

Ombudsman's Determination

Applicant	Mr E
Scheme	British American Tobacco UK Pension Fund (the Fund)
Respondents	British American Tobacco UK Pension Fund Trustee Limited (the Trustee), Capita Employee Benefits Limited (Capita)

Outcome

1. Mr E's complaint against the Trustee and Capita is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, for the part that is upheld, the Trustee should pay Mr E an award of £500, in addition to the £500 that he has already received, in respect of the significant non-financial injustice he has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E says he received incorrect information about the level of contingent spouse's pension payable on his death. He relied on assurances provided by Capita in July 2014, when deciding to gift his daughter a share in an investment property, a decision he cannot now unwind. Had he been given correct information, he would have reduced the monetary value of the gift by £13,500.

Background information, including submissions from the parties

4. Mr E worked for BAT Industries and Rothmans International, and was a member of their respective pension schemes. The schemes merged in 1999. In September 1999, Mr E retired from the 'Rothmans' section of the Fund.
5. Mr E married in 2006. His spouse is nine years younger than him.
6. The contingent spouse's pension payable on Mr E's death was initially miscalculated by the previous administrators of the Fund. In April 2008 Capita took over the administration of the Fund.
7. Under the Fund's provisions, the contingent spouse's pension is subject to the applicable HM Revenue & Customs benefits limits in force before 6 April 2006 (the **HMRC Limits**).

8. In Mr E's retirement statement dated July 1999, (the **Retirement Statement**), he was wrongly quoted a contingent spouse's pension of £12,133 per annum. The correct amount, after allowing for HMRC Limits, was £11,702 per annum.
9. Mr E has explained that the spouse's pension under the 'BAT scheme' was slightly complicated, and he had doubts about Capita's ability to provide correct figures, so he regularly asked Capita for updates on the death benefits.
10. On 15 January 2014, in response to a request from Mr E, Capita confirmed that the total spouse's pension payable on his death was currently £27,746 per annum. Around June 2014, Mr E contacted Capita after noticing a discrepancy in the figures when compared with a figure of £28,295 on its website.
11. Following an exchange of correspondence about the discrepancy, Capita clarified, on 14 July 2014, that the figure shown on the website was wrong, and assured Mr E that the spouse's pension figures quoted on 15 January 2014, and earlier, in January 2013, January 2012, and January 2011, were correct. It explained that the spouse's pension had been incorrectly updated on the website, and that the update had been completed by an external data team who had unfortunately misunderstood the 'special terms' applying to his spouse's pension.
12. Mr E has said that after June 2014, he stopped referring to the spouse's pension amount shown on the Fund's website. At the time, he believed the spouse's pension quoted in his Retirement Statement, and letters as at each 1st January, between January 2010 and January 2015, were all correct and that any figures provided in future would also be correct.
13. The Trustee accepted that the spouse's pension figure given to Mr E when he retired from the Fund was wrong. It also accepts that the figures provided to him by Capita on the above dates were also incorrect. It says the changes that have since been made to Capita's process and systems, should prevent similar mistakes occurring in the future.
14. In March 2015, Mr E and his wife decided that they did not need all their capital, so they gave a gift of £93,200, approximately 28% of the purchase price of an investment property of £333,000, to their daughter. Mr E has explained that they took this decision after considering several factors, including their capital needs, current income, ages, and a spouse's pension figure of £24,800 per annum derived from figures provided to him. They worked out that they could give away about £6,000 per annum. Had they known the correct position they would not have been so generous as to gift as much as £93,200.

15. Mr E is conscious that, as his wife is nine years younger than him, she may outlive him by 15 years. Although he accepts she may not live for a further 15 years after his death and could possibly die before him, it is not unreasonable to consider the possibility as a factor in his financial planning. He has worked out that the shortfall in the expected spouse's pension, over 15 years, amounts to £13,500. Consequently, they have gifted £13,500 more than they would otherwise have done had they been given correct figures.
16. In May 2016, Mr E received a statement relating to a pension increase exchange (PIE) exercise showing a total contingent spouse's pension of £23,726 per annum. Mr E has explained that this was the first time the spouse's pension was correctly quoted to him. Mr E said that the Pensions Manager refused to communicate with him and ignored his repeated requests for a copy of Capita's complaint procedure.
17. Mr E has clarified that any problems he later raised about the PIE exercise, when he again received incorrect figures, do not form part of his complaint to us. Consequently, any reference he has made to it is simply to highlight that Capita were still providing incorrect figures after it had said it had corrected the position.
18. Capita has acknowledged that mistakes were made in Mr E's case in that the contingent spouse's pension was misquoted on more than one occasion. The calculations did not allow for different increase rates to be applied to different tranches of the pension. Consequently, the pension was calculated using the wrong applicable pension increases. It has carried out a full review of Mr E's record.
19. Capita accepts that it failed to address some of the issues Mr E raised in his formal complaint, and that it wrongly provided reassurances that figures quoted to him were correct. It also accepts that its website showed an incorrect contingent spouse pension figure in June 2014, and that, as at June 2017, the website had still not been updated to show the correct figure. Capita has paid £500 to Mr E as a gesture of goodwill for the mistakes it made. Capita does not accept that it is responsible for the financial loss Mr E is claiming.
20. The Trustee has acknowledged that it delayed responding to Mr E's enquiries. It was not in a position to reply fully until a review of the method of calculating the spouse's pension had been completed following the PIE exercise.
21. The Trustee does not accept that Mr E would have gifted a lower amount than 28% of the purchase price of the property to his daughter had he known the true position. The difference between the spouse's pension of £24,800 per annum that Mr E expected, and the amount as at January 2017, of £23,889 per annum, amounts to approximately £900 per annum, a variance of approximately 4%. Furthermore, Mr E has not taken steps to mitigate any potential future financial loss. The options available to him include restructuring his ownership of the property and asking his daughter to repay the money back when the property is sold. In any event, Mr E has not actually lost any money, and it is speculative that he will lose money in the future.

22. Mr E says the Trustee is wrong to say that he has not taken steps to mitigate the loss of the expected higher contingent spouse's pension. He has diverted £1,650 into his savings to try and make up the shortfall in his wife's expected future income needs. As a share in the property was given to his daughter as a gift, rather than loan, he finds it unreasonable for the Trustee to suggest that his daughter could give them back £13,500.
23. Mr E has acknowledged that both Capita and the Trustee played a part in what has gone wrong. He considers Capita's offer of £500 to be fair. He considers redress for the financial loss he is claiming, and an amount which recognises the distress and inconvenience caused to him by mistakes made over the last 17 years, would be reasonable compensation.

Adjudicator's Opinion

24. Mr E's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee in respect of the non-financial injustice which Mr E has suffered. The Adjudicator's findings are summarised briefly below:-
 - Apart from the errors made in the calculation of Mr E's contingent spouse's pension before 2014, Capita assured Mr E in July 2014, that figures quoted in previous statements were correct. It is evident that the assurances given by Capita raised his expectation, it was reasonably foreseeable that he would base his financial planning, in part, on the details provided. Capita should have ensured the figures were correct.
 - However, no promise was made to Mr E such that it would give rise to an entitlement to the higher contingent spouse's pension he is claiming.
 - Where figures have been misquoted, the Pensions Ombudsman will award compensation for any financial injustice that has occurred as a direct result of the misstatement. It therefore follows that an award of this nature will only be made where the individual has suffered an actual financial loss.
 - No event has occurred which has caused Mr E to actually lose money. Therefore, the loss he is claiming is hypothetical rather than actual.
 - Mr E has suffered significant distress and inconvenience and an award should be made in recognition of this. Given that multiple misstatements have been made in this case, an award of £1,000 is merited. . Capita has already paid Mr E £500, however, ultimately, the Trustee is responsible for the administration of the Fund. Given the sequence of events, the Trustee should pay an additional £500 to Mr E.
25. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E has provided his further comments but these 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 E for completeness.

Ombudsman's decision

26. With regard to the complaint process, Mr E has explained that, he thought he would be given the opportunity to present additional arguments direct to an Ombudsman. The Adjudicator allowed the Trustee to change its mind, concerning the reason for rejecting his complaint. He believes "it is inequitable, dishonest and outside normal legal process to allow a party to invent a totally different decision making process" after it has made its decision on a complaint. The Trustee's response under stage two of its internal dispute resolution procedures (**IDRP**), and formal response to this office were not explanations of the decision it made under stage one of the IDRPs or new evidence. Rather, entirely new and different arguments were made.
27. Mr E asserts that, contrary to what the Adjudicator said in the Opinion, his financial loss is real, rather than hypothetical. He and his wife now have less capital, than they would otherwise have had, had he not relied on the misstatements.
28. Mr E has pointed out that the redress paid by Capita, is not connected to his complaint against the Trustee. In relation to the Trustee's role in the matter, he has suffered disturbed sleep, weight loss and has spent a considerable amount of time dealing with Trustee's attempts to persuade the Adjudicator that he is lying. He finds the accusation particularly upsetting because Capita assured him that the figures were correct; the mistake went undiscovered for 17 years; the Trustee had several opportunities to put things right; the Trustee failed in its duty of care to manage or monitor Capita; and it mismanaged his enquiries and tried to mislead the Adjudicator.
29. Firstly, having reviewed Mr E's file, I am satisfied that he was given sufficient opportunity to provide additional comments and/or new information that he felt supported a different decision to the one made by the Adjudicator. While I acknowledge that the Trustee has put forward new arguments, Mr E and Capita were also given the chance to do so. Furthermore, I find no evidence to support the assertion that the Trustee attempted to mislead the Adjudicator.
30. I agree with the Adjudicator's finding that the alleged loss Mr E is claiming does not constitute an actual financial loss. His assessment of the loss is based on a scenario that may, or may not, materialise in future.
31. However, Mr E is entitled to an award in respect of the extent that the maladministration, on the part of both the Trustee and Capita, has caused him to suffer significant, distress and inconvenience. I note that the payment made to Mr E by Capita is in respect of the mistakes they have made concerning the value of the contingent spouses' benefit. Given the number of errors that have been made a higher award than one I would normally make, is warranted. However, in deciding the level of award I have taken into account that the mistakes made only concerned the value of a contingent benefit which may never be relied upon. Therefore, I have decided that an award of £1,000 for non-financial loss, is sufficient.
32. Therefore, I uphold Mr E's complaint in part.

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Directions

33. To put matters right, the Trustee shall, within 21 days of the date of this Determination, pay £500 to Mr E, in addition to the £500 which he has received from Capita, in recognition of the significant distress and inconvenience he has suffered.

Anthony Arter

Pensions Ombudsman
12 January 2018