

Ombudsman's Determination

Applicant	Mr T
Plan	Lafarge UK Pension Plan (the Plan)
Respondent	Lafarge UK Pension Trustees Limited (Lafarge)

Outcome

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

Complaint summary

3. Mr T has complained that he received information which led him to believe he would receive a higher pension when he reached retirement age.

Background information, including submissions from the parties

4. In 1988, Mr T left employment with Redland Group, and became a deferred member of the Plan. On 15 August 1988, Redland Group sent a letter to him detailing the options available as a deferred member of the Plan. The options were:

"to leave your rights as a deferred pension within the Redland Pension Plan which currently amounts to £2,202.67 per annum, but will increase between now and age 65, your normal retirement date, to £12,733.66 per annum. At retirement, subject to Inland Revenue limits you will be able to exchange up to one quarter of the increased pension for a tax free cash sum,

or

to transfer the value of your deferred pension amount to £7,711 to your new employer's pension Plan or to a policy in your own name with a qualifying insurance company of your choice."

5. Mr T chose the option to defer his pension and confirmed this to Redland Group.
6. No further action was taken and Redland Group was taken over by Lafarge.

7. In June 2001, Lafarge wrote to Mr T. It said it was reviewing information that had been sent to members who had left employment in the 1980s. This was because Lafarge believed the wording relating to pension increases was incorrect. It said the following:

“Throughout the entire period since you left employment with Redland Group, the Plan’s provisions relating to the increases of pension have remained unchanged. The provisions are:

- During the period between your leaving employment and drawing your pension, the part of your deferred pension in excess of your guaranteed minimum pension of “GMP” (see below) will be increased by 5% each year, provided that the cumulative increase between leaving and drawing your pension does not exceed the rise in the Retail Price Index over the same period.
- Once in payment, that part of your pension in excess of the GMP will be increased by 5% each year, provided that the cumulative increase since your retirement does not exceed the rise in the Retail Price Index during the same period.
- Your GMP (being part of your pension that is broadly equivalent to the pension that you would have received from the State Earnings Related Pension Plan (“SERPS”) had the Plan not been contracted-out of SERPS) is subject to specific statutory increases set by the Government.
- In addition, pension increases are reviewed each year by the Company, Increases above the levels set out above may be granted from time to time by the Trustees with the consent of the Company.”

Lafarge believed the letter issued in 1988 could have been construed as the pension being increased by 5% each year regardless of the Retail Price Index, which was incorrect.

8. In June 2002, Mr T contacted Lafarge, he said he had not been able to respond sooner as he was out of the country with work. He asked that Lafarge address the following questions that he had which were:
- what were the financial implications of their letter of June 2001?
 - what instigated the letter being sent and had other members of the Plan had reason to complain?
 - did Lafarge believe he should seek independent financial advice?
9. On 11 June 2002, Lafarge provided the following response to the three points Mr T raised. It said:

- There are no financial implications to the earlier letter – the purpose of the letter was to clarify the benefits retained for him in the Plan in particular with regard to pension increases.
 - The pension increases provisions of the Plan had been misunderstood in a few isolated cases and it was felt best, in the circumstances, to provide general clarification to deferred Plan members.
 - It was open to him to seek further advice if he wished regarding the matter.
10. From 2003 to 2014 Mr T received annual benefit statements which showed his correct deferred pension entitlement.
11. No further action was taken until 2014, when Mr T says he became aware that his pension increases would be lower than he had anticipated. So he asked Lafarge to tell him what benefits he could expect to receive when he reached age 65. He also asked why he had been given incorrect and misleading information in 1988 and 2002.
12. On 16 October 2014, Lafarge wrote to Mr T and provided a number of pension illustrations based on the increase he might receive when he reached age 65. The benefits ranged from £9,396 to £10,273 using increases from 0% to 4%. It also provided the following comments:
- The Projections in the 1988 letter assumed an average 5% per annum future increases although the Rules specify the increases as the increase in the Retail Price Index subject to the ceiling of 5% per annum. In order to provide members with an approximation of the possible value of a projection of 5% per annum was used. In retrospect the letter should have also clarified that the pension quoted at age 65 was an approximate amount.
 - Our letter of June 2001 was sent to clarify how increases during deferment were specified in the Trust Deed and Rules and also provided a Deferred Benefit Statement which clarified that the total deferred pension at that time amounted to £4,032.64 per annum, as well as providing an explanation of the pension increases that would subsequently apply.
 - The June 2002 letter, in retrospect, could have referred you to the June 2001 Benefit Statement which clearly explained the current value of the deferred pension and the basis for further pension increases.
13. Mr T took his complaint through both stages of the internal dispute resolutions procedure. Lafarge offered £1,000 for the distress and inconvenience he had suffered.
14. Mr T remained dissatisfied and brought his complaint to the Pensions Ombudsman to be independently reviewed.

Adjudicator's Opinion

15. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by Lafarge. The Adjudicator's findings are summarised briefly below:-
- There was no dispute that in 1988, Mr T received misleading information which indicated that his pension benefits would include increases which would result in his pension benefits amounting to £12,733.66 per annum. This was incorrect and Mr T was later made aware that his pension would increase to between £9,000 and £10,000. Misleading information amounts to maladministration, however, that does not mean that Lafarge is required to pay benefits that Mr T is not entitled to.
 - Lafarge provided a letter in 2001 which explained how increases would be calculated. It then followed this up in 2002, providing answers to the questions Mr T raised. It could have provided a more detailed response as to how the calculation of increases would affect Mr T. Furthermore, Lafarge explicitly told Mr T that there would be no financial implication to him which was incorrect as increases to the deferred pension were lower than previously indicated.
 - Whilst it was acknowledged that Lafarge could have provided better explanations, it could not be ignored that correct benefit statements were sent to Mr T from 2001 to 2014, which explained what the deferred pension was and the increases.
 - Mr T is only entitled to increases that are payable in line with the Trust Deed and Rules. Therefore, Lafarge are not required to pay him the higher increases. However, he would have suffered significant distress and inconvenience. Lafarge offered Mr T £1,000 to acknowledge this which was sufficient.
16. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T provided the following comments which do not change the outcome:
- The wording in the Adjudicator's Opinion explained that the 1988 letter said the pension "could" increase to £12,733.66 per annum, whereas the letter actually said it "will" increase to that amount.
 - He was forced to pay extra money in to another private pension plan to try and compensate for the lower pension amount he will receive from the Plan.
 - He had no reason to contact an independent financial adviser because the letter in 2002, explicitly told him that there were no financial implications for him.
 - Although, Mr T received correct benefit statements, he still believed following receipt of the information in 1988 that his benefits would eventually increase up to £12,733.66.
 - He was not querying the £1,000 award for distress and inconvenience as this was not the dispute.

17. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr T for completeness.

Ombudsman's decision

18. Mr T has complained that his pension benefits will be lower than he anticipated, following incorrect information which was sent to him in 1988.
19. Mr T has highlighted that the 1988 letter said his pension would increase to £12,733.66. He said the wording was definitive and unambiguous. Mr T is correct that the wording was definitive and it is acknowledged that the letter provided misleading information about the increases, whether that was the wording used, the figures provided, or both. However, that does not change the outcome of the complaint. Mr T may only receive increases that are calculated in line with the Trust Deed and Rules.
20. Mr T says that he made irreversible decisions to make investments in reliance on the figures quoted and has been forced to pay money into a personal pension plan, to try and rectify receiving a lower pension from the Plan. He said it was due to the misinformation that he is now in this position. However, there is nothing to suggest that particular investments would not have been made had Mr T known that his pension was likely to be lower than had been quoted. It is not disputed that Mr T will receive a lower pension from the Plan than he was told in 2001, but from 2003 to 2014 Mr T received annual benefit statements which showed his correct deferred pension entitlement. The fact he has chosen to increase his retirement income by paying contributions to another pension plan was his own decision and was not a consequence of receiving wrong or misleading information. Rather he chose to do that as a result of being provided with the correct information.
21. In my view on receipt of the 2001 letter and benefit statement Mr T could have asked more specific questions about how the calculation of increases would affect his benefits. Instead he asked Lafarge what the financial implications would be to him, to which Lafarge said there would be no financial implications. This was because his deferred pension before increases had not changed. Whilst that is not an incorrect response I do consider that Lafarge could have explained that the final pension amount may be lower because of how the increases were being calculated. But, I do not consider this changes the outcome of the case.
22. Mr T said he had no reason to contact an independent financial adviser because he was told by Lafarge that there were no financial implications to him. I do not consider Lafarge can be held responsible that Mr T made the decision not to consult a financial adviser. Lafarge clearly said in the 2002, letter that it was his decision whether or not to seek financial advice.
23. Even though Mr T received a number of correct benefit statements, he assumed, that based on the 1988 information, his benefits would eventually increase to the £12,733.66. I consider that given Mr T was provided with sufficient correct information

from 2003 onwards and it was not reasonable to make the assumption that the increases would eventually reach the higher amount.

24. I believe the award of £1,000 Lafarge has offered is sufficient to cover the distress and inconvenience Mr T has suffered.
25. Therefore, as I consider Lafarge have made a reasonable offer, I do not uphold Mr T's complaint.

Karen Johnston

Deputy Pensions Ombudsman
7 February 2018