of approximately £8,438.40. Using this information, he decided to take early retirement. He took the benefits from one of his other pension policies and used some of his savings to fund his retirement.
8. In April 2016, the Scheme's assets were transferred to FAS and Mr H received a welcome pack confirming details of the benefits he would receive from FAS. This included the option of taking a maximum tax free cash sum of £25,464.31 and an annual pension of £3,819.65.
9. Based on the information given to him in 2014, Mr H believed he would receive a higher annual pension of about £8,438.40. Berkeley Burke and the Trustee did not uphold his complaint. Berkeley Burke said:-

"The figures you were passed by the Trustee two years ago were those calculated under the Scheme rules and were for his information. At the bottom of the copy...it states that 'the figure does not take into account any reduction that may be applied

at the date of retirement.’ The sponsoring employer ceased to exist many years ago and the Scheme’s funding is weak. The reduction in pension at retirement can therefore vary from time to time. In 2014, it would not have been possible to identify what the reduction in benefit would be in 2016.”

10. In summary, the Trustee said the following:-

- Mr H has commented that Appendix 1 of the 2012 circular says the reduction by FAS would be a maximum of 10%. However, what Appendix 1 actually says is that FAS would pay 90% of the pension accrued in the Scheme before it started to wind up (30/06/1999).
- Appendix 1 also sets out the way in which benefits are revalued post wind up date. Rather than the Guaranteed Minimum Pension (**GMP**) revaluation of 7.5% per year that is applied under the Scheme rules, FAS revalue the benefits, accrued at the date of wind up, in the following way:
  - a) From wind up date to 30 March 2011 - increases are in accordance with the Retail Prices Index (RPI) up to a maximum of 5% per year.
  - b) From 31 March 2011 to normal retirement age - increases are in accordance with the Consumer Prices Index (CPI) up to a maximum of 5% per year.
- The difference in the GMP revaluation is material because the figure of £9,376.89, provided by Berkeley Burke, was based on the Scheme rules and did not take account of the FAS level of revaluation or the 10% reduction.
- Berkeley Burke’s email said the figure does not take into account any reduction that may be applied at the date of retirement. The reduction includes both the 10% reduction and the reduced rate of GMP revaluation.
- There is no evidence to suggest that Mr H’s decision to cash in other benefits has caused him to be disadvantaged.

11. Mr H did not agree with the responses from Berkeley Burke and the Trustee, and he has referred his complaint to us for an independent review.

## **Adjudicator’s Opinion**

12. Mr H’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee and Berkeley Burke. The Adjudicator’s findings are summarised briefly below:-

- Strictly speaking, the pension figure provided by Berkeley Burke, in the email of 22 July 2014, was correct. The calculation was based on the Scheme rules and the transfer of the Scheme’s assets to FAS was not completed until 2016. At the time of the email in question, the Trustee had an obligation to provide

information in accordance with the Scheme rules, until its obligations had been discharged following the completion of the transfer to FAS.

- The email also stated that the figure does not take into account any reduction that may be applied at the date of retirement. It is not unreasonable to interpret this statement to include both the 10% reduction and the reduced rate of pension increases applied by FAS, particularly as this information was made available to members in the 2012 circular.
- By considering the email of 22 July 2014 in the context of the 2012 circular, and also the fact that the pension figure of £9,376.89 was calculated in line with the Scheme rules, the email does not constitute misinformation from Berkeley Burke or the Trustee.

13. Berkeley Burke and the Trustee accepted the Adjudicator's Opinion and made no further comments.
14. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, and I will therefore only respond to the key points made by Mr H for completeness.
15. In summary, Mr H's response to the Adjudicator's Opinion included the following points:-

- He made his complaint following a letter from Barnett Waddingham dated 21 January 2016, and not in response to the FAS' welcome pack in April 2016. Barnett Waddingham referred to a lower pension figure, which did not match the amount quoted by Berkeley Burke in 2014, even though it was sent before the benefits were paid by FAS. Barnett Waddingham's letter said:

"As you will be aware the Scheme entered into wind up on 30 June 1999 and is now receiving assistance from the Financial Assistance Scheme (FAS). As at 30 June 1999 your pension was £4,714.22. FAS will increase this in line with the Retail Prices Index up to March 2011 (and the Consumer Prices Index after March 2011), subject to a maximum of 5% per year. You will then be entitled to 90% of the revalued amount. A FAS valuation has been carried out, which will determine every member's share of benefits within the fund, broadly, members will receive the greater of 90% of their FAS pension and the pension that their share of the fund can buy. As the Scheme has not yet transferred to FAS we are unable to confirm what your exact pension will be at this stage."

Therefore, Barnett Waddingham were able to provide information prior to the transfer to FAS that was factual, whereas Berkeley Burke's email in 2014 was misleading.

- The figure provided by Berkeley Burke was in response to his request to the Trustee for the current expected value of his pension. The request was not for the value of his pension in the hypothetical scenario that the benefits would be paid by the Scheme. It was known to everyone that the Scheme would not be paying the benefits.
- There is no indication in Berkeley Burke's email that the figure was calculated using the Scheme rules. He has not been advised that the Trustee and Scheme administrator are obliged to provide information only in accordance with the original out of date Scheme rules. The formal transfer of the Scheme assets was not until 2016, but all members had been told by the Trustee that the Scheme had qualified for assistance from FAS and how it would apply. Therefore, he did not expect to receive a meaningless pension value estimate based on the Scheme rules.
- In an email dated 3 June 2016, the Trustee suggested that Berkeley Burke had made a genuine error and he could contact Berkeley Burke directly to pursue a complaint. This shows that the Trustee did not believe that it had an obligation to provide figures based on the out of date Scheme rules, but had passed on wrong information given by Berkeley Burke.
- If he had been told that it was not possible to get an estimate or that the figures were not based on FAS' rules, then his decision to take early retirement would have been different.
- There was a second opportunity for Berkeley Burke to explain the figures during a telephone conversation soon after receiving the email, but this resulted in confirming his understanding that the value was correct.
- The reduction to be applied to the pension value had been set out in the Trustee's circular in 2012. Berkeley Burke must have known about the circular at the time of the email in 2014, but still provided misleading information.
- The 2012 circular also included Appendix 2, which said that "FAS pays the higher of the notional pension calculated by reference to the solvency of the Scheme or the FAS entitlement. If the notional pension is higher it will be put into payment. Every year FAS will compare the notional pension against the FAS entitlement." It is reasonable for him to think that the higher figure provided by Berkeley Burke was based on the valuation referred to in Appendix 2.
- It is unreasonable to expect him to interpret the "reduction at the date of retirement" as meaning anything else other than the declared 10% reduction by FAS.

## **Ombudsman's decision**

16. Berkeley Burke's email in 2014 was addressed to the Trustee and not to Mr H. Having said that, I acknowledge that the email was passed onto Mr H. It is also clear from the wording of the email, received indirectly by Mr H, that it was not intended to be a final statement of his pension benefits. The email states that the "figure does not take into account any reduction that may be applied at the date of retirement." Mr H says that it was known to everyone that the benefits would be paid by FAS, and not the Scheme. Therefore, I consider it reasonable to expect Mr H to have interpreted the email in the context of the 2012 circular, which was a more detailed document, sent directly to the members, about the level of reductions that may be applied by FAS.
17. Given all of the information that was available to members, I do not consider it reasonable for Mr H to have based his early retirement solely on the figures stated in an email, which in any case was qualified by possible reductions. The 2012 circular explained both the 10% reduction and the reduced rate of pension increases applied by FAS. Even if Mr H had interpreted Berkeley Burke's email as the latest FAS valuation, the value was always subject to change as FAS would, annually, compare the notional pension against the FAS entitlement, until the transfer was completed.
18. Therefore, I do not uphold Mr H's complaint.

**Anthony Arter**

Pensions Ombudsman  
28 July 2017