

## Ombudsman's Determination

Applicant	Mr I
Scheme	Fiat Group Pension Scheme ( <b>the Scheme</b> )
Respondents	Capita Employee Benefits ( <b>the Administrator</b> ), Fiat Group Pension Trustee Limited ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

3. Mr I's complaint concerns his membership in the Scheme between 1979 and 1982. He believes that the Administrator and the Trustee have deliberately concealed evidence that proves he was a member of the Scheme between the said period, to deny him a pension. Additionally, he considers the Administrator has denied him his legal right to have his complaint thoroughly investigated.

Mr I has also complained about the Administrator's maladministration in providing him with incorrect benefit information.

## Background information, including submissions from the parties

4. Mr I says that he was a member of the Scheme during both periods of his employment with Fiat (**the Company**). After leaving the Company in 1991, Mr I became a deferred member of the Scheme in relation to his accrued benefits between 1985 and 1991 and, his normal retirement date (**NRD**) was his 65<sup>th</sup> birthday which was 4 September 2017.
5. In January 2017, Mr I contacted the Administrator to query when he would receive retirement quotes. The Administrator informed Mr I that he would be sent retirement quotes in March 2017, which was six months prior to his 65<sup>th</sup> birthday. The Administrator also informed Mr I that it had no record of him being a member of the Scheme between 1979 and 1982.

6. On 23 March 2017, the Administrator sent Mr I a retirement pack in relation to the benefits he had accrued in the Scheme between 1985 and 1991. This informed him that he could receive a full retirement pension of £6,500.52 per annum, or a reduced pension of £4,737.96 per annum and a tax-free pension commencement lump sum (**PCLS**) of £31,585.70. It also informed him that if he died after retirement, a spouse's pension of £3,250.32 would be payable.
7. Following receipt of the retirement pack, Mr I emailed the Administrator to query the figures. On 27 March 2017, the Administrator replied to Mr I and said:

"[It had] checked the previous figures issued to [Mr I] in 2012, and it appears that [it had] applied the wrong date of revaluation to a part of [his] pension, and when [he] left the Scheme in 1991 [he was] quoted a **guaranteed** pension at Normal Retirement Age 65 of £9,041.88 per annum."

The Administrator apologised for the oversight and said that it would send Mr I a revised quote with the correct figures on the same day.

8. The revised quote that Mr I received showed that he could get a maximum pension of £9,041.88 or a reduced pension of £6,590.28 with a PCLS of £43,934.51. The spouse's pension payable following his death after retirement was £4,521. Mr I signed the revised quote on 28 March 2017, opting to take a reduced annual pension of £6,590.28 with a PCLS of £43,934.51.
9. On 30 March 2017, Mr I complained about the miscalculation of his benefits through stage one of the Scheme's internal dispute resolution procedure (**IDRP**). Mr I explained that he believed the error could have cost him approximately £50,000 and that he did not consider that the email apology the Administrator had sent him on 27 March 2017, addressed the issue. He was also disappointed that he was not offered any compensation for the error.
10. At the same time, Mr I also complained about his membership in the Scheme between 1979 and 1982, as the Administrator had not been able to locate any information about his membership within the Scheme for this period. Mr I did not consider its inability to do so was a sufficient reason not to pay him a pension for the said period. Therefore, he requested proof that he had been refunded the contributions he had paid into the Scheme between 1979 and 1982.
11. On 26 April 2017, the Administrator sent Mr I a letter advising him that it was setting up his pension on the higher amount of £9,041.88. The letter also stated that the Administrator had checked the position with Her Majesty's Revenue & Customs (**HMRC**) in relation to his pension during his earlier employment with the Company. The Administrator explained that "if [Mr I] had been a member of the... Scheme he would have been contracted out of the State Pension Scheme..." It explained that HMRC did not have a record of Mr I and therefore, it considered that he would have received a refund of contributions when he left the Company in 1982.

12. The Administrator asked Mr I to provide any paperwork that he had from the Scheme regarding his earlier membership. The Administrator explained that if it did not receive anything further from Mr I to prove his membership in the Scheme between 1979 and 1982, it would assume that the only benefits payable are the ones that he accrued between 1985 and 1991.
13. On 8 May 2017, Mr I responded to the Administrator and said that he accepted the higher annual pension, but he was dissatisfied that it had not explained why the mistake had occurred initially. He therefore explained to the Administrator, why he thought the mistake had occurred. Mr I also confirmed to the Administrator that his National Insurance record showed that he was contracted out of the State Pension Scheme (**SPS**) between 1979 and 1982, and that he was contracted back into the State Pension Scheme in 1982.
14. He explained that he had not received any paperwork from the Administrator, regarding his earlier membership of the Scheme. However, during his exit interview, his manager informed him that the benefits he had accrued in the Scheme would be frozen to provide him with a pension at retirement. He informed the Administrator that he did not have a conversation regarding the cancellation of his pension, or the refund of his contributions. Therefore, he requested that the Administrator pay him a pension for the period he was contracted out of the SPS between 1979 and 1982.
15. On 12 May 2017, the Administrator responded to Mr I and explained how the miscalculation of his benefits had occurred. It explained why HMRC had said it had no record of him being contracted out of the SPS between 1979 and 1982, and the Administrator repeated its request for Mr I to provide any documentation that would prove his membership in the Scheme between the said period.
16. On a date between 13 May 2017 and 6 June 2017, Mr I requested, from the Administrator, a cash equivalent transfer value (**CETV**) of his benefits. On 6 June 2017, the Administrator sent Mr I the CETV, in relation to the benefit he had accrued in the Scheme between 1985 and 1991. Following receipt of the CETV, Mr I complained about the value through the Scheme's IDRP, as he considered the value was too low. Mr I also reiterated his concerns about his missing pension.
17. On 15 June 2017, the Administrator informed Mr I that it was checking the value of his pension in relation to his CETV. It also explained that Mr I was not entitled to a tax free PCLS as well as the higher pension of £9,041.88 per annum as the PCLS was in exchange for some pension. On 16 June 2017, the Administrator sent Mr I a revised CETV with a higher value and it explained why the value had increased.
18. Between 16 June and 20 June 2017, there was further correspondence between Mr I and the Administrator regarding the calculation and payment of his pension benefits.
19. On 28 June 2017, the Administrator sent Mr I the IDRP stage one response to his complaint. It informed Mr I that it was aware that he was satisfied that his benefits had now been calculated correctly. It also informed Mr I that at the Trustee meeting, it was

decided that it was not clear he was entitled to benefits for the period between 1979 and 1982. Therefore, his claim for additional benefits in that respect was not accepted.

20. The Administrator accepted that it should have responded sooner to some of the questions Mr I had raised. Therefore, in recognition of its errors, the Administrator offered him £300 as a goodwill gesture in full and final settlement of his complaint against the Administrator and the Trustee.
21. Dissatisfied with the response he received from the Administrator, Mr I appealed the decision through stage two of the Scheme's IDRP. In his IDRP stage two appeal, Mr I explained that he believed the Administrator was deliberately trying to withhold a pension he was entitled to. He also expressed his dissatisfaction with the service he had received from the Administrator.
22. In the IDRP stage two response dated 28 July 2017, the Trustee accepted that the Administrator had provided Mr I with incorrect calculations on several occasions. It said its understanding was that the Administrator had corrected the errors and that Mr I had accepted the final figures. In addition, the Administrator had offered him £300 for any distress and inconvenience caused by its errors. The Trustee explained that, its legal advisers informed it that, based on case law, Mr I had not provided sufficient evidence to prove he is entitled to a pension from the Scheme between 1979 and 1982.
23. The Trustee explained that Mr I may have had a refund of contributions in 1982, and that is why the Scheme does not have any records of his entitlement for the said period. It also informed Mr I that it did not consider the Administrator tried to mislead him in any way.
24. Unhappy with the Trustee's response, Mr I referred his complaint to this Office, and he provided a detailed background of the events that led to his complaint. Mr I also provided a copy of the letter dated 28 April 2016, that he received from the Department for Work and Pensions (**the DWP**) which showed he was contracted out between 1979 and 1982. He also said that this situation has caused him stress and worry.
25. In response to Mr I's complaint, the Trustee made the following points:-
  - It believes that Mr I's complaint has been thoroughly investigated and it is satisfied that there had been no deliberate deceit, misinformation or underhand tactics and that Mr I had not been subject to any victimisation.
  - The Administrator has offered Mr I compensation in relation to the miscalculation of his benefits for the years 1985 to 1991. The Trustee has apologised for the errors and said it has sought a detailed explanation for why the errors occurred as well as what steps have been taken to prevent such mistakes in the future.

- The Trustee categorically denies Mr I's allegation that it exerted pressure on the Administrator to undervalue his pension and CETV. It also denies that Mr I was deliberately misled. These are serious and pejorative allegations which are baseless, unfounded and entirely contrary to the Trustee's statutory and fiduciary duties.
- It believes the offer of £300 already made by the Administrator for the distress and inconvenience caused is appropriate as it is broadly in line with what the Ombudsman would award for similar complaints.
- It considers the letter from the DWP is a clear indication that it was more likely than not that Mr I received a refund of contributions on leaving service in 1982 and did not retain preserved benefits in the Scheme. This would explain why the Scheme does not have any records relating to his service or benefits for that period.

26. In response to the complaint, the Administrator made the following points:-

- Mr I's comments are largely in respect of his employment from 1978 to 1982. The issues relating to the Administrator's calculation errors were addressed and resolved. Mr I suffered no financial loss as a result of the errors and the Administrator duly offered a formal apology and made an offer as a gesture of goodwill.
- Mr I has suggested that the errors were made deliberately, to reduce the Scheme's liabilities. While the Administrator sympathises with Mr I's frustration, to make such a claim is disappointing and entirely unfounded.

### **Adjudicator's Opinion**

27. Mr I's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or the Administrator. The Adjudicator's findings are summarised below:-

- There was no dispute that Mr I was contracted out of the SPS between 1 July 1979 and 26 February 1982. What is in dispute is whether or not Mr I was a member of the Scheme during that period, and if he was, did he remain a deferred member after he left service in 1982.
- It is often very difficult to ascertain what happened a long time ago, particularly when two parties have conflicting views and there is insufficient documentary evidence to confirm what occurred. The role of this Office is to look impartially at the complaint and, based on the information available, determine what on the balance of probabilities, is likely to have happened.
- The letter from the DWP confirms that Mr I was contracted out from the SPS between 1 July 1979 and 26 February 1982. The letter also confirms that the

“scheme was bought back into the additional State Pension Scheme” after the latter date. The wording of the DWP letter is a little confusing as it talks of the Scheme being bought back into the additional State Pension Scheme. But, the process would have been for Mr I to have been bought back into the additional SPS.

- Therefore, in order for Mr I to have been bought back into the SPS, the Trustee would have paid HMRC a Contributions Equivalent Premium to have Mr I reinstated into the SPS. In doing so, the Trustee would have extinguished all liabilities owed to Mr I, and paid him a refund of contributions as he was no longer a member of the Scheme. Therefore, that is the reason why neither the Trustee nor the Administrator have any record of Mr I's membership within the Scheme between 1979 and 1982.
- Mr I has said that he has no recollection of receiving a refund of contributions nor did he sign for one. However, on the balance of probabilities, it was more probable than not that Mr I would have received a refund of contributions at the same time that the Scheme paid for him to be reinstated into the SPS. Therefore, the Adjudicator did not consider that an Ombudsman would uphold this element of Mr I's complaint, and direct the Trustee to pay Mr I a pension for the period in dispute.
- Regarding the issue of the incorrect quotation and the CETV, the Administrator accepted its errors. It has apologised and has offered Mr I £300 as a goodwill gesture for any distress and inconvenience caused. While it is disappointing that a retirement pack with incorrect values and an incorrect CETV was sent to Mr I initially, those errors were corrected quickly and did not result in Mr I incurring a financial loss. Therefore, the Adjudicator did not consider that an Ombudsman would direct the Administrator to increase its offer of compensation.
- The letter the Administrator sent Mr I on 26 April 2017, could have been worded better. However, the Adjudicator did not consider it was sent to intentionally mislead Mr I. It was the Adjudicator's view that Mr I did not suffer any financial loss because of the letter, instead, he suffered a loss of expectation. Consequently, the Adjudicator concluded that an Ombudsman would not direct the Trustee to pay Mr I the higher pension of £9,041.88, as well as the PCLS of £43,934.51.

28. Mr I did not accept the Adjudicator's Opinion and in response, made the following submissions:-

- There are four main elements of his complaint. The first element of his complaint relates to the contents of the letter he received from the Administrator dated 26 April 2017. He obtained advice from an experienced barrister regarding the contents of the said letter. The barrister's opinion was that a court would most likely support his claim that the Administrator had agreed to increase his pension from £6,590 to £9,041, in addition to paying him the tax free lump sum of £43,934.

- In Mr I's opinion, that letter was a direct response to his original complaint in which he expressed his dissatisfaction with the calculation of his benefits and had requested compensation. Mr I had signed and returned his acceptance of a pension of £6,590 and lump sum of £43,934, one month prior to the Administrator's letter of 26 April 2017. Consequently, it was the barrister's opinion that the Administrator's agreement to increase his pension from £6,590 to £9,041, could only mean that it intended to increase his pension and pay him the lump sum.
- The letter constituted an enhancement to the signed and agreed pension contract already in its possession. Any ambiguity, confused wording or misunderstanding was most likely deliberate. The enhanced pension contract in the Administrator's letter would be a contractual obligation, enforceable in court and represented a physical loss of income of £43,934 and not a loss of expectation, as he was not paid the £43,934 in September 2017.
- The second element of Mr I's complaint relates to the financial errors by the Administrator, when it calculated his retirement benefits and CETV. He said that the Administrator explained that the reason for incorrectly calculating his pension for his second period of employment from 1986 to 1991 was due to human error. He is a reasonable person and makes mistakes like everyone else. But, the Administrator simply disregarding the error when it would have cost him approximately £60,000 over his expected lifetime, is unacceptable.
- Mr I does not consider that the miscalculation of his CETV was due to human error as it was checked by a number of pension experts who failed to question the figures and ask for it to be checked. He was informed by a financial adviser of how his CETV should be calculated. Therefore, when he checked the CETV he had received from the Administrator, he informed it of the error. When Mr I received a revised CETV with a higher transfer value, he considered that the revised figure seemed too low. As a result, he asked whether this Office could check the figures.
- The third element of Mr I's complaint concerns his entitlement to benefits he had accrued in the Scheme between 1979 and 1982.
- Mr I asserts that when he decided to leave his employment with the Company, he was informed that his pension benefits would be frozen until he reached age 65. He was told this by his supervisor, and not the Company's HR department as the Company did not have such department at that time.
- The Administrator's refusal to speak to his supervisor at the time, is a clear breach of his right to have his claim for a pension properly and thoroughly investigated. The Administrator has said that the reason it has no paperwork for him at all was due to him being contracted back into the SPS. However, this contradicts what the Administrator had previously told him. Mr I asserts that he had previously been informed that the Administrator had filed and kept all members and ex-members of the Scheme's paperwork.

- Mr I believes that the reason there is no, nor was there ever any paperwork regarding his membership in the Scheme for the said period, is because the Company had neglected to inform the Administrator that he had joined the Scheme. He considers that it is “very convenient” for the Administrator to say that it has no paperwork for him, because it would not have to produce his signed authority which he knows for certain does not exist.
  - He also believes that his legal right to a fair and thorough investigation into his pension claim was not carried out because he was told a lie about his contracted-out status by the Administrator.
  - The fourth element of Mr I’s complaint is the reporting of the Administrator to the Financial Conduct Authority (**FCA**) for malpractice. He considers the Administrator has acted in an unacceptable and possibly fraudulent manner, and would like this Office to submit its findings to the FCA.
29. Mr I’s complaint was passed to me to consider. I agree with the Adjudicator’s Opinion, and I will therefore only respond to the key points made by Mr I for completeness.

### **Ombudsman’s decision**

30. Mr I asserts that the letter he received from the Administrator dated 26 April 2017, constituted an enhancement to the signed and agreed pension contract the Administrator already had in its possession. However, I disagree.
31. The revised pension quote that the Administrator had sent Mr I showed that he could either get a maximum pension of £9,041.88; or a reduced pension of £6,590.28 with a PCLS of £43,934.51. There was no option on the quote for Mr I to receive the maximum pension of £9,041.88 as well as a PCLS.
32. The 26 April 2017 letter from the Administrator informed Mr I that it was setting up his pension on the higher amount of £9,041.88. But, it did not state that Mr I would be paid the higher pension along with the PCLS. I find that it would not have been unreasonable for Mr I to have queried the contents of the letter with the Administrator, to check that his interpretation of the contents of the letter was correct.
33. I find that Mr I’s interpretation of the letter resulted in him incurring a loss of expectation and not an actual financial loss, as he was never entitled to the higher pension and PCLS. Therefore, I will not direct the Administrator to pay Mr I the higher pension and a PCLS.
34. Consequently, I do not uphold this element of Mr I’s complaint.
35. When a complaint of maladministration is referred to this Office, if I find that the maladministration has resulted in the complainant incurring a financial loss, I will direct the respondent to the complaint to put the complainant back into the position they would have been in, but for the maladministration. In some circumstances, if I



find that the maladministration has resulted in the complainant suffering significant distress and inconvenience, I may also direct the respondent to pay the complainant an award in recognition of the non-financial injustice.

36. To determine if the distress and inconvenience is significant, I consider certain things such as why the maladministration occurred, the length of time it took the respondent to correct the error, and whether or not the complainant relied on the error to their detriment.
37. In this case, the Trustee and the Administrator have accepted there was maladministration on the Administrator's behalf, when it provided Mr I with incorrect pension and CETV quotes. In recognition of the errors, the Administrator offered Mr I an apology and £300. Mr I does not consider that the compensation offered is sufficient as the error could have cost him approximately £60,000 over his expected lifetime. He also considers that the Administrator deliberately provided him with a lower CETV than he was entitled to.
38. I have considered the circumstances surrounding the Administrator's maladministration. I appreciate that Mr I had to bring the errors to the Administrator's attention on both occasions. However, after being made aware of the error in the quotes, the Administrator sent Mr I a revised benefit quotation four days after the original quote was sent, and the higher CETV quote was sent to Mr I ten days after he had received the incorrect one.
39. Therefore, while I accept that these errors should not have occurred and would have caused Mr I distress and inconvenience, I do not find that Mr I relied on the incorrect information to his detriment. I also do not agree that the errors were made deliberately. It is my view that the Administrator rectified the errors quickly, and I do not find its offer of compensation to be unreasonable in the circumstances. Consequently, I will not direct the Trustee or the Administrator to pay Mr I a higher compensation for its maladministration.
40. I note that Mr I has queried if this Office can check his revised CETV figures to see if they are correct. It is not the role of this Office to provide actuarial services by checking a pension administrator's calculations. Therefore, if Mr I considers that the revised CETV figures are still incorrect, he may wish to consider having the figures checked by an actuary or suitably qualified independent financial adviser.
41. Mr I asserts that the Administrator has not completed a thorough investigation of his complaint because it has failed to demonstrate that he had received a refund for his membership in the Scheme between 1979 and 1982. He asserts that he has a clear memory of what he was told at his exit interview in 1982, and that the Company's refusal to speak to his supervisor to corroborate his recollection, breaches his legal right to a thorough investigation. Mr I is also dissatisfied that he has received conflicting information regarding why the Company has no details of his membership within the Scheme for this period.

42. I have carefully considered this element of Mr I's complaint. I accept that he is disappointed that the Company no longer has a record of him being a member of the Scheme, and that it has also not agreed to contact his old supervisor. However, the Company has confirmed that a review of the Scheme's records shows that Mr I's supervisor passed away in 2007. Therefore, contacting him is not an option.
43. Additionally, despite the Company being unable to produce a signed acceptance of a refund of contributions by Mr I, the letter from the DWP confirmed that the Scheme was contracted back into the SPS in 1982. Therefore, as the Adjudicator said in her Opinion, on the balance of probabilities, I find that it is more likely than not that Mr I would have received a refund of his contributions, at the same time that the Scheme paid for him to be reinstated into the SPS.
44. I appreciate that Mr I has said that he has a very vivid recollection of the events that occurred during the period in dispute and I accept that it must be very frustrating for Mr I that he has no recollection of receiving a refund. However, the onus is on Mr I to prove that he is entitled to a pension for his membership in the Scheme between 1979 and 1982. I do not find that Mr I has provided sufficient evidence that he is being denied a pension he is entitled to from the Scheme for the period in dispute.
45. Therefore, I do not find that the Company's actions, in this regard, have resulted in Mr I incurring a financial loss.
46. Having carefully considered all the elements of Mr I's complaint, I do not find that the Company or the Trustee have acted in a fraudulent manner, and that Mr I is being denied a pension he is entitled to.
47. Therefore, I do not uphold Mr I's complaint.

**Anthony Arter**

Pensions Ombudsman  
10 September 2018