

Ombudsman's Determination

Applicant	Mr A
Scheme	Steria Pension Plan (the Scheme)
Respondents	Capita Employee Benefits (Capita) Sopra Steria Limited (the Trustee)

Outcome

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

Complaint summary

3. Mr A's complaint against the Trustee is summarised as:
 - Mr A's deferred benefits within the Scheme should be revalued in line with RPI instead of CPI
 - Mr A would like the late retirement factor quantified and projected
 - The Trustee did not respond to his IDR request
 - Mr A is concerned that there are legal issues with the Scheme
 - The Scheme rules were changed in 2011 without member consultation
 - There has not been a recent updated Scheme member booklet
4. Mr A complains that Capita has repeatedly failed to respond to his correspondence.

Background information, including submissions from the parties

5. In March 2010, the Scheme closed to future accrual, at which point Mr A became a deferred member. He remained in employment with the principal employer (**the Employer**) to the Scheme until August 2015.
6. The Scheme Trust Deed and Rules (**the TDR**) states that, for deferred members, benefits will be subject to "the higher revaluation percentage applicable in accordance with paragraph 2(3) of Schedule 3 to the Pension Schemes Act 1993".

7. Paragraph 2(3) of the Pension Schemes Act 1993 states:

“The higher revaluation percentage which the Secretary of State is to specify in relation to a revaluation period is the lesser of –

- a) the percentage which appears to the Secretary of State to be the percentage increase in the general level of prices in Great Britain during the period which is the reference period in relation to the revaluation period (“the inflation period”), and
- b) the higher maximum rate [defined in the case of a revaluation period of 12 months, 5%].”

8. In 2010, the government stated that CPI was to be the rate of determining the general level of prices in Great Britain.

9. Mr A has complained that the current Trust Deed and Rules (‘TDR’) was amended from an earlier 2006 version without member consultation. The Trustee has said that, following the Scheme closure in 2010, it made changes to the previous 2006 TDR. The Trustee has confirmed that none of the changes made fell within the categories defined in the 2006 TDR as requiring member consultation.

10. In January 2016, Mr A wrote to Capita asking for a clearer idea of the late retirement factor that would be applied. He said that he wished to know what value this benefit had for him and how it would be calculated and applied.

11. Mr A argued that the previous late retirement factor of 8% was easy for him to apply when performing his own projection of his benefits. However, changes to the late retirement factor in 2012 meant that he could no longer do this and he asked to be provided with a projection including this factor.

12. Capita responded to say that the late retirement increase was subject to advice from the Scheme actuary and that a decision had been made in 2012 to stop using a fixed rate of 8%. Instead it would be applied on an individual basis, based on age, type of benefits accrued and market factors to provide a fair value to all members of the Scheme.

13. In July 2016, the Chairman to the Trustee wrote to all members about a proposed merger of the three pension schemes linked to the Employer, the Scheme being one of these three. The letter said that the trustees of all three schemes were considering a merger and were taking advice on the matter. It went on to say that the trustees would only agree to the proposal if there would be no material adverse effect on member benefits.

14. On 17 August 2016, Mr A wrote to the Chairman of the Trustee in response to the July 2016 letter. Mr A raised concerns and questions about the proposal and the potential impact upon his benefits. He told the Chairman that there should be a

member consultation and that he would like to be involved. The Scheme secretary acknowledged Mr A's letter and explained that the Trustee was not in a position to provide a substantive response to his letter as discussions on the merger were at an early stage.

15. On 18 November 2016, Mr A emailed the Scheme secretary to ask when he would receive a response to his complaint letter of 17 August 2016. The secretary responded on the same day to explain that it wasn't clear Mr A was invoking the internal dispute resolution (**IDR**) in his letter of 17 August 2016. The secretary then shared the Scheme IDR information.
16. Mr A has said that there is a legal issue with the Scheme. The Trustee has responded to say that Mr A is referring to a potential issue with an amendment to the TDR in 2006, which was implemented following actuarial and legal advice at the time. The Trustee has said that the issue is being decided in the High Court, but that the outcome will either validate the current calculation of Mr A's benefits or increase them; the Court decision will not reduce Mr A's benefits.
17. In January 2017 Mr A asked this Office to investigate his complaint. The Trustee at this time had not issued its IDR response. This Office decided to accept the case for investigation as a reasonable amount of time had passed. On 19 May 2017, the Trustee provided this Office with a full response to the complaint. In its response, the Trustee explained that Mr A had raised a lot of queries and supplied a high volume of documentation that it needed time to review and respond to.
18. Capita responded and a summary of this is below:
 - Mr A emailed Capita on 29 January 2017 requesting detailed information and raising some technical queries.
 - A full and factual response was issued by Capita on 5 February 2017.
 - A further 'in-depth' email was received from Mr A on 26 February 2017, the majority of which contained Mr A's comments on certain issues and requests for Capita's view on matters not linked to administration of the Scheme.
 - Capita acknowledges that there were two points contained within Mr A's email of 26 February 2017 that it was responsible for answering, which it ought to have done.
 - Capita also acknowledges that it should have responded to the 26 February 2017 email to confirm that it would not respond to views and commentary about other non-administrative matters

Adjudicator's Opinion

19. Mr A's complaint was considered by one of our Adjudicators who concluded that no further action was required by Capita or the Trustee. The Adjudicator's findings are summarised briefly below:-
- The TDR allows for an increase to benefits upon late retirement, but there is no guarantee that such an increase will be applied.
 - The Trustee is correct to apply CPI to deferred benefits, as this is in line with the TDR.
 - The fact that the Trustee did not recognise sooner that Mr A was invoking the IDR procedure was reasonable and not detrimental to Mr A.
 - The outstanding legal issue will not negatively impact Mr A.
 - The changes made to the TDR in 2011 did not require the Trustee to consult members.
 - The Trustee is not expected to issue updated member handbooks after the Scheme closure.
20. Mr A did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr A provided his 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 A for completeness.

Summary of Mr A's response

- The Adjudicator did not address each of his comments made throughout his complaint.
- His annual statements continued to say his benefits would increase in line with RPI, even after the change.
- His estimated pension benefits have decreased between some of the annual statements.
- The Adjudicator did not address his concerns about the proposed merger of the schemes.
- The Adjudicator's opinions mirrored many of the Respondent's opinions.

Ombudsman's decision

21. Mr A has made many comments as part of his complaint. It is not my intention to address each one individually, but to comment on what I deem to be the salient points.

22. The annual statements Mr A refers to actually state that benefits in payment will increase with RPI. It would seem Mr A has confused this with benefits in deferment. The TDR confirms that the revaluation factor is the lesser of 5% or the rate set by the Secretary of State for the given period. The Trustee has correctly applied the provisions set out in the TDR.
23. Mr A has complained that his annual statement projections do not always increase year on year. The figures contained within annual statements for deferred benefits before Normal Retirement Age are a projection based on the applicable factors for that statement period. Benefits will be revalued from the deferment date to the current date so can fluctuate year on year. This does not constitute a financial loss.
24. Mr A has asked that the Trustee provide him with accurate projections of his late retirement factor. The TDR does not state that a member has a right to the application of a late retirement factor. The TDR says that, subject to actuarial advice, the Trustee may increase benefits upon late retirement. This means that any late retirement factor is discretionary and as such the Trustee is not obligated to award such a benefit to members. For this reason, I find that the Trustee is not obligated to provide a projection for this unsecured benefit.
25. In its formal response to the complaint, the Trustee acknowledged and apologised that it did not immediately recognise that Mr A wished to invoke the IDR process. Having read the letter dated 17 August 2016, I see no expression of complaint or request to invoke the complaint process. This letter contained Mr A's worries and questions about the proposed merger of the schemes. I do note that the letter was acknowledge in this context.
26. Mr A has raised concerns over a legal issue involving the 2006 TDR. He has suggested that this throws doubt on the overall standing of the merger of three schemes, one of them being the Scheme. The Trustee has explained that this element of Mr A's complaint "concerns a technical issue identified in one of the [Scheme's] legal documents which has not yet been resolved and which may affect the calculation of member benefits." The Trustee went on to say:

"A number of years after the 2006 Deed was executed, the [Trustee] received legal advice from its present solicitors (privilege in relation to that advice is not waived) identifying doubts that requisite confirmation or certificate had been provided in relation to the 2006 Deed.

In light of that uncertainty, and as is usual, the Trustee has brought High Court proceedings seeking a ruling on how to administer the [Scheme]."
27. The Trustee also confirmed that the Court application does not concern the funding of the Scheme and that Mr A will not be negatively affected.
28. To the extent that a legal issue about the validity of a Deed is already before the High Court it would be inappropriate for me to make a finding about how the outcome of that issue may affect the calculation of Mr A's benefits and I decline to do so. Mr A has

complained that the Trustee has not issued an updated Scheme member's handbook since 2008. However, given that the Scheme closed to future accrual in March 2010, I see no reason for it to continue to issue updated handbooks and I am not aware of any legislation that would require it to do so. The Trustee is required to share the Scheme rules and provide basic information to members about eligibility and benefits. The Trustee has shown that it provided the TDR to Mr A in October 2015 at his request. I have seen no evidence to suggest that Mr A has not been sent his Scheme benefit information.

29. Therefore, I do not uphold Mr A's complaint against the Trustee.

30. Mr A has complained that Capita did not respond to his communications. Capita has explained that it responded in full to his email of 29 January 2017, but apologises for not acknowledging the subsequent email. I find that Capita was not responsible for providing answers to the non-administrative questions posed by Mr A. Capita did provide a full response to the administrative questions in Mr A's first email. I find that Capita ought to have acknowledged the second email to confirm its position, and acknowledge the follow up questions it was able to answer. I imagine the lack of response to the second email caused Mr A some frustration, however I do not consider this significant enough to make an award.

31. Therefore, I do not uphold the complaint against Capita.

Karen Johnston

Deputy Pensions Ombudsman
23 November 2018