

Ombudsman's Determination

Applicant	Mr G
Scheme	Sirdar Plc Retirement Benefits Plan (1974) (the Scheme)
Respondents	AIREA plc (the Company). Capita (the Administrator). Powell Financial Management (the Financial Adviser). Trustees of the Sirdar Retirement Benefits Plan (1974) (the Trustees)

Complaint Summary

Mr G's complaint against the respondents is in three main parts:-

- i. The provision of incorrect information and delays caused by the Administrator in relation to both sections of the Scheme.
- ii. Delays in the transfer of his benefits, from the defined contribution section of the Scheme, to a separate scheme with Legal & General.
- iii. The Company and Trustees' decision not to consent to early payment of benefits with no reduction from age 60 from the defined benefit section of the Scheme.

Summary of the Ombudsman's Determination and reasons

The complaint is not upheld against the Company or the Financial Adviser, but it is upheld in part against the Administrator and Trustees for the following reasons:-

- The Administrator was at fault on several occasions, but was appointed by the Trustees and acted on their behalf, so I also hold the Trustees responsible for its actions.
- The Financial Adviser advised the Trustees in finding an alternative scheme for the purpose of winding up the defined contribution section of the Scheme. This Office has no jurisdiction in respect of the provision of this service. The Financial Adviser also monitored the transfer of funds from the defined contribution section of the Scheme to the recommended buy-out Scheme, but in this respect no administrative errors were identified.

- The Company is not at fault for inaccuracies or delays in the provision of information to Mr G in respect of his benefits under either section of the Scheme. Nor is it responsible for incorrectly transferring Mr G's benefits under the defined contribution section of the Scheme to the separate Legal & General scheme.
- The Trustees are ultimately responsible for the inaccurate information which Mr G received regarding his benefits in the defined benefit section of the Scheme. Therefore, they shall pay him £500 for the significant distress and inconvenience he has suffered.
- The Trustees are also ultimately responsible for delays transferring of Mr G's benefits under the defined contribution section of the Scheme to the separate Legal & General scheme. So, they shall provide redress to Mr G for any loss of investment growth associated with this delay, and a further £500 for significant distress and inconvenience caused to Mr G.
- There is no fault on the part of the Company or Trustees in respect of Mr G's reduction of benefits from the defined benefits section. Mr G cannot receive such benefits without actuarial reduction from age 60, as the Trustees' and Company's consent is required and consent has not been given. Even if there had been no delay and Mr G had been able to begin taking benefits from the defined benefit section in around June 2016, it is likely consent would not have been given due to the Scheme's funding deficit. So, I do not find that Mr G has suffered a loss of benefits under the defined benefits section.

Detailed Determination

Material facts

1. Originally, Mr G was an employee of Sirdar Plc and a member of the Scheme (formerly a defined benefit occupational pension scheme).
2. The rules of the Scheme are the Conformed Definitive Deed & Rules (incorporating amendments to introduce accrual on a money purchase basis on and from 1 March 2005), dated 28 February 2005 (as amended) (**the Scheme Rules**). Under the Scheme Rules, Mr G was a "Specified Member", covered by Section A of Parts III and IV of Schedule 1. As a deferred member, he is also covered by Section IV of Schedule 1, for purposes of calculating his benefits. The relevant parts provide:

"Subject to the Trustees' consent, a Member who has left Service and in respect of whom benefits have been provided under Rule 12(a) or (b) may, at any date prior to Normal Pension Date at which an immediate pension or, if appropriate retirement lump sum could be been granted under Rule 10 had he not previously left service, elect that in lieu of such benefits, reduced benefits shall become payable as if that date were his Normal Pension Date." [12(H) Payment of pension or retirement lump sum before Normal Pension Date]

“Specified Member” means a Member who at the date of his admission to the Plan or, if he has been admitted to membership more than once, the date of his last such admission, was eligible for membership in accordance with the Proviso to Rule 2(a).’ [Schedule 1; Part 1]

“For the avoidance of doubt, any pension or other benefits payable in accordance with this Part IV(II) of the Schedule shall come into payment at the same time as any other benefits payable to the Member from the Plan unless otherwise permitted while maintaining the status of the Plan as an Exempt Approved Scheme.” [Schedule 1; Part IV(II)]

3. On 12 December 1991, the Trustees wrote to Mr G (**the 1991 letter**). They stated:

- “your Normal Retirement Date [**NRD**] will be your 65th birthday whether you are a man or a woman;
- ... men and women will still be able to retire early or late with the Company’s consent;
- if you retire on or after your 60th birthday your benefits will not be reduced to take account of the early payment; and
- if you retire before your 60th birthday your benefits will only be reduced to take account of the time until your 60th birthday rather than until [**NRD**].”

4. Under “Early Retirement”, it stated:

“Although the [**NRD**] under the Plan will be age 65 from 1st January 1992 it will still be possible for you to retire earlier with the Company’s consent.

If you retire before [**NRD**] but after your 60th birthday your benefits will be worked out in the usual way (see your explanatory booklet), but will not be reduced for early payment.

If you retire before your 60th birthday although your pension will be reduced for early payment the reduction will only be based on the period to age 60 (not on the whole period up to your [**NRD**]).

5. In January 2000, the Trustees wrote to Mr G (**the 2000 letter**). This stated:

“In 1991/1992, the Company did not wish to give a guarantee that benefits would be paid in full on retirement at age 60, because the finances of the Company and the Plan would not permit such a guarantee. Nevertheless, it was the Company’s intention that consent to an immediate pension on retirement on or after age 60 would not be withheld and, in fact, consent has not been withheld for any Member retiring early from service with an Employer since 1 January 1992. In addition, once consent is given in such

circumstances, the early retirement pension is calculated on the basis that there is no reduction for early payment.

The 1992 Changes were announced and, in practice, have been implemented over the last 8 years. However, the Trustees have been advised that there may be a technical defect in the documentation, arising from the failure to guarantee that the rights Members had already earned up to 1 January 1992 would be protected.

The change announced in 1991 does impact on the benefits for Members who leave the Plan after 1 January 1992 and became entitled to a deferred pension. Because of the change, the deferred pension becomes available as of right from age 65 over all service whereas previously it had been available from age 60 for males for pensionable service from 17 May 1990 to 1 January 1992 and for females for all pensionable service from 17 May 1990 to 1 January 1992. Members who have left or who leave the Plan and become deferred pensioners after 1 January 1992 may find that the transfer value or their early retirement provision could be reduced because of the change.

The Trustees and the Company now invite you to consent to the 1992 Changes and a copy of the announcement of December 1991 is attached for your convenience.”

6. Mr G consented to these changes and became a “Consenting Member”.

7. In November 2000, a Deed of Clarification was made. This stated:

“In the exercise of the power conferred on them by Clause 4 of the Definitive Deed and any other power than enables them, the Trustees hereby... in the case of a Consenting Member confirm and restate that the Normal Pension Date in respect of all Pensionable Service is the Member’s 65th birthday.”

8. The Trustees initially administered the Scheme in-house but from 2002 administration was outsourced to the Administrator.

9. In February 2005, the Scheme was closed to future accrual, with past pensionable service continuing to be linked to final pensionable salary. After that, the Scheme provided benefit accrual on a defined contribution basis. So, the Scheme had two sections: a defined benefits section (**the DB Section**), which included Additional Voluntary Contributions (**AVCs**), and a defined contribution section (**the DC Section**).

10. In November 2007, Mr G became a deferred member of the Scheme, Section IV of Schedule 1 provides that:

“For Members in Service on 28 February 2005, for the purposes of calculating benefits in accordance with this Part IV(I) of the Schedule only, no period of Service will count as Pensionable Service after 28 February 2005. This

provision shall override all other provisions on this Part IV(I) of the Schedule... Benefits set out in this Part (IV)(I) of the Schedule are subject to the limitations set out in Part II of the Schedule.”

11. On 5 November 2007, Sirdar Plc wrote to Mr G (**the 2007 letter**), and stated:

“On Friday 2 November 2007... Sirdar PLC... agreed to sell Sirdar Spinning Limited... to Sirdar Holdings Limited... As an employee of Sirdar Spinning... you will no longer be eligible to be an active member of the Plan with effect from that date. You become a deferred member of the Plan...

An announcement was issued in 2000... In this announcement, the Company explained that it would endeavour to allow members retiring from active service to retire early without an actuarial reduction to their pension if they retired on or after their 60th birthday. This was not a guarantee that members could retire at age 60 with an unreduced pension but that the Company and Trustees would continue with the practice wherever possible. The announcement also explained that for deferred members, retirement without an actuarial reduction would not be available until they reached their Normal Retirement Age of 65.

Following the sale of Sirdar Spinning, the Company now proposes to extend the policy to retire early without an actuarial reduction to their pension from their 60th birthday to all members who have become deferred members as a result of the sale (although you should note that payment of early retirement pensions is subject to the consent of the Trustees in any event). Although this is not a guarantee, the Company hopes that members will appreciate that significant efforts are being made to protect past service pension benefits for the people affected by the sale.”

12. In 2015, the Company and Trustees decided to wind up the DC Section. Then, the Financial Adviser was appointed to arrange a suitable alternative pension scheme. It recommended members transfer their benefits thereunder, into a Section 32 buy-out policy with Scottish Widows (**the Trustee Buyout Plan**). Members not wishing to do so were free to make alternative arrangements.

13. In February 2016, the Trustees wrote to Mr G and stated:

“After detailed consideration, the trustees of the Sirdar Plc RBP have decided that they will wind-up the [DC Section] with effect from 31st March 2016. This means that there will be no further payments into the scheme, and that we must make alternative arrangements to secure your existing benefits...

Unless you instruct otherwise, we intend to transfer all your benefits in the scheme to [the] Trustee Buyout Plan...

You must let us know within three months if you do not wish your funds to be transferred to the Trustee Buyout Plan. In considering your options, you may

wish to take financial advice. It would be helpful if you could use the enclosed form to let us know your intentions.”

14. In March 2016, Mr G informed the Administrator that he intended taking benefits from the Scheme in June 2016, at age 55.
15. In May 2016, Mr G requested to transfer his DC benefits to a separate scheme, the Legal & General Sirdar Spinning Personal Pension Plan (**the L&G Scheme**), rather than the Trustee Buyout plan.
16. In July 2016, the Administrator provided Mr G with a benefit statement. However, it was inaccurate as it did not include the value of his AVCs.
17. In August 2016, the Administrator provided Mr G with a corrected benefit statement, including his AVCs. The statement also included a reduction due to benefits coming into payment before age 65. Mr G disputed this reduction.
18. In September 2016, the Administrator provided Mr G with another benefit statement with a reduction only applying from age 60. This was incorrect; the Administrator did not understand that such a reduction was only available with the consent of both the Company and the Trustees. Thereafter, Mr G corresponded with the Administrator in relation to his benefits under the DC Section.
19. In October 2016, Mr G requested a lump sum and cash equivalent transfer value (**CETV**) under the DB Section, but he was informed that CETVs had been put on hold. He then requested forms to take his benefits from this section as soon as possible. However, there was a delay before they were provided.
20. In December 2016, Mr G was informed by the Trustees that, with immediate effect, the Company would no longer give consent to members wishing to take unreduced pension DB Section benefits from age 60.
21. During this time, against his wishes, Mr G’s DC benefits were incorrectly transferred to the Trustee Buyout Plan.
22. On 3 January 2017, Mr G complained to the Trustees about the proposed reduction in the level of his DB Section benefits. He said:

“For many years I have worked towards and planned retirement at age 55 in the knowledge that I am entitled to a full pension at age 60... I had planned to take the [DC] element as part of my Tax Free Cash when I took my pension. Unfortunately I felt I had no option but to agree to the transfer which I did on 5th April 2016, as the fund was being wound up in May.”

23. The Trustees responded under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). They said, whilst the Company had told him, in 2000 and 2007, that it would "endeavour" to allow members retiring from active service to retire early without actuarial reduction, this was not a binding promise. Moreover, it was not the Trustees' but the Company's decision. So, there had been no change in the Scheme rules and the Company was entitled to make this decision. The position outlined by the Administrator, that consent to early, unreduced benefits would no longer be given, was correct.
24. In March 2017, Mr G appealed and re-iterated his main complaint. He also outlined a second complaint, regarding his DC benefits being incorrectly transferred.
25. On 6 March 2017, Mr G's benefits under the DC Section were finally transferred to the L&G Scheme. The Trustees then wrote to Mr G and said:-
 - The Administrator's response was correct in that members were no longer entitled to early pensions without actuarial reduction.
 - So, the Administrator's calculations were correct, as they included a reduction.
 - He should contact the Administrator about the incorrect transfer.
26. On 13 March 2017, Mr G complained to the Trustees again. Among other things, he said that if no delay had occurred, he could have retired in June 2016, when the Company was still consenting to early retirement without reduction. The Trustees responded and re-iterated that there was no automatic entitlement to retire at age 60 without reduction; consent was always a requirement, and it was not given in this case.
27. On 26 April 2017, Mr G complained to the Financial Adviser. He said that he held it responsible for delaying the transfer of his DC benefits between April 2016 and March 2017, so it should pay him £3,600 for the resulting losses.
28. On 4 May 2017, Mr G complained to the Company. In summary, he said his request to take benefits was made some months before the Company stopped consenting to early retirement without reduction, so this should be granted to him. He also claimed redress for loss of benefits and compensation for distress and inconvenience.
29. In June 2017, the Trustees wrote to Mr G again. In summary, they acknowledged various failings and inaccuracies in statements that had been provided to him. But, they maintained that accurate figures were eventually provided to him.
30. The Company then wrote to Mr G and explained that there was never a guaranteed entitlement to early retirement without actuarial reduction. So, the final illustrations provided to Mr G by the Administrator were correct.

31. In July 2017, the Financial Adviser wrote to Mr G. In summary, it explained its role was limited to, firstly, providing advice to the Trustees regarding the wind-up of the DC Section and, secondly, providing general advice to members regarding the overall transfer. But the administration process was overseen by the Administrator.
32. In September 2017, the Trustees, the Company and the Administrator, wrote to this Office with their additional comments in relation to Mr G's complaint.
33. In October 2017, the Financial Adviser wrote to this Office with its further comments.

Summary of Mr G's position

34. The Administrator said that it did not receive his pension benefit request until 18 April 2016, but Mr G had an email which he attached, dated 14 March 2016, in which made his request.
35. The Financial Adviser thought that Mr G had signed discharge forms on 5 April 2016. However, Mr G had not said he signed discharge forms at that time; his claim was he had signed forms to allow the transfer of funds to begin on 5 April 2016.
36. The Financial Adviser also said, that by choosing a scheme other than the Trustee Buyout Plan, Mr G became responsible for his own transfer. None of the parties involved with the Scheme had made this clear.
37. Mr G disputed that he had stopped the transfer of funds on many occasions. He said:

"From the outset I was trying to delay this transfer only because I was hoping to be in receipt of my DB pension by 2nd June 2016. Options were never clearly explained as to what I could do with this fund. I was never given the options [sic] to take the fund under triviality rules. Every time I tried to get clear information to help me make a decision I was thwarted by being told the wind up had taken place".

38. He attached evidence of his fund transfers to support of his claim that he had incurred a financial loss because of the transfer delay.

39. In his email of 14 March 2016, Mr G told the Company:

"I am considering taking early retirement on my 55th birthday on 2nd June, could you please send me an estimate of my pension entitlements... I have a letter indicating we can retire on full pension at age 60 and trust if there is any reduction for retiring early at 55 that it is based on CPI as I believe increases are. I would like me AVC's as cash along with the Money Purchase Fund, but no tax free cash from my Defined Benefits element".

40. Mr G further stated:

“I believe this [email] confirms my intention was always to take my DB without a cash free [sic] lump sum, along with my AVC's and DC (Money Purchase element) on my 55th birthday on 2 June 2016”.

41. When Sirdar Spinning Limited transferred land and other assets to Sirdar Plc, it also transferred the pension scheme to Sirdar Plc, with an agreement that the latter would use any proceeds on the transfer of the land and other assets to: reduce debt; address the group's pension deficit; and invest in the group's core activity, i.e. floor coverings. He provided a link to a news article highlighting that the proceeds of property disposals should be used to address any Scheme deficit.
42. Mr G did not believe the Company and Trustees could have knowingly accepted, since 2009, benefit illustrations from the Administrator on an unreduced basis. If that were the case, then the administrative process between them was inadequate.
43. If this issue had been resolved in June 2016, then he too would have received unreduced benefits. Therefore, in Mr G's opinion the Company and Trustees should be directed to pay his benefits unreduced now.
44. If it were not possible to uphold his complaint, then I should direct the Company and Trustees to stop payments to any members who had received unreduced benefits since 2009. Moreover, I should direct the Company and Trustees to reclaim any and all overpayments from the recipients or their estates.
45. He was always told to contact the Administrators by email; he was never told that he should contact the Company or Trustees directly. Therefore, the Administrator could and should have informed them of his request to retire at age 55 in June 2016.
46. It seemed to him that the Company and Trustees had allowed the Administrator to grant consent to unreduced benefits “by custom and practice” since 2009. Therefore, the estimate provided by the Administrator, including unreduced benefits from age 60, was in fact granting consent on behalf of the Company and Trustees, and should be honoured.

Summary of Company's and Trustees' position

47. In March 2018, Womble Bond Dickinson (UK) LLP (**WBD**) responded on behalf of the Trustees and Company. Its submissions, in summary, were as follows:-

48. It was partly upholding parts (i) and (ii) of Mr G's complaint, due to "procedural delays and inaccuracies" in some of the benefits statements provided to him. But it was not upholding part (iii). This was because early retirement without reduction was subject to consent, no consent had been given, and neither the Trustees nor the Company was required, either by "estoppel or custom and practice", to pay Mr G an early retirement pension unreduced from age 60.
49. There were inaccuracies in benefit statements provided to Mr G, but this was partly because Mr G had provided incorrect information. The July 2016 statement was incorrect because the Administrator did not include Mr G's AVCs. The August 2016 statement was accurate, but Mr G disputed it as being less than he was expecting. It was less than expected because, as a deferred member, there was no longer a link to his final pensionable salary, so an early retirement reduction was applied for benefits coming into payment before age 65. Whilst this was correct, the Administrator then issued the September 2016 statement, which included a reduction applicable from age 60, which was incorrect. The Administrator did not realise such a reduction was only possible with the Trustees' and Company's consent.
50. But whilst the September 2016 statement was inaccurate, Mr G had not established a legal right against the Trustees or the Company to receive payment of an early retirement pension unreduced from age 60. The September 2016 statement differed from the July and August ones; the September 2016 statement incorrectly referred to a NRD of 60, which was incorrect; and, the 1991, 2000 and 2007 letters issued to Mr G, clearly stated that early retirement was subject to consent. Therefore, the grounds for estoppel by representation were not met as there was no unambiguous statement that Mr G had such a right. Moreover, Mr G had provided no evidence that he had relied on such representations to his detriment.
51. Nor had Mr G undergone a change of position as a result of any representations he received. In any case, he could not argue change of position to claim a benefit; he could only argue it as a defence to recovery of an overpayment.
52. Some enquiries were made by the Administrator regarding the calculation of Mr G's benefits. However, the Trustees were not aware, before his letter of 3 January 2017, of his intention to retire at age 55.
53. Under the Rules of the Scheme, early retirement requests require the consent of the Trustees but, having liaised with the Company, the Trustees said that they would not give consent to early retirement unreduced from age 60.
54. Members could take early retirement, but this was based on all benefits from the DB Section being actuarially reduced from age 65, the NRD for deferred members under the Rules.

55. Following a rule change in 2000, the NRD was, with member consent, changed to 65 for current members. Early retirement from active service continued to be an option, but only with Company consent, without which it would be actuarially reduced.
56. The 1991 and 2000 letters made clear that whilst the intention was to consent to early unreduced retirement, this was not guaranteed. The 2007 letter proposed to extend early retirement to deferred members. Therefore, benefits could potentially be paid unreduced from age 60, but this was not guaranteed. So, Mr G did not have a right to an unreduced pension from age 60 without Trustees and Company consent.
57. The case of *IBM v Dalgleish and Ors* [2017] EWCA Civ 1212 established that “mere intention” was insufficient to argue “estoppel by representation”. Nor could Mr G argue estoppel by convention, as the Letters made it clear that the position regarding early retirement could change and consent could not be assumed.
58. It would not be inequitable for the Trustees and the Company to withhold consent based on a change of position claim from Mr G. So, as consent was not given in Mr G’s case, he was only entitled to unreduced benefits from age 65. Only his “Barber Window benefit” would be unreduced from age 60, in the absence of consent to all his benefits being unreduced from age 60.
59. Mr G requested to transfer his benefits in the DC Section to the L&G Scheme, not the Trustee Buyout Plan. The Administrator liaised with L&G and Mr G to do this.
60. Under paragraph 1.1 of Part IV(II) of Schedule 1 to the Scheme Rules, benefits in the DC Section and the DB Section must come into payment at the same time. In its email of 22 September 2016, the Administrator informed Mr G that either: (i) he needed to take his benefits under the DC Section at the same time as taking his benefits in the DB Section, to use the DC benefits to fund his tax-free cash; or, (ii) he would need to wait until he had transferred out his benefits in the DC Section if he just wanted to take his DC benefits as cash.
61. Under 12H of the Scheme Rules, any request for early retirement from deferred status was subject to the Trustees consent. This had always been the case under the Scheme Rules since Mr G joined. The Letters also made clear that Company consent was required, since the Letters were incorporated into the Scheme Rules via clause 1(a) of the Scheme Rules. So, if the Trustees consented but the Company did not, any reduction would need to be applied from age 65. Therefore, Company consent was required for benefits to be paid unreduced for early payment from age 60.

62. The Trustees and the Company had granted consent to unreduced early retirement pensions from 2009. However, whilst unreduced pensions had been paid in practice, there was no policy to do so.
63. As the Scheme was in deficit, it was considered inappropriate to provide members with “enhancements”, for example in reducing benefits taken before NRD, whilst the Scheme was underfunded. The Trustees were required to consider the interests of all members. Therefore, the Trustees’ view was that it would be inappropriate to grant unreduced early retirement pensions.
64. Even if Mr G’s request to take benefits from the DC Section had been received in June 2016, that is, if there had been no delays due to inaccurate statements, consent would still not have been given, due to the funding impact on the Scheme.

Summary of Financial Adviser’s position

65. As explained in the Trustees’ and Company’s submissions, the Trustees appointed the Financial Adviser “to assist with identifying an appropriate buy-out provider. Whilst [the Financial Adviser] was responsible for managing the initial correspondence with members and acted as a contact point for any issues the Trustees, member or [the Administrator] may have, the transfer process itself and its day-to-day administration was outsourced to [the Administrator]. [The Financial Adviser] therefore only had a limited role in relation to the Scheme.”

Summary of the Administrator’s position

66. The Trustees were initially responsible for administering the Plan in-house. But after 2002, administration was outsourced to the Administrator..

Conclusions

67. The evidence indicates the Administrator provided incorrect information in relation to Mr G’s benefits on three occasions. First, due to an internal error, the Administrator failed to flag a request as outstanding, which resulted in a delay. Second, it failed to include Mr G’s AVCs in a statement, resulting in incorrect information. And third, it failed to fully reduce his benefit estimate to reflect early retirement. In my view, these errors and omissions amount to maladministration. I find that Mr G experienced avoidable delays in circumstances where he was entitled to expect prompt and accurate information regarding his benefits. This would have caused him serious distress and inconvenience. The proper administration of the Scheme is usually the responsibility of the Trustees. After 2002, the administration of the Scheme was carried out by the Administrator, so the Administrator is responsible for the omissions, however, the Administrator was acting on behalf

of the Trustees are ultimately responsible to ensure the Scheme is administered correctly, so I also hold them responsible.

68. On reviewing the chain of events, I do not agree with Mr G's assessment, outlined in his letter of 25 October 2017, that the transfer of his benefits in the DC Section was delayed from April 2016, when he signed a form in relation to winding up of the DC Section, until March 2017. As he explained in that letter, "They also claim I ceased the transfer of funds on many occasions. From the outset, I was trying to delay this transfer only because I was hoping to be in receipt of my DB pension by 2nd June 2016. Options were never clearly explained as to what I could do with this fund...".
69. I do not consider that any redress is appropriate for the period April 2016 until June 2016. Either Mr G could not take benefits, from either section of the Scheme, before 2 June 2016. Or, he did not wish to. In any event, by 2 June 2016, he could potentially have taken benefits from both sections, even if reductions would apply in respect of the DB Section.
70. The Administrator explained, in September 2016, that either Mr G needed to take his benefits from the DC Section at the same time as taking benefits from the DB Section, or, he would have to wait until after he had transferred his benefits from the DC Section, if he just wanted to take the benefits as cash. Therefore, once Mr G had confirmed that he wished to transfer his benefits from the DC Section to the L&G Scheme, and the forms returned, the transfer could have been processed within a reasonable period of time; it did not need to take more than a couple of weeks.
71. So, I find that Mr G is entitled to redress for loss of potential investment growth caused by the delay transferring his benefits from the DC Section, but this should be limited. The Trustees and the Company have said that even if Mr G's request to take benefits from the DB Section had been received in June 2016, consent to early, unreduced retirement would not have been given due to the funding impact on the Scheme. So, from June 2016 onwards, Mr G was waiting for something the Trustees and Company were never going to agree to, namely (1) an early reduced pension from age 55 and (2) an early unreduced pension from 60.
72. Given that Mr G has brought his complaint to this Office in the belief he is entitled to (1) and (2) above, I find it is unlikely he would have accepted that he could not have this. He had informed the Administrator, in March 2016, that he wished to use his benefits in the DC Section to fund his tax-free cash. In addition, while the Trustees claim they did not know until January 2017, that Mr G intended to retire at age 55; in fact, he said in March 2016, "I am considering taking early retirement on my 55th birthday..."

73. Mr G started the process of transferring his DC benefits in April 2016; he formally requested this in May 2016; and, proceeded with the transfer in December 2016, after learning that he could not take unreduced benefits from the DB Section. So, I find it is more likely than not Mr G would have transferred his DC benefits in or around June 2016, if it had been clearly explained to him, at that time, that any benefits payable from age 60 in the DB Section would be reduced. In summary, I agree with Mr G that he was provided with insufficient information to make an informed decision.
74. There is limited information in relation to the incorrect transfer of Mr G's benefits from the DC Section. It has not been mentioned in the Trustees' and Company's formal responses. Nor has it been mentioned in WBD's letter. In that letter, it was explained that once Mr G elected to transfer his DC benefits to a scheme other than the Trustee Buyout Plan, he was responsible for effecting the transfer. However, I am of the view that Mr G was entitled to expect that the Administrator, or someone acting on behalf of the Trustees, would liaise with the parties on his behalf, to carry out the transfer in a reasonable of time. WBD states, "[the Administrator] then took responsibility for effecting the transfer of the funds from the Scheme to [the L&G Scheme]. [The Administrator] was therefore liaising with [Mr G] and Legal & General to manage this administrative undertaking and effect the transfer." The fact that Mr G's benefits in the DC Section were not transferred to the L&G Scheme until March 2017, and appear to have been transferred to the Trustee Buyout Plan against his clear wishes to the contrary, was an administrative error. So, I find that Mr G should receive redress for any loss of investment growth, and £500 in respect of the significant distress and inconvenience the delay would have caused him.
75. On a review of the Scheme rules, I agree with the Trustees and Company that consent is a required for members to receive an early, unreduced pension from age 60. It has always been a requirement under the Scheme rules for the Trustees to provide consent to early retirement; and, following an amendment of the Scheme rules, Company consent is also required.
76. Moreover, I agree with the Trustees and Company that a deferred pension is only available unreduced from age 65, and this is consistent with a deed of clarification executed in 2000. The effect of the 2000 deed was to increase, the Normal Retirement Age from 60 to 65. This change occurred with member consent. Following the deed of clarification, early retirement would still be permitted, but it would only be allowed with Trustee and Company consent. Upon receiving consent, members' benefits could be paid unreduced from age 60.
77. There are several documents, for example the 1991 letter, the 2000 letter and the 2007 letter, that arguably led Mr G to believe an early, unreduced pension

from age 60 would be available to him. However, all three mentioned the need for consent.

78. I agree with the Trustees and Company that while it was hoped that consent to early, unreduced pensions would be given, this was not a guarantee. Members were not entitled to this as of right. Additionally, I agree that there was some incorrect information provided to Mr G, regarding the taking of an early unreduced pension, however, taking into account all the other information that was provided, I do not find that Mr G has a claim for estoppel by representation. So, Mr G is not entitled to an early, unreduced pension as of right, and nor do I support his argument that he should have an unreduced pension because he was led by some documents into believing that he was entitled to one.
79. In summary, neither the Trustees nor Company has made an administrative error by withholding consent to paying Mr G an early, unreduced pension from age 60.
80. The Financial Adviser's main role was to advise the Trustees on finding a suitable alternative scheme for winding up the DC Section. This Office has no jurisdiction over it in carrying out those instructions on behalf of the Trustees. It was also responsible for liaising with the Administrator, Trustees and Scheme members in relation to any transfer queries. In that regard, I do not find that it made any administrative errors.
81. The Administrator made a number of errors, but it was appointed by the Trustees, to act on their behalf. The Trustees are responsible for the proper administration of the Scheme and so the Trustees shall pay Mr G £500 for the significant distress and inconvenience he has suffered in respect of incorrect information provided in several benefit statements, and the confusion that would have caused him. Also, for failing to inform Mr G, in June 2016, that any benefits payable from the DB Section would have to be reduced, so he should not delay transferring his benefits from the DC Section.
82. In addition, I find that the Trustees are responsible for causing delays in the transfer of Mr G's benefits in the DC section of the Scheme, by the Administrator incorrectly transferring them to the Trustee Buyout Plan. Therefore, the Trustees shall pay redress to Mr R for loss of investment growth, if any, associated with this delay; and, they shall pay him a further £500 for the significant distress and inconvenience this will have caused him.
83. Mr G has provided evidence of a sale agreement between Sirdar Spinning Limited and Sirdar Plc, which I have been able to review. But I do not find that this agreement binds the Company in the way Mr G has suggested; the Company is not obliged, by reason of the agreement, to pay Mr G the benefits on an unreduced basis.

84. Mr G adds, that he does not believe the Company and Trustees could have knowingly accepted, since 2009, illustrations from the Administrator on an unreduced basis. If they did, their administrative process was inadequate. However, I find that this does not change the outcome of the complaint. Members were not entitled as of right to early, unreduced retirement; consent was always required.
85. Mr G says, the Company and Trustees have granted consent to unreduced benefits “by custom and practice” since 2009. So, he should also receive his benefits on this basis too. I do not agree. Whether consent is given will depend on the funding of the Scheme and other such circumstances which the Trustees and the Company can take into account. Its grant is entirely at the discretion of the Trustees and the Company.
86. Mr G says that if he had received his benefits in June 2016, they would have been paid unreduced. But even if he had made his request in June 2016, I am of the view that consent would not have been given due to the funding impact on the Scheme. As the Scheme was in deficit, the Company and Trustees considered it would inappropriate to provide this sort of “enhancement”. Various exercises have been carried out to manage the Scheme’s liabilities including: closing the DB Section to future accrual in 2005; winding up the DC Section in 2016; and, conducting a PIE exercise in 2016. Taking this into account, and given the Trustees’ obligation to consider the funding of the Scheme in respect of all members, and also the Company; I find it is unlikely that consent to unreduced, early retirement would have been given, even if a request had been made in June 2016.
87. I do not uphold Mr G’s complaint in respect of the payment of an early unreduced pension. However, I do uphold Mr G’s complaint in respect of: incorrect information provided in various benefit statements; failing to inform him that he could take his benefits in the DC Scheme, in or around June 2016; and incorrectly transferring his benefits in the DC Section.
88. The question of whether the scheme trustees, and or the administrators appointed by the trustees, are responsible for any administrative errors, depends on the circumstances. In this case, although I have found the Administrator liable in respect of its acts and omissions, I have decided to hold the Trustees ultimately responsible for the Administrator’s maladministration. Therefore, the Trustees shall provide Mr G with the redress as set out in paragraph 89 below.

Directions

89. Within 21 days of the date of this Determination, the Trustees shall:-

- 1) Request that L&G calculate the loss, if any, between (a) the value of Mr G's DC benefits as at March 2017, when they were transferred to the L&G Scheme and (b) the value of the same benefits had they been transferred to the L&G Scheme on 30 June 2016, and pay Mr G the difference.
- 2) Pay Mr G £1,000 for the serious distress and inconvenience he has suffered in respect of: (i) £500, for incorrect information provided in various benefit statements, and for failing to inform him, in and around June 2016, that he could take his benefits in the DC Scheme; and (ii) £500, for incorrectly transferring his benefits in the DC Section.

Anthony Arter

Pensions Ombudsman
10 September 2018