

## Ombudsman's Determination

Applicant	Ms N
Scheme	Zurich Financial Services UK Pension Scheme ( <b>the Scheme</b> )
Respondents	Zurich Financial Services UK Pension Trustee Limited ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

3. Ms N's complaint is that she was provided with misleading and incorrect information in relation to her eligibility for a temporary pension from the Scheme. She relied on this information to her detriment and she believes she has suffered financially as a result.

## Background information, including submissions from the parties

4. Ms N left service on 14 September 1994. On 2 June 1995, details of her deferred pension were sent to her. There was no mention of a temporary pension being payable.
5. When Ms N left service, her normal retirement age (NRA) in the Scheme was age 60. This was the same as her state pension age (SPA). However, male members of the Scheme had a NRA of 60 but a SPA of 65. As a result of this, a temporary pension is payable to male members between age 60 and age 65. Female members of the Scheme were not entitled to a temporary pension.
6. Following the change to the SPA of women in July 1995, the Scheme granted a temporary pension to female members on the same basis as that provided for male members, covering the same period. Namely, from the Scheme NRA to the SPA. The entitlement for female members did not apply retrospectively and only applied to female members who left service after 19 July 1995.
7. After Ms N left service, she received a number of letters which referred to a temporary pension being payable as follows.

- On 30 April 2001, a generic letter was issued informing members that benefit improvements were being made following a merger. The only reference to a temporary pension was a sentence that said: "...a corresponding reduction will be made to any temporary supplementary pension payable before [SPA]."
  - On 27 February 2003, an updated deferred pension statement was issued at Ms N's request. Among other things, the letter said: "Your personal and spouse's pension entitlement will therefore be higher, however, please note that the temporary pension, payable between age 60 and [SPA], will have been correspondingly reduced". No figure was quoted on the actual statement for a temporary pension.
  - In 2003 and 2005, Ms N received correspondence concerning a possible transfer out. Included in the correspondence were generic factsheets which made reference to temporary pensions, and provided other general information about the Scheme. No quotations of a temporary pension were however provided.
8. In 2012, Ms N called to enquire about her benefits and the options available to her at retirement. A retirement estimate was issued showing the annual pension and lump sum available. There was no mention of a temporary pension and a quotation for one was not provided.
9. In July 2015, Ms N raised queries about taking her benefits from October that year and asked why she had not received a quote for a temporary pension. She received a response which, among other things, informed her that a temporary pension is not payable to her as she left service in 1994.
10. Ms N first raised her disappointment about the unavailability of the temporary pension on 11 September 2015. She subsequently complained under the Scheme's internal dispute resolution procedure (**IDRP**) on 2 February 2016. As Ms N's complaint was not upheld at both stages of the IDRP, she brought her complaint to us.
11. Ms N's position in relation to this complaint can be summarised as follows.
- She had expected to receive a temporary pension from age 60 to her SPA based on the information she had received over time which confirmed her understanding that she would receive it.
  - She raised a number of queries with the administrator in 2012 but was never informed that she was not entitled to a temporary pension.
  - She was provided with misleading and incorrect information over time and the Trustee accepted that there had been errors which had caused confusion. In pension matters, there should be no confusion or errors and information should be clear and accurate.
  - Relevant information about her benefit entitlement was only disclosed to her because she raised a complaint. All these matters should have been brought to

her attention rather than sending her generic information. She did not receive any communication which said if a temporary pension amount had not been quoted, then it was not payable. All the paperwork she received said she would receive a temporary pension.

- When she legally separated from her husband, she expected a temporary pension at age 60 and she factored this into her decision making at the time. To now discover that she will not receive this has had financial implications for her. It is now too late for her to make any financial provision or preparation for the lack of income, during the six year period between her retirement and SPA.
  - This situation has been ongoing for some time and caused her distress at a point in her life when she did not expect to have to go through something like this. The apology from the Trustee does not compensate her for the financial loss.
  - The Trustee should accept that it created a difficult situation for her through incompetence and should accept that it is responsible for what happened.
  - She would like to receive payment of the temporary pension for the relevant six year period, backdated to September 2015 with interest. She would also like to receive compensation for the distress caused.
12. The Trustee's position in relation to Ms N's complaint is that she has no entitlement to a temporary pension under the rules of the Scheme. When the Scheme rules changed in July 1995, Ms N had already left service and the change was not retrospective.
13. The Trustee accepts that a number of generic Scheme communications issued to members in the past have caused confusion in this case and it has apologised to Ms N. Ms N has never been quoted a temporary pension value so it is difficult to understand on what basis she "factored this into decisions taken at the time [of her separation]" and how this "has caused financial implications". Ms N's complaint was not upheld because there is no entitlement to a temporary pension and the financial implications for her are, at best, unclear.

## **Adjudicator's Opinion**

14. Ms N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised briefly below.
- The rules governing the Scheme ultimately supersede any information that is given about benefits in the Scheme, even where there is a contradiction. There is no provision in the Scheme rules that gives Ms N an entitlement to a temporary pension from her NRA to SPA.

- In cases involving misinformation, the general legal position is that the provision of incorrect information, does not create an entitlement for the recipient, to those incorrect (higher or additional) benefits. Accordingly, the generic letters and factsheets that Ms N received did not change her entitlement in the Scheme to a temporary pension.
  - Although the Trustee has accepted that Ms N was sent generic communications, which referred to a temporary pension being payable, these did not definitely indicate that such a pension would be payable to Ms N. Ms N had received sufficient other information, in the form of her benefit statements, that should have cast doubt on the notion that a temporary pension would be paid to her.
  - There was no need for the Trustee to issue Ms N with a notice that said, if a temporary pension had not been quoted it is not payable. Given that she was never quoted a figure for a temporary pension, it was not reasonable to rely on the references in the communications she received.
  - In considering her options Ms N could not have relied on receiving a temporary pension. She was never given a value for this and she did not request one at any point, even after receiving updated quotations of her retirement benefits. When undertaking a financial planning exercise, it is not unusual to expect that all sources of income will be specified to arrive at a specific total. Even if Ms N had used a speculative or approximate amount in her decision making, she has not provided a basis for how this was calculated, and it cannot be said that such speculation amounts to an actual loss.
  - Whilst this matter has caused Ms N some distress, in the circumstances, compensation is not warranted.
15. The Trustee accepted the findings of the Adjudicator. At the Adjudicator's request, the Trustee provided copies of previous documentation in 2005/2006 that had been issued to Ms N's solicitors, and which had not previously been provided during the Adjudicator's investigation. It also said it had given further consideration to its position on an ex-gratia payment to Ms N, as a gesture of goodwill. It said it recognised that there were some errors made in its dealings with Ms N so it said it would be happy to offer her £250.
16. The Adjudicator informed Ms N of the Trustee's offer and provided her with copies of the additional information the Trustee had supplied on request.
17. Ms N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms 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 Ms N for completeness.

## Ombudsman's decision

18. Ms N has raised a number of points in her response to the Adjudicator's Opinion which are summarised below.

- The letters she received dated 27 February 2003 and 8 April 2003, were not generic letters. She asserts that they had been written in response to her specific requests for information regarding her pension. She believes the Adjudicator should have taken these letters into consideration in her findings. Ms N says it was reasonable for her to interpret the information in the February 2003 letter as meaning she would receive a temporary pension, details of which would be provided to her close to her retirement date.
- She was not informed in the letters and telephone conversations she had in 2012 that due to her leaving date, she would not receive a temporary pension.
- The Trustee did not write to female members of the Scheme who left service after 19 July 1995, or included information relating to the temporary pension in any of its generic guidance.
- In relation to the additional information the Trustee provided, it has not clarified the details contained in the missing pages. The letter dated 26 October 2005, enclosed a transfer value statement which stated that her total transfer value was £46,284. It included a note which said "Your transfer value is today's value of your future pension. It includes all the benefits that are promised to you, but does not take account of any discretionary increases that we may give you after your pension starts." Ms N says it is reasonable to conclude from this that the temporary pension amount is included in this total amount or in the section of the statement under "alternative benefits".
- The Pension Act 1995 (**the 1995 Act**), includes reference to equal treatment and says: "All occupational pension schemes must continue to provide equal access to male and female employees and for service after 17 May 1990, equal treatment for male and female members of the scheme". Ms N does not consider that there has been equal treatment as the entitlement to the temporary pension for female members has not been made retrospective to apply to those who left employment before 19 July 1995. She asserts that she was still working after 17 May 1990, as she left service on 14 September 1994.
- She would like the Trustee to either pay her a temporary pension, or increase its ex-gratia offer to cover the amount of the temporary pension she would have received from age 60 to 66.

19. I do not agree with Ms N's interpretation of the letters she received. Irrespective of the fact that they were issued in response to her specific requests for information about her pension benefits, the references to a temporary pension were generic in nature.

They did not create an entitlement for Ms N and I do not agree that these created an expectation that this additional benefit would be payable to her.

20. Similarly, I have not been persuaded that the reference in the 26 October 2005 letter to “all the benefits that are promised”, included a temporary pension. The transfer value statement included the following information:

“Total transfer:	£46,284
This transfer value is made up as follows:	
- for service before 6 April 1997 (not contracted out)	£42,970
- for service before 6 April 1997 (contracted out/GMP)	£3,314
...	
<b>Alternative benefits in the scheme:</b>	
A deferred pension at 14 September 1994 of:	£1,784.12 a year
Including guaranteed minimum pension of:	£106.08 a year”

21. I do not agree that in the absence of an explicit amount for temporary pension, one can be inferred from the figures quoted in the total transfer value amount or from the alternative benefits quoted.
22. I agree with the Adjudicator that there was no requirement for the Trustee to inform Ms N that she was not entitled to temporary pension. If Ms N had been unsure of her entitlement prior to her imminent retirement date, she could have raised this with the Trustee at the time and the position would have been clarified.
23. I will now address Ms N’s assertion that she has not been treated equally. She has referred to the 1995 Act and believes that as she was still working after 17 May 1990, she should be entitled to a temporary pension.
24. The legislative provisions on equal treatment in the 1995 Act, were the result of the landmark case of *Barber v Guardian Royal Exchange* [1990] 2 All ER 660. On 17 May 1990, the European Court of Justice decided that pensions constituted deferred pay and were subject to specific provisions requiring equal pay for equal work<sup>1</sup>. The effect of this judgment was that it was no longer permissible for schemes to have different (unequal) retirement ages for men and women. Therefore, from the date of the judgment (17 May 1990), all schemes were required to equalise normal retirement ages for men and women. The judgment did not have retrospective effect.
25. The 1995 Act became law on 19 July 1995. Section 62 of the 1995 Act introduced an equal treatment rule into all schemes<sup>2</sup> and this provision came into force on 4 December 1995<sup>3</sup>.

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<sup>1</sup> It decided that pensions are subject to the provisions of Article 119 of the Treaty of Rome (now Article 157 of the Treaty on the Functioning of the European Union)

<sup>2</sup> It has now been replaced by the non-discrimination rule in section 61 of the Equality Act 2010

<sup>3</sup> Pensions Act 1995 (Commencement No. 2) Order 1995 SI 1995/3104

26. Ms N's interpretation of the dates do not have the effect that she appears to have given them.
27. Following the enactment of the 1995 Act on 19 July 1995, the Scheme decided that it would make a temporary pension payable to members who left service after that date, whose SPA had increased to age 65. The 1995 Act does not require or compel the Scheme to make this additional benefit payable on a retrospective basis and all female members who left service before 19 July 1995 will not have an entitlement to a temporary pension from the Scheme .
28. Ms N is not entitled to a temporary pension so the Trustee has no need to pay her one. The Trustee's offer of £250 to Ms N is reasonable for the distress and inconvenience caused by its admitted errors. Ms N has not accepted this offer. For the avoidance of doubt, I am not directing that the Trustee pay Ms N any amount in compensation. If Ms N decides to accept the offer, it will be for her to contact to the Trustee and inform it of her wishes. If at that time the offer is still open for acceptance, then the Trustee may pay Ms N the goodwill payment.
29. Therefore, I do not uphold Ms N's complaint.

**Anthony Arter**

Pensions Ombudsman  
29 December 2016