

Ombudsman's Determination

Applicant	Mr T
Scheme	Atos UK Pension Scheme (the Scheme)
Respondent	Xafinity

Outcome

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

Complaint summary

3. Mr T is complaining that Xafinity (as the administrators of the Scheme) provided him with incorrect retirement estimates. As a result, Mr T says he relied on those estimates to make irreversible financial decisions.

Background information, including submissions from the parties

4. Mr T joined the Scheme in 1999 and his normal retirement age is 65 (in 2021).
5. In 2004, a pension sharing order (**PSO**) became effective providing 35% of Mr T's benefits to his former spouse.
6. In 2011, Mr T was provided with an annual statement from the Scheme's former administrator. It confirmed the amounts quoted included the PSO debit and the estimate provided was correct. The estimated benefits were:

	Age 60	Age 65
Maximum tax free cash lump sum	£129,010.79	£143,843.38
Reduced annual pension	£19,351.68pa	£21,576.60pa

7. On 15 August 2013, Mr T requested a retirement quote to age 60. Xafinity (the current Scheme administrators) provided the estimate and confirmed that the PSO debit had been included. Mr T was quoted with a maximum tax free cash lump sum of £159,846.57 and an annual pension of £23,976.99. Unfortunately, this was not correct.
8. In April 2014, Mr T requested another retirement estimate with a retirement date on his 58th birthday. The maximum tax free cash lump sum quoted was £144,772.41 and the annual pension was £21,715.86. Again, Xafinity incorrectly informed Mr T that the estimate included the PSO debit.
9. In January 2015, Mr T made two decisions. On 5 January 2015, he gave three months' notice to his employer that he was retiring early. He also agreed with his siblings to purchase their share in a property bequeathed to them from another sibling. The parties agreed the full sale price of the property as £167,500 and Mr T would purchase the other two shares for £111,666.
10. In February 2015, Mr T says he contacted a builder to quote for renovations on the property.
11. On 6 March 2015, Xafinity sent Mr T a retirement estimate with no reference to the PSO debit. Mr T queried this and Xafinity issued a new estimate on 31 March 2015 giving a maximum tax free cash lump sum of £156,195.22 and an annual pension of £23,429.28. Although Xafinity told Mr T that the PSO had been included in the calculation, again, this was incorrect.
12. Each estimate Mr T received from Xafinity stated: "Please note that these figures are estimates only and subject to change".
13. On receipt of the 31 March 2015 estimate, Mr T instructed his solicitor to proceed with the sale of the property and the necessary documents to transfer the property to his ownership. Building work began on 7 April 2015.
14. On 1 May 2015, Xafinity wrote to Mr T informing him that while calculating his final retirement benefits it had come to their attention that the PSO debit had not been correctly calculated and therefore there was a reduction to the benefits he had previously been quoted. Mr T was provided with an updated quotation showing his benefits at approximately 11% less than the 31 March 2015 estimate (a maximum tax free cash lump sum of £138,998.25 and an annual pension of £20,849.74).
15. Mr T completed and returned the retirement option forms on 8 May 2015 and confirmed that he would be making a complaint about the reduction to his benefits. Mr T received payment of his benefits on 14 May 2015.
16. Mr T says that the money was paid to his siblings on 19 May 2015. A Deed of Variation was signed on 15 June 2015, which transferred his siblings rights in the property to Mr T, and the property was registered with the Land Registry on 19 June 2015.

17. Between 15 April and 31 October 2015, Mr T says he spent £40,591.08 on the property. As well as building renovations, he has included in this council tax, utilities and estate agent fees. The invoices and receipts he has provided as part of this investigation, excluding landlord insurance, amounts to £35,946.10.
18. Mr T complained through the Scheme's internal dispute resolution procedure (**IDRP**). Neither Xafinity nor the Trustees of the Scheme upheld his complaint on the basis that Mr T was in receipt of his correct entitlement from the Scheme. The Trustees agreed that Mr T would not have had prior knowledge of the error, but it was their conclusion that he would have made the same decision regarding his retirement and the purchase of the property. Mr T's distress and inconvenience was recognised with an offer of £1,000 (an increase on a previous offer of £500).
19. Mr T argued that he made irreversible financial decisions based on the higher retirement estimates. He says that he would not have retired when he did and would not have proceeded with the purchase of that particular property had he been aware that his benefits would have been 11% less than he expected. He says if he had known the correct figures at any point prior to January 2015, he would have carried on working.
20. Mr T disagreed with the outcome of the IDRP and complained to this office.

Adjudicator's Opinion

21. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by Xafinity. The Adjudicator's findings are summarised briefly below.
 - It was agreed that Mr T would not have known of the error until Xafinity brought it to his attention.
 - There was no evidence submitted to show that Mr T had mitigated his losses by seeking to reverse his retirement. However, he had made some attempt to mitigate the loss of his annual pension by taking on two small part time roles which equated to an income above the 11% decrease in his expected annual pension.
 - Mr T had not taken any steps to have the property valued or put on the market to sell.. The Adjudicator also felt that there was the opportunity for Mr T to not have purchased the property and that there was time to reverse the decision before it became final.
 - The Adjudicator's view was that Mr T also would have purchased the property even if he had the correct information. This was based on Mr T confirming that he would have either purchased a property or invested the lump sum, if he had known the correct position.

- Mr T had previously informed the Trustees that, prior to retirement, he had been suffering from stress and had been absent from work. As a result, part of his decision to retire was to improve his health. Based on this, the Adjudicator's view was that Mr T would have made the same decision to retire and this was supported by Mr T not making enquiries to reverse his retirement on receiving the correct information.
- The Trustees offer of £1,000 to recognise the non-financial loss Mr T had suffered was more than reasonable.

22. Mr T did not agree with the Adjudicator's Opinion. His reasons for doing so are summarised below.

- His employment had terminated by the time he was made aware of the correct information.
- While he has taken on some employment, this is not a long term solution to mitigate his annual pension loss and only supplements his income for this year.
- He agrees that, in principle, that the selling of an asset to mitigate a loss must be considered. However, he feels that the Opinion did not address this correctly.
- Mr T argues that it was not reasonable for him to reverse the sale, renegotiate the sale or sell the property. He says that on being made aware of the error selling the property would have increased his losses.
- He quotes a number of previous Determinations which he believes are relevant to his case.
- He disagrees with the purpose of the disclaimer wording on the estimates and says, "The purpose of the disclaimer is to notify the individual that the estimates may change, but the individual is entitled to rely on the accuracy of the content subject to changes as may occur as a result of market fluctuations or changes to calculation methodology...".
- He reiterates his argument that he would not have invested in the property if he had been aware of the correct position.
- He stresses that his losses are not limited to the difference in lump sum; his entire retirement strategy was based on the anticipated annual benefit in addition to the lump sum.

23. As Mr T did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Mr T's further comments 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 T for completeness.

Ombudsman's decision

24. Mr T's case is one of detrimental reliance, in that Mr T is claiming he relied on a mistake by Xafinity that he claims was to his detriment in the sense that he would not have retired when he did and consequently would not have bought this particular property from his siblings had he been aware of the correct value of his pension.
25. It is plain that multiple statements provided to Mr T were wrong. The Trustees have explained that the error derived from an incorrect calculation of the PSO which ran through multiple illustrations and was not spotted despite internal review. However, the basic principle is that a scheme is not bound to honour statements containing incorrect information, in this case, the retirement estimates. A member is only entitled to receive the benefits provided for under the scheme rules, in other words, those based on correct information accurately reflecting the scheme rules. In Mr T's case that means he is entitled only to his pension once the correctly calculated PSO has been deducted.
26. To establish a claim to any higher amount based on incorrect information, Mr T must show that he relied upon that particular information to make decisions, it was reasonable to do so, and as a result of those decisions he has suffered financial loss. There must be a causal link between the detrimental reliance and the incorrect information, i.e. Mr T must be able to show that but for the erroneous estimates, he would not have made the decisions or taken the actions that he did. He cannot prove reliance if the same decision would have been made or the action taken even had he known the correct facts.. The obligation to prove specific financial loss is on Mr T and he must also demonstrate that he has tried to mitigate any losses which he can prove to have been caused.
27. I agree with Xafinity, the Trustees and Mr T that he would not have had previous knowledge that the estimates he received prior to May 2015 were incorrect. But, whether or not Mr T ought to have known of the mistake is only one aspect that is taken into consideration when establishing if Mr T relied on the error to his detriment.
28. In January 2015, when Mr T handed in his notice, he had been thinking about his options for some time. He had obtained an illustration of benefits at age 58 in April 2014 and made efforts to ensure it was accurate so far as the PSO was concerned. His retirement planning was careful. He says none of it was a snap decision. He had a settled intention of investing his lump sum to produce income. In working out what he could afford he was reliant on the 3 April 2014 figures provided by the Scheme and his own estimation of how additional accrual and a recent pay rise would affect them. He says he thought of the April figures as a 'minimum'. Stress at work was also a factor in his decision making. Since retirement he has found alternative part time work but has not said that he ever tried to go back to the type of job he was doing before he retired.
29. I appreciate that with the benefit of hindsight staying at work for longer and investing the money later or in some other way, might now seem more attractive than the

stress of the transaction which he undertook, which has turned out to be less profitable than he expected. However, I have to consider what he most probably would have done if he had had the right figures at the time he handed in his notice. The difference between the incorrect annual benefit figures quoted on 3 April 2014 and the correct figure provided in May 2015 is £866.12. The difference in lump sum is £5,774.16. I have considered what Mr T said about not wanting to eat into his savings, but I also bear in mind the attractiveness of what then appeared a simple transaction capable of achieving his income generation goal while avoiding sale and purchase costs. In those circumstances, and without the benefit of hindsight, I do not consider that the difference in the figures was so great that I can conclude he was likely to stay in a job which was causing him to feel unwell for another 18 months. I conclude he was more likely to have retired when he did.

30. By the time he instructed his solicitor and his builders to start work Mr T had received the higher figures in the 31 March statement and was working from those. He says he calculated that the purchase and renovations came within the lump sum quotation of £156,195.22 when making his decision to proceed. He says he was concerned that they should because he did not want to eat into his savings. I accept that. I also accept that on later being given the correct figures he made reasonable decisions to press on with his plans – to take his benefits, complete his half finished building work and complete the transaction. He made that choice after an evaluation of whether he was likely to be better off financially by pressing on with his retirement strategy or calling it quits. I make no criticism at all of the choice he made. It seems a reasonable decision and it was one which he was entitled to make; I do not think there is any issue about failure to mitigate a loss. However, I am not persuaded that the decision to go ahead, whether on 31 March or 1 May, has been shown to have caused any financial loss.
31. Mr T bought the property for £111,666. According to the evidence he submitted, he then spent £35,946.10 on renovations. I bear in mind, the property would have been valued in its condition prior to renovation. Mr T made the improvements as an investment decision, has realised a rental income and the renovations will also have increased the capital value.
32. If he had purchased the property (or any property) and not renovated, he would have had to pay council tax, utilities, landlord insurance and estate agent fees, regardless. Those are costs of generating income rather than losses and were not incurred in reliance on the misinformation.
33. Overall, Mr T still has the advantage of an asset that is affording him an income. If Mr T wishes to mitigate his perceived losses in the short term, he has the option of selling the property and recouping some or perhaps all or more of those costs and reinvesting elsewhere, as he said he would do if he had been aware of the correct position.

34. While I can empathise with his disappointment, I do not find that it is possible to say with any degree of certainty that Mr T would not have taken the same actions if he had been in possession of the correct information at an earlier date, and I am not persuaded there is evidence that he is worse off as a consequence of any reliance on the misinformation provided. He has suffered a loss of expectation.
35. I accept that the discovery of the mistakes in his benefit statements added an unnecessary element of stress and uncertainty to Mr T's retirement process. As the Adjudicator noted, the £1,000 offered by the Trustees is above the minimum usually directed by me in cases such as this. I agree that in this case the offer reflects the non-financial loss suffered.
36. Therefore, I do not uphold Mr T's complaint.

Karen Johnston

Deputy Pensions Ombudsman
23 January 2017