

## Ombudsman's Determination

Applicant	Mr L
Scheme	Schneider Pension Plan ( <b>the Plan</b> )
Respondents	The Trustees of the Schneider Pension Plan ( <b>the Trustees</b> ), Xafinity Consulting Limited ( <b>Xafinity</b> )

## Outcome

1. Mr L's complaint against Trustees and Xafinity is not upheld, as although there was some maladministration on the part of Xafinity, the administrators addressed the issue once Mr L had formerly complained and Xafinity offered to pay Mr L £500 in recognition of Mr L's significant distress and inconvenience.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr L's complaint against the Trustees and Xafinity (the current administrator of the Plan) is that they have not calculated correctly his retirement benefits under the Plan, the Trustees have not kept accurate records and Xafinity has not responded to his enquiries in a timely manner.

## Background information, including submissions from the parties

4. Mr L became employed by Square D Limited on 1 September 1971 and later joined the Square D pension scheme (**the Scheme**) administered by William M Mercer Limited (**Mercer**). This was a defined benefit arrangement.
5. In May 1991 Square D Limited was acquired by Schneider Electric Ltd (**Schneider**).
6. Mercer's letter to Mr L, dated 15 July 1993, enclosed a schedule which estimated that he would have a total deferred pension of £11,280 p.a. under the Scheme as at 30 July 1993, based on his scheme service from 1 April 1972. The total estimated pension at age 65 was £27,843 p.a. This assumed that on termination of his employment an augmentation payment of £4,000 would be made by the employer to the Scheme. The estimate also allowed for Mr L's accumulated voluntary contributions (**AVC Fund**) of £1,726.

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7. Mr L left employment on 31 July 1993.
8. On 8 September 1993 Mercer sent Mr L a letter and schedules detailing his estimated retirement benefits at age 65: an annual pension of £29,389 including his AVC Fund and a company contribution (**Special Contribution**) of £8,000 to be paid to the Scheme in lieu of part of his redundancy payment. The Special Contribution was estimated to provide a pension of £3,092 p.a. from age 65.
9. The Special Contribution was paid to the Scheme at the end of 1993, amounting to £8,553, including interest for late payment.
10. On 6 April 1994 the Scheme was merged into the Plan. At that time Mercer provided the following data in respect of Mr L: employment date 1 September 1971; joined the Scheme on 1 April 1978; left service 31 July 1993; deferred pension at that date £8,321 p.a. including a guaranteed minimum pension of £345 p.a.; normal pension date 27 August 2014.
11. On 2 April 1996, Schneider's benefit consultants Hogg Robinson wrote to Mr L's financial adviser, confirming that if Mr L died before retirement the death benefits specified in Mr L's deferred pension certificate would apply. The letter also recalculated Mr L's cash equivalent transfer value as £70,586, taking account of the Special Contribution, plus interest. In addition, the AVC Fund was then worth about £2,000.
12. On 3 May 1996, Hogg Robinson sent a transfer information form to Mr L: this estimated his annual pension at normal pension date (age 65) as £8,321.09, plus the value of the Special Contribution and his AVC Fund.
13. Entegria (the Plan administrator at that time) produced a statement of entitlement for Mr L on 26 August 2004. This referred to his scheme membership having started on 1 April 1978.
14. Xafinity later became the Plan administrator. On 15 July 2013, Xafinity sent Mr L a half yearly Bank of Ireland AVC statement which showed funds of £3,492.74, with no interest added.
15. On 16 April 2014, Xafinity sent Mr L a quotation of benefit options available at normal pension date, based on Mercer's data; with revaluation to normal pension date the deferred pension was estimated to be £15,373 p.a.
16. On 16 May 2014, Xafinity sent a retirement quotation pack to Mr L.
17. In July 2014, Mr L queried the date he had joined the Scheme, and said he thought his contributions had been understated. He provided Xafinity with copies of his P60 forms, which showed that pension contributions had been deducted from his pay before April 1978.

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18. On 22 October 2014, Xafinity said that despite an extensive investigation it had found no evidence that Mr L's Scheme service had started before April 1978.
19. On 2 February 2015, Xafinity told Mr L that Mercer's data showed Mr L's company service from 1 September 1971 but Scheme service from 1 April 1978: his contributions totalled £6,368.42 and his deferred annual pension was £8,321.09. Xafinity said that Schneider had looked through its files but was unable to find any information to support Mr L's argument that he was entitled to a larger pension.
20. In response, Mr L pointed out that he had joined the Scheme shortly after joining the company in 1971, so his Scheme service should be longer and therefore his pension should be larger. The Schneider pensions manager asked Xafinity to investigate the matter.
21. In May 2015 Mr L complained to The Pensions Advisory Service (**TPAS**) that his period of service from 1971 to 1978 should also have been taken into account.
22. On 16 December 2015 TPAS provided Xafinity with further copies of Mr L's P60 forms.
23. On 19 January 2016, Xafinity told TPAS that Mr L's deferred pension was £8,321.09 p.a. as at the date of leaving, unless he could find a benefit statement stating a larger amount; Xafinity was not satisfied that the contributions shown on the P60 forms were transferred to the Plan.
24. On 15 April 2016, Mr L told TPAS that he was sure that he had joined the Scheme in 1971 or 1972 as he had been eligible for membership after completing 6 months' service. He sent several documents to support his case, including a statement of benefits as at 1 April 1992, which showed him joining the Scheme on 1 April 1972, Mercer's letter of 15 July 1993 and Hogg Robinson's letter of 2 April 1996.
25. TPAS forwarded the documents to Xafinity and said that this information should enable Xafinity to correct its records. Mr L expressed his annoyance that it had taken so long, and requested compensation.
26. On 10 June 2016, Xafinity told TPAS that, having reviewed the additional documents, it would accept Mr L's leaving service pension as being £11,280, as mentioned in Mercer's letter of 15 July 1993, and would quote his retirement benefits accordingly.
27. On 12 June 2016, Mr L pointed out that the Special Contribution of £8,000 had been paid into the Scheme when he left service, to increase his benefits. He provided a Mercer statement showing that payment. He queried why Xafinity had said on 2 February 2015 that his contributions were only £6,368.42.
28. On 15 June 2016, TPAS provided Xafinity with Mercer's 1993 schedule of estimated retirement benefits, and asked Xafinity to clarify if its pension figures included the AVC Fund and the Special Contribution. Xafinity replied that its quotation included the Special Contribution but not the AVC Fund.

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29. On 27 June 2016, Xafinity sent a retirement quotation pack to Mr L, based on his late retirement on 27 August 2016. The total pension was £23,344.06 p.a. excluding the AVC Fund.
30. On 22 July 2016, Xafinity calculated Mr L's pension benefits as at 27 August 2016, Mr L's 67<sup>th</sup> birthday. Xafinity quoted a deferred pension of £11,280 at date of leaving, saying "This is agreed as per the documents we received from [TPAS] 15/04/2016."
31. On 25 July 2016, Mr L sent the Trustees his complaint letter for stage 1 of the Plan's internal dispute resolution procedure (**IDRP**). He complained that the Trustees had not kept accurate records of his membership including his Scheme starting date and contributions paid, and they had caused unacceptable delays in providing him with information; he had lost confidence in the accuracy of the figures presented; his pension would be paid two years late and that had caused him to cash in some investments that he would prefer to have kept, and he had to postpone visiting his son's family in Brazil. Mr L asked the Trustees to pay compensation for the turmoil caused, his distress and the time taken.
32. On 29 July 2016, Mr L told TPAS that Xafinity's calculations ignored the Special Contribution and the AVC Fund of £3,492.
33. On 1 August 2016, TPAS suggested to Xafinity that the pension should be backdated to 2014, because it was not Mr L's fault that payment had been delayed.
34. On 9 August 2016, Xafinity told TPAS that Mr L's AVCs had originally been held by the Trustees on cash deposit with the Bank of Ireland (**BOI**); when BOI took the decision to close this fund the money was transferred to the Trustees' bank account, but still held on cash deposit. Xafinity said that it had granted the deferred annual pension of £11,280, but could not provide a breakdown of calculations before Mr L's date of leaving because he had transferred from the Scheme.
35. On 10 August 2016, TPAS agreed that there was proof that a contribution of £8,000 had been paid, but commented that it was unusual to keep AVCs in a bank account without any options to invest.
36. On 11 August 2016, TPAS asked Xafinity for a copy of the Scheme rules in force when Mr L left service. TPAS chased Xafinity on 7 and 16 September 2016.
37. The Trustees discussed Mr L's complaint in a meeting held in September 2016.
38. Xafinity apologised for the delay on 21 and 27 September 2016, saying it would send a full response by the end of the week. It failed to do so.
39. On 13 October 2016, Xafinity sent TPAS an extract from Appendix B to the rules of the Plan, saying that it was reviewing Mr L's benefit calculations. TPAS replied that the rules extract was unhelpful as it showed the benefit structure from 1 April 1978. Xafinity apologised on 2 November 2016 and said it would reply by the end of that week.

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40. On 11 November 2016, Xafinity provided TPAS with another extract from the rules of the Plan (pages 11, 28 and 29). Xafinity accepted that Mr L's Scheme service predated 1978, and explained that there were discrepancies between Mercer's benefit statements and the data that it had transferred to Xafinity in 1994.
41. Mr N, the pension services director of Xafinity, emailed Mr L on 22 November 2016 to apologise for the time taken. Mr N accepted that company service before 1 April 1978 was "used as an underpin", and asked Mr L if he could provide a copy of the leaving service statement issued by Mercer in 1993.
42. On 23 November 2016, Mr N confirmed that there was a benefit underpin in the rules of the Plan so that service before 1978 counted towards pension accrual.
43. On 28 November 2016, Mr N said that Xafinity would offer to pay the higher amount that Mercer had calculated (£8,300 p.a.) instead of Xafinity's previous calculation (about £7,500 p.a.), plus the AVC Fund and the Special Contribution held in bank accounts, plus interest.
44. On 29 November 2016, Mr L said he was happy with this proposal except for the interest being calculated only at bank base rates. He said he did not want to transfer out of the Plan.
45. On 30 November 2016, Mr L sent Mr N the Mercer statement of September 1993 which referred to the Special Contribution on leaving service and the AVC Fund.
46. Mr L's complaint was discussed further at the Trustees' meeting held on 13 December 2016.
47. On 16 December 2016, TPAS said that the Pensions Ombudsman would consider a period of up to four months for responding to an IDRPs request to be reasonable.
48. On 5 January 2017, TPAS told Mr L that he could contact us as over five months had passed since he started IDRPs. Mr L contacted us the following day.
49. On 22 March 2017, the IDRPs stage 1 response was sent to Mr L by Mr R, Schneider's pension administration manager. He said that it seemed to be an isolated case centring on the membership data transferred when the scheme administration was changed from Mercer to Hogg Robinson, and on information about Mr L's redundancy payment that subsequently came to light. Mr R apologised to Mr L for the delays, inconvenience and frustration caused, and said that in the absence of a definitive leaving statement Mr L would be provided with benefits based on a deferred annual pension of £8,321.09 p.a. at date of leaving, together with the benefits in respect of the AVC Fund (now worth about £4,000) and the Special Contribution (now worth about £58,000: although it had been held in the Plan bank account it had now been rolled up to reflect the Plan's investment returns over the relevant period). Mr R said that Mercer's deferred pension of £11,280 "was only an estimation and not definitive, and on further review contained some inaccurate information".

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50. On 23 March 2017, Mr L sent Mr R a copy of Mercer's letter of 8 September 1993.
51. On 30 March 2017, Mr L told Mr N he did not accept the IDRPs stage 1 response. He asked for IDRPs stage 2 to be completed. He complained about the delay in completing IDRPs stage 1 and said the Trustees' response reneged on figures that had been agreed with Xafinity, and that the Special Contribution should have been invested by the Trustees.
52. On 15 May 2017, Xafinity asked Mr L to provide a copy of the leaving service statement that they thought Mercer would have issued to him in 1993, plus any other relevant documents that Xafinity and the Trustees had not seen.
53. On 22 August 2017, the Trustees' chairman sent the Trustees' IDRPs stage 2 response to Mr L. They apologised for the time taken to process the IDRPs, and said that Mr L's deferred annual pension was £8,321 although Xafinity had told TPAS that it would be £11,280; Xafinity had made an error, but this did not bind the Trustees to pay a larger amount; using a combination of market based adjustments and the asset return of the Plan, the AVC Fund and Special Contribution had a current value of about £62,000 which would buy him additional pension. The Trustees said that Xafinity had offered to pay Mr L £500 for his distress and inconvenience.
54. On 25 August 2017, Xafinity sent Mr L a retirement quotation pack for his late retirement as at 27 August 2017. This was based on a joining date of 1 April 1972 and a deferred annual pension of £8,321 at the date of leaving. It referred to the AVC Fund being worth £4,571 and the Special Contribution being worth £57,339.
55. On 29 August 2017, Mr L told TPAS that the Trustees were dismissive of Mercer's correspondence; the deferred annual pension of £11,200 was not merely an estimate; he had accepted Xafinity's quotation.
56. TPAS told Mr L that the augmentation sounded correct, but explained that an estimate of pension was not binding.
57. On 30 August 2017, Mr L told TPAS that Mercer's documentation in 1993 had referred to a pension of £11,200 p.a. at that time, and a prospective pension of £25,630 p.a. at age 65, and that these figures should not be ignored.
58. In a formal response to us dated 12 October 2017, Xafinity (on behalf of the Trustees) said that based on the rules of the Scheme they had calculated Mr L's deferred annual pension at date of leaving as £7,394.86 based on pensionable service of 15 years 4 months, a pension accrual rate of 1.67% and final pensionable pay of £28,878.67. However, they added:

“Although Xafinity has been unable to reconstruct the Mercer calculation of [Mr L's] deferred pension benefit of £8,321.09 p.a. as at the date of ceasing pensionable service, the Trustees and SEL have agreed to continue to accept the deferred pension benefit as per the membership data provided by Mercer.”

59. Xafinity agreed that in view of the April 1992 statement of benefits, Mr L's Scheme service had started on 1 April 1972; the deferred annual pension of £8,321.09 calculated by Mercer was taken to relate to both pre and post April 1978 pensionable service. Xafinity explained that the membership data provided by Mercer had not mentioned the augmentation payment made by the company when Mr L left service.
60. Xafinity also said it could not agree a total deferred pension of £11,280 p.a. as at Mr L's date of leaving as that was inconsistent with the Scheme rules and the 1 April 1992 benefit statement: in accordance with the pensions legislation then in force the maximum allowable deferred pension based on Mr L's 22 years 11 months service, potential service to normal pension date of 43 years 11 months and final pensionable earnings of £28,878.67 was £10,046.34 p.a., which was less than the £11,280 quoted by Mercer. Xafinity and the Trustees therefore queried whether Mercer's figures included the value of the AVC Fund and the Special Contribution. They also said that the schedule enclosed with Mercer's letter of 8 September 1993 was not the deferred pension certificate; the cash augmentation on redundancy was stated to be £8,000 but the actual payment made was £8,553; the schedule did not show how the figures had been calculated, e.g. the assumed revaluation rates, investment returns and annuity rates applicable at retirement.
61. The letter also said that the quotation provided by Xafinity on 27 June 2016 included a warning note that Xafinity could not bind the Trustees or the employer to provide benefits exceeding Mr L's entitlement under the Plan rules, or to augment or amend his entitlement; in the event of any error in the quotation his benefits would be limited to his entitlement under the rules.
62. The letter also commented that the membership data received from Mercer did not refer to the augmentation made by the company when Mr L left service, or the benefits that it would provide, and there were errors about the company augmentation in Mercer's letters and schedules; if Mr L was able to provide his certificate of deferred pension, as requested, and it showed a materially different amount of pension the Trustees would review the calculation of Mr L's benefits.
63. Xafinity said that its own calculations based on Mr L's 1 April 1992 benefit statement produced a total deferred pension of £8,350.57, which was close to Mercer's calculation of £8,321.09.
64. Mr L clarified that his concerns about his pension benefits related to several aspects of the calculations: the date of joining the Scheme, the amount of the deferred pension as at the date of leaving and the effect of the AVC Fund and Special Contribution. He also wanted more compensation for his distress and inconvenience.

## Adjudicator's Opinion

65. Mr L's complaint was considered by one of our Adjudicators who concluded that no further action was required. The Adjudicator's findings are summarised below:-

- Although he never worked for Schneider, Mr L was entitled to receive retirement benefits from the Plan because his deferred pension was transferred from the Scheme to the Plan in 1994, after he left service. The benefits that he accrued would be revalued until retirement date and enhanced by the accumulated value of the AVC Fund and the Special Contribution paid in 1993.
- Mr L had complained about various aspects of his pension calculation. Firstly, there was some confusion about the period of Scheme service on which his pension accrual was based. Mr L's Scheme service started on 1 April 1972, and this was stated correctly in Mercer's letter of 15 July 1993. Unfortunately, when Mr L was transferred to the Plan in 1994, Mercer informed the Plan administrator that Mr L had joined the Scheme on 1 April 1978, and subsequent quotations issued by the Plan administrators referred to that date instead. The matter was not resolved until June 2016, after Xafinity received documentary evidence that Mr L had joined the Scheme in 1972. The problem would not have arisen if Mercer had provided Xafinity with correct details in 1994, so Xafinity should not be held responsible for this aspect of the complaint.
- Secondly, Mr L had received conflicting information about his deferred annual pension. Mercer informed Mr L on 15 July 1993 that his "Total estimated deferred pension at date of leaving" was £11,820. In 1994, Mercer informed Xafinity that the deferred annual pension was a lower amount, £8,321.09, and this was repeated in subsequent benefit statements and the retirement pack of May 2014. In June 2016, Xafinity told TPAS that it would accept the £11,820 figure, having received documentary evidence from Mr L. However, at stages 1 and 2 of the IDRPs Mr L was told that, in the absence of a leaving service statement to the contrary, his benefits would be based on a deferred annual pension of £8,321.09, as Xafinity's calculations did not support the higher amount.
- In the Adjudicator's view, Mercer's estimate of £11,280 p.a. included the expected value of Mr L's AVC Fund and the proposed company augmentation, as evidenced by the words "Total estimated". The word "Total" would not have been needed if only the accrued scale pension was in mind. If any ambiguity had arisen, it was due to the manner in which Mercer worded its letter.
- The calculations provided by Mercer in 1993 were clearly stated to be estimates, not guaranteed. Therefore, they were not binding on the Trustees or Xafinity.
- With regard to the AVC Fund, Mr L should have noticed from the half yearly statements he received that no interest was being added, as the money was being held on cash deposit. He could have queried with the Trustees or Xafinity whether a more attractive - and probably a more risky - form of investment was possible, but he did not do so. The Trustees and Xafinity should not be blamed for that.



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- With regard to the Special Contribution, this should have been invested by the Trustees when it was received in 1993. At IDRPs stage 1, Mr L was told that the amount had been rolled up in line with the Plan's investment return. It benefitted from significant returns over the period, and had increased to about £58,000. Therefore, this part of the complaint had been remedied.
  - Mr L had not yet drawn his pension, despite passing his normal pension date in 2014, because he thought that doing so would prejudice his claim. However, he could have drawn his pension in 2014 on the basis that if it turned out that he was entitled to receive a larger amount, the arrears would be paid to him later. Furthermore, when the pension comes into payment it will be enhanced for late payment, so Mr L will not incur a financial loss.
  - During the IDRPs the Trustees and Xafinity agreed that their communications with Mr L were sub-standard and took too long.
  - It was therefore the Adjudicator's opinion that this complaint would be partly upheld, because Xafinity took longer than expected to clarify the amount of pension that would be payable to Mr L, including the elements relating to the AVC Fund and the Special Contribution. In correspondence in 2017 Xafinity had offered to pay Mr L £500 for the distress and inconvenience caused. That amount was consistent with the awards that I make in most cases where I consider that there has been non-financial injustice caused by maladministration. The Adjudicator did not think that I would make a larger award if I were required to make a final, binding determination in this case.
66. Mr L did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr L and Xafinity provided 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 L and Xafinity for completeness.
67. Mr L recently provided a letter from Mercer Australia dated 29 December 1989 regarding his pension options when his job was transferred to Australia, and queried whether the content of the letter supported his contention that he had two deferred pensions worth £11,820 p.a. in total.
68. Xafinity reviewed the letter and provided a detailed analysis of its terms. Xafinity concluded that it was consistent with Mr L having a deferred pension of £8,321.09 p.a. under the Scheme, and there was no evidence of any other pension arrangement, but if Mr L could produce a deferred pension certificate issued after he left the Scheme which indicated that his deferred pension was larger, the Trustees would then review his entitlement from the Plan.

69. Mr L also pointed out some minor inaccuracies in the Opinion, which have been corrected in this Determination, and pointed out that his total contributions shown on an annual benefit statement and pay slips he had recently found were £8,533.14, “suspiciously close” to the £8,321 deferred pension that had been quoted by Xafinity. He concluded from the evidence that he submitted that the Trustees had failed to keep accurate records of his Scheme benefits.
70. Xafinity replied that it could not reconstruct Mercer’s leaving service pension estimate of £9,068 p.a., but it could reconstruct a leaving service pension of £8,342.53 p.a. Xafinity also pointed out that Mercer’s letters and schedules were stated to be illustrations, so were not binding on the Trustees, and furthermore Mr L’s pension benefits were calculated by reference to an accrual formula, and did not relate specifically to the amount of contributions he had paid.

### **Ombudsman’s decision**

71. The letter from Mercer Australia that was sent to Mr L in 1989 set out Mr L’s options to transfer his deferred pension under the Scheme to an Australian pension plan, with a transfer value of £18,700, or to retain a deferred pension of £3,395 p.a. (plus revaluation) in the Scheme. The figures set out in the letter do not support Mr L’s contention that he was entitled to two deferred pensions worth £11,820 p.a. in total. Furthermore, the deferred pension is calculated by reference to the length of scheme service and amount of scheme salary, and does not equate to the amount of a member’s contributions.
72. When the Scheme’s assets and liabilities were transferred into the Plan in 1994, the Plan administrator had to rely on the membership records supplied by Mercer, the Scheme administrator. Unfortunately, those records proved to be defective in several respects. In particular, the date that Mr L’s Scheme service started was 1 April 1972 but was stated by Mercer to be 1 April 1978. That was not the fault of Xafinity or its predecessor as Plan administrator. That issue was settled in 2016 after Mr L found an old benefit statement.
73. I am satisfied from the lengthy correspondence on this matter since 2014 that Xafinity has put a lot of time and effort into determining the correct benefits for Mr L and responding to his queries. In 2017, at IDR stage 2, Xafinity admitted that it had taken longer than expected to clarify the amount of pension, and offered to pay Mr L £500 for his distress and inconvenience. Xafinity’s delays amount to maladministration, and £500 is the minimum amount that I award nowadays where I consider that significant distress and inconvenience has been caused to an applicant. I consider that amount to be appropriate in the circumstances, and on the basis that the offer is still open I will not make a larger award.

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74. Therefore, I do not uphold Mr L's complaint against Xafinity, as it has already offered Mr L £500 in respect of the distress and inconvenience he has suffered and were I to uphold the complaint I would not award a higher sum, so the maladministration has been adequately addressed. I do not uphold the complaint against the Trustees, because the Trustees delegated the Plan administration to Xafinity. Mr L should contact Xafinity if he wishes to accept its offer of £500 in respect of the significant distress and inconvenience he has suffered.

**Anthony Arter**

Pensions Ombudsman  
30 November 2018