

Ombudsman's Determination

Applicant	Mrs Y
Scheme	Universities Superannuation Scheme (the Scheme)
Respondents	Universities Superannuation Scheme Limited (USS)

Outcome

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

Complaint summary

3. Mrs Y has complained that she (and her ex-husband, Professor Y) was given incorrect information by USS, regarding the age at which she would be able to access an unreduced share of his pension, on obtaining a Pension Sharing Order.
4. Further, Mrs Y believes that the Cash Equivalent Transfer Value quote sent out on 30 March 2015 was invalid, as the basis for calculations had changed by April 2015, after she had received the quote.

Background information, including submissions from the parties

5. In 2004, at age 52, Mrs Y enquired with USS about obtaining a Pension Sharing Order (**PSO**). She had separated from her husband, a retired member of the Scheme since 1996. USS informed Mrs Y that the normal pensionable age at that time was age 63 ½; she and Professor Y therefore decided to remain married, with Mrs Y receiving a monthly maintenance payment from Professor Y.
6. In 2015, Professor Y became ill, and it was possible he would need to move to a nursing home. If this happened, the maintenance payments would be stopped. On speaking to a lawyer, it was agreed that Professor and Mrs Y would proceed with a divorce, and obtain a PSO. Professor Y subsequently requested a Cash Equivalent Transfer Value (**CETV**) and some additional PSO information from USS.
7. On 30 March 2015, USS issued a CETV quote (**the March 2015 quote**), stating the value of Professor Y's pension was £472,187.36. It was confirmed that a new CETV

would be calculated once a Decree Absolute was issued, and that the figures could change. Under the list of options, the quote stated the following:

“If an internal transfer option is chosen, the pension will be payable from the age of 65, but a request for earlier payment of reduced benefits can be made to the trustee company at any time from age 60.”

8. An illustration was provided to give an example of the level of benefits Mrs Y could expect based on a 1% share of the pension. It had been agreed that Mrs Y would receive a 70% share, equating to an expected pension of £12,691 pa.
9. On 20 July 2015, a Decree Absolute was issued by the court, finalising the divorce and PSO.
10. On 30 October 2015, Professor and Mrs Y received the final CETV calculations following implementation of the PSO. The final value was £410,527.11; and therefore Mrs Y's 70% transferable share from the PSO had reduced from approximately £330,000 to £287,000, with an annual pension of £11,019. USS confirmed that, under the current Scheme Rules, as amended in 2011, Mrs Y's normal pensionable age was 65, but she could claim the pension on a reduced basis from age 60 onwards.
11. On 25 November 2016, USS wrote to Mrs Y in response to her query regarding the pensionable age. It confirmed she could not access the pension on an unreduced basis until age 65. If she was to take her pension at her current age of 63, it would be actuarially reduced to £10,148 pa.
12. On 30 November 2015, Mrs Y made a complaint through stage 1 of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). She stated Professor Y and herself would not have proceeded to divorce had they been aware that Mrs Y would have to wait until age 65 to access the pension unreduced. Nor would they have divorced if they had known the pension value would reduce so significantly between March and October 2015. Mrs Y concluded that the information received in March 2015 was insufficient to make an informed decision.
13. On 19 February 2016, USS issued its Stage 1 IDR response, and did not uphold her complaint. It explained the Scheme's pensionable age had been amended in October 2011, and that the Scheme was not required to write to individual members regarding this change, as the information was available on the USS website. USS stated that, when Mrs Y's divorce was finalised, the pension value was recalculated, as was explained in the March 2015 quote, and the final CETV had reduced to £410,527.11.
14. On 28 July 2016, following discussions with The Pensions Advisory Service (**TPAS**), Mrs Y appealed against the Stage 1 IDR decision, arguing that the change in CETV factors from “1 April 2015” had invalidated the March 2015 quote. It was her view that Professor Y should have been informed of the forthcoming change in CETV factors. Mrs Y added that, having telephoned USS in April 2015, she was informed that any

transfer changes would be minimal, and she would be able to receive the pension immediately (at age 63).

15. On 4 November 2016, USS upheld the initial IDRPs decision. It stated that Mrs Y receiving the March 2015 quote after a change in factors did not make the March 2015 quote invalid. The cover letter had stated the CETV would be recalculated on the day the Decree Absolute was issued, so it was clear the figures could change. It further explained that, although when Mrs Y first enquired about a PSO in 2004 the pensionable age was 63 ½, a PSO was not actually elected until 2015, by which point the pensionable age had increased to 65. The Scheme Rules applicable to Mrs Y were those in effect when the PSO was finally implemented.
16. On 25 November 2016, Mrs Y brought her complaint to this office. She argued that the age at which she could take the pension had changed without her being informed, as had the basis for calculation of benefits. As the calculation method was changed in April 2015, Mrs Y believes the March 2015 quote was invalid when she received it, and she is entitled to the original higher figure.

Adjudicator's Opinion

17. Mrs Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by USS. The Adjudicator's findings are summarised briefly below.
 - There is no record of the calls between Mrs Y and USS in 2015, so, unfortunately, there is no evidence to support her comments that she was misinformed about the age at which she could claim her benefits. But, the information enclosed within the March 2015 quote was clear stating that normal pensionable age was 65.
 - Mrs Y was not a member of the Scheme in 2004, so it was unreasonable that she could expect to substitute the Scheme's normal retirement age in 2015, for one that was in place prior to her own membership in the Scheme.
 - The Scheme was not obligated to notify Professor Y of the change to normal pensionable age in 2011, particularly given that he had retired 14 years before the change was implemented. Under the circumstances the Scheme would not be expected to communicate changes in normal pensionable age to retired members, as this information would be considered irrelevant.
 - The Scheme Rules allow USS to ask the Actuary to review the basis for CETV calculation at any time, and the Scheme can then accept any changes recommended by the Actuary. It was therefore not unreasonable for the Scheme to change the factors during April 2015.
 - The Scheme was not obliged to inform Professor Y that the basis for calculating transfer values was changing, because it had only produced an illustration, and it

clearly stated the CETV would be recalculated on the date the Decree Absolute was granted by the court.

18. Mrs Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs Y provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, but I will, for completeness, respond to the key points made by Mrs Y in her letter of 15 March 2017.

Ombudsman's decision

19. I will only document any new points made by Mrs Y in this determination, and these are shown below:-
- Mrs Y suggests that, despite Professor Y already being retired, information relating to changes in the Scheme's normal pensionable age should have been communicated. She says that it is not uncommon with couples of her age for the wife to not have a pension in her own right, choosing to raise a family in lieu of having a career. She, therefore, argues that such information is very relevant as, when divorcing, the wife would be dependent on the husband's pension for financial support.
 - Mrs Y states that she and Professor Y would not have proceeded to divorce, had they known the (correct) lower CETV figures, and the increase in the Scheme's normal pension age. She argues that, although Professor Y had been ill, he was not imminently moving into a nursing home (and nor is he currently residing in one), and the actual decision to get divorced was subject to whether Professor Y's pension benefits would be adequate to provide them both with a sufficient income.
20. Mrs Y contends that she believed she would be eligible to receive unreduced benefits from the Scheme at age 63 ½, and that Professor Y was not notified at any time that the normal pensionable age had increased to age 65. Further, Mrs Y argues that the March 2015 quote was invalid by the time she received it, because USS had taken the decision to change the factors in calculating pension benefits from April 2015, and this decision was not communicated to Professor Y.
21. Mrs Y states that a normal pensionable age of 63 ½ was confirmed in literature provided in 2009, and in her numerous phone calls with the Scheme. It is Mrs Y's position that she could not have been aware of the change in pensionable age, prior to her divorce, as no further literature advising of this was received. In my view, it would not have been appropriate for USS to provide information on normal pensionable age changes to a scheme member who was already in retirement and in receipt of pension benefits.
22. Further, I do not consider it reasonable for Mrs Y to believe the Scheme should continue to provide such information because, in her view, it is common in couples of her age that the wife would not have had her own career, and no pension of her own.

It would not be appropriate for USS to make assumptions regarding a member's relationship status, or the financial situation of their spouse's. In any event, the change in normal pensionable age was available on the USS website.

23. Whilst it is correct no newsletter or update regarding the change in normal pensionable age was communicated directly to Professor Y, the cover letter enclosing the March 2015 quote clearly stated normal pensionable age in the Scheme was 65. Therefore, I do not agree that Mrs Y could not have been aware of the change prior to proceeding with her divorce. Mrs Y contends that USS told her during telephone calls that the age of 63 ½ was still applicable to her, however, these calls were not recorded. In the absence of any evidence I am unable to agree that Mrs Y was provided with misleading information regarding normal pensionable age, following receipt of the March 2015 quote.
24. It is noted that Professor Y's illness did not result in him moving into a nursing home, as was previously feared. Given this, and the amicable nature of Professor and Mrs Y's relationship following separation, it would not be unreasonable to conclude that Professor Y is likely to continue to support Mrs Y financially, until such time she is eligible to claim her unreduced pension at age 65 (22 October 2017).
25. Mrs Y has argued that the decision to proceed with the divorce was (largely) based on the figures provided in the March 2015 quote. As the divorce had not even begun at the time of requesting the CETV, USS could not reasonably have known that Professor and Mrs Y had agreed to a divorce, and it was simply providing them with an illustration valuing Professor Y's retirement benefits in the Scheme. Final figures could only be provided following the divorce and agreement of the PSO by the court. It was therefore unnecessary in my view, for Mrs and Professor Y to be informed that the transfer basis was changing from April.
26. The Scheme, in my opinion, was not obligated to notify Professor Y or any other member that changes to the transfer basis was being considered by the Scheme Actuary. The Scheme Trustees have fiduciary duties to ensure the Scheme is being managed correctly in accordance with legislation and the Scheme rules, and that includes ensuring the calculations of factors being used were suitable. I do not consider the Scheme was under any obligation to inform Professor Y that it was considering changes to the transfer basis, particularly as the March 2015 quote was always subject to recalculation should the divorce ever be finalised.
27. Therefore, I do not uphold Mrs Y's complaint.

Anthony Arter

Pensions Ombudsman
22 March 2017