

## Ombudsman's Determination

Applicant	Ms H
Scheme	BAE Systems Pension Scheme ( <b>the Scheme</b> )
Respondents	BAE Systems Pension Fund Trustees Limited ( <b>the Trustee</b> ), Equiniti Paymaster ( <b>the Administrators</b> )

## Outcome

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

## Complaint summary

3. Mr D's widow, Ms H has complained that Mr D's reliance on the benefit statements he received from the Administrators between 2001 and 2016 resulted in him incurring a financial loss. Ms H has also complained that as a result of the incorrect statements Mr D received from the Administrators, her dependant's pension benefits are lower than she and Mr D had expected.

## Background information, including submissions from the parties

4. Mr D was a member of the Scheme from 1 April 1978 until 2 March 2001 when he left BAE employment and became a deferred member. His NRD in the Scheme was 1 November 2021. In spring 2016 Mr D was diagnosed with terminal cancer.
5. On 4 May 2016, Mr D contacted the Scheme to request a benefit statement. On 1 June 2016 the Scheme replied and informed him that his accrued pension at 5 April 2016 was £25,934.04 per annum.
6. In July 2016 Mr D applied to the Scheme for his pension on the grounds of chronic ill health. On 5 October 2016 the Trustee sent Mr D a letter informing him that it had agreed to his request to retire early. The letter also informed Mr D of the benefits available to him if he retired on 1 November 2016. It explained that if Mr D were to take his full pension he would be paid £25,934.04 per annum, and his dependant's pension following his death would be £12,967.02 per annum. However, he also had the option to take the maximum retirement lump sum which was £122,605.28 and a

reduced pension of £18,390.84 per annum. His dependant's pension was unchanged.

7. On 20 October 2016 the Trustee sent Mr D a further letter explaining that it had received his option forms. However, when his pension was recalculated, it was discovered that his guaranteed minimum pension (**GMP**) was overstated. It provided details of the correct and incorrect GMPs and informed Mr D that the correct full pension he could receive was £23,463.69 per annum, and his dependant's pension would be £11,731.85 per annum. It also informed him that he was entitled to a retirement lump sum of £110,925.03 with a reduced pension of £16,638.84 per annum. His dependant's pension was unchanged.
8. Following receipt of the letter dated 20 October 2016, Mr D made a formal complaint to the Trustee through the Scheme's internal dispute resolution procedure (**IDRP**) because he was dissatisfied with the reduction of his retirement benefits. He explained that between 2001 and 2016 he had received annual statements that confirmed his pension value and he had no reason to doubt those figures. He said the Trustee's decision to reduce his pension without any consideration of the impact on him or his family was insensitive and it caused him stress and great inconvenience. Therefore, given his personal circumstances, he asked the Trustee to make him a compensation payment equivalent to the monetary value he had lost due to the incorrect statements.
9. On 8 December 2016 Mr D sent a further letter to the Trustee explaining how the incorrect statements he had received had impacted his financial planning since 2001. He explained that after he had become a deferred member of the Scheme he started a Free Standing Additionally Voluntary Contributions (**FSAVC**) plan to boost his retirement income. He said that he had continued to contribute to the FSAVC until February 2012, when he transferred his FSAVC benefits to his then employer's Stakeholder pension scheme. He said that had he known his Scheme benefits were lower, he would have increased contributions into his FSAVC.
10. In the IDRP stage one response dated 23 January 2017, the Trustee accepted that Mr D was provided with incorrect benefit statements. But it said it was not upholding his complaint because under the "Rules of the Scheme, the Trustees can only pay the pension benefits to which [he was] actually entitled". However, the Trustee offered Mr D a £1,000 ex-gratia payment for the distress and inconvenience he had experienced.
11. Mr D died on 23 February 2017 and his widow continued with his complaint on behalf of his estate. She appealed the Trustee's decision through stage two of the Scheme's IDRP. In her appeal Ms H sent the Trustee a letter Mr D had drafted prior to his death in which he said that he did not consider that the Trustee had adequately dealt with his complaint as it did not take responsibility for the incorrect benefit statements he had received for the past 15 years, nor did it consider the impact the incorrect statements had on his finances during that period. It appeared that the Trustee had only focused on the financial effect of the incorrect statement he was sent in October

2016. In the stage two IDR response dated 31 May 2017, the Trustee said that the evidence submitted in the appeal had been noted but it did not change the original Trustee decision. Therefore, it was not upholding the complaint but it reoffered the £1,000 for the distress and inconvenience the situation had caused.

13. Dissatisfied with the Trustee's response, Mr D's widow referred the complaint to this Office and said:

- Mr D was unable to maximise his pension savings because of the Administrators' mistake. He had actively planned his retirement savings during his working life and would have increased his contributions in his FSAVC if he had been given correct information by the Administrators.
- He received a lower pension than he was expecting between November 2016 and February 2017. Mr D died in February 2017 and as his widow she will receive a lower pension than he expected her to receive.
- They lost the opportunity to increase her income through Mr D's pensions. Pension planning was very important to Mr D. The mistake was an avoidable source of stress to Mr D as he was battling cancer at the end of his life, particularly as the mistake was revealed to go back over so many years.
- Mr D based his decision to leave his last employer seven months early and accepted a reduced redundancy package as a result of the annual statements he had received. This also resulted in him losing sick pay.

14. In response to the complaint the Trustee, on behalf of the Administrators and itself, gave a background to the events that led to the complaint and also made the following points:

- No evidence has been provided to show that Mr D relied to his detriment on the incorrect statements in his annual financial planning. Therefore, no substantial award should be given for loss of as a result of its maladministration.
- There is no evidence to suggest that Mr D would have made alternative pension arrangements if he had been aware of his correct benefits under the Scheme, so as to get closer to the lifetime allowance.
- It accepts there was maladministration on the part of the Administrators when it continuously sent Mr D incorrect statements. However, it reiterated that the Trustee does not have the power lawfully to pay benefits at the mistaken level.
- In accordance with the principles of this Office and the Court, Mr D and his widow are not entitled to be compensated for the loss of what they expected on the basis of negligent statements. They are only entitled for any out of pocket losses that they can demonstrate they suffered as a result of detrimental reliance on those statements.

## PO-18109 & PO-18602

- Although Mr D's widow claims that Mr D would have remained employed for a further seven months if he had been sent correct information in the annual statements, the chronology does not support the view that had he been provided with correct figures, Mr D would not have retired from the Scheme but would have instead, remained in his last employment until 31 December 2016.
  - This is because in the letter he had sent to the Trustee dated 22 February 2017 Mr D said that he was informed in March 2016 that his current employment would become redundant in December 2016. However, in a previous letter to the Trustee dated 8 December 2016, Mr D had said that his retirement at 31 May 2016 was enforced due to his chronic ill health and the redundancy of his role as finance director. The Trustee noted that he was signed off work on permanent sick leave in April 2016.
  - Mr D first enquired about taking his retirement benefits in June 2016 but he was not provided with any figures until October 2016, when the Trustee had approved his application for ill health benefits. Therefore, when Mr D left his employment in May 2016 he had no figures from the Scheme which he could use to compare and assess with the relative merits whether it was better to take the loss in the redundancy package.
  - The statements he had received would not have helped him make a detailed assessment of what he could expect from the Scheme on chronic ill health.
  - The Trustee considers that given the extenuating circumstances of Mr D's ill health prevailing in October 2016, the higher award of £1,000 was appropriate in this case, but no higher award than that was justified.
15. In response to the Trustee's reply, Mr D's widow sent further information that she considered showed that Mr D relied on the incorrect benefit statements he received from the Scheme to his detriment and she also made the following points:
- She and her husband always had surplus income.
  - She is surprised that the Trustee considers someone who has little time left to live should not access his pension. When their financial adviser (**the IFA**) was informed of Mr D's ill health at their initial meeting on the 22 April 2016, the IFA recommended that Mr D investigated the possibility of applying for ill health retirement.

## Adjudicator's Opinion

16. Ms H's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or the Administrators. The Adjudicator's findings are summarised briefly below:-

- There was no dispute that Mr D was sent incorrect benefit statements between 2001 and 2016 by the Administrators and that this amounted to maladministration. Ms H asserted that Mr D relied on those incorrect statements to plan his retirement. In the Adjudicator's view, it was not unreasonable for Mr D to believe that the statements he had received from the Administrators between the said periods were accurate. Therefore, she considered whether his reliance on those statements resulted in him incurring a financial loss
- It was not disputed that Mr D commenced a FSAVC in 2001 to boost his retirement income. Ms H asserted that Mr D would have increased his contributions into the FSAVC had he known the correct value of his deferred Scheme benefits earlier. In the Adjudicator's opinion, in the absence of evidence to demonstrate that Mr D made the decision to contribute a certain amount into his FSAVC as a result of the value of his deferred Scheme benefits, it would be difficult for me to quantify any loss Mr D had incurred as a result of contributing a lower figure into his FSAVC. Therefore, the Adjudicator did not consider that I would uphold this element of the complaint.
- Mr D accepted redundancy from his employer in May 2016 and, it has been claimed that had he known the true value of his Scheme benefits, he would have waited until December 2016 to accept redundancy. His employer has confirmed that although he was on sick leave it was possible for him to wait until December 2016 to accept the redundancy package. It also confirmed that if Mr D had accepted redundancy in December 2016 instead of May 2016, he would have received £1,796.25 more than he did.
- The Trustee did not accept that Mr D based his decision to accept redundancy early due to the annual statements he had received. This was because it said Mr D did not enquire about taking an ill health pension from the Scheme until 24 June 2016, which was three weeks after he had accepted the redundancy package.
- The Adjudicator appreciated that Mr D had received incorrect statements between 2001 and 2016. However, she did not consider that Mr D had relied on those statements to decide to accept the redundancy package in May instead of December 2016. This was because when Mr D became a deferred member of the Scheme in 2001, the Trustee sent him a letter which informed him of his deferred benefits. Under the heading '**Early Payment**' it said:

"In the event of chronic ill-health you may apply to the Trustees for your pension at any age. This is also subject to Trustee approval on a case by case basis."
- Mr D did not apply for his pension on the grounds of chronic ill health until July 2016, which was after he had accepted redundancy from his employer. Therefore, in the Adjudicator's opinion, on the balance of probabilities, Mr D would not have based his decision to take redundancy in May instead of December 2016 because of the incorrect statements he had received as he would not have known in May

2016, whether or not his ill health pension would have been approved by the Trustee.

- Ms H believes that Mr D incurred a financial loss as a result of accepting redundancy in May instead of December 2016, in relation to his sick pay entitlement. His employer has confirmed that Mr D was entitled to 12 weeks full pay and then 12 weeks half pay while on sick leave. It explained that Mr D had reached 12 weeks, after holidays, on 11 February 2016 but it had continued to pay him full pay until 1 May 2016 when it reverted to half pay for his last month of employment. As a result of what Mr D's previous employer had said, the Adjudicator did not consider that Mr D incurred a financial loss in relation to his sick pay entitlement.
  - The Adjudicator understood Mr D was and Ms H is disappointed that Mr D received a lower pension than he was expecting, and that she is also receiving a lower dependant's pension than she originally was led to believe she would receive. However, it was her view that Mr D and Ms H both suffered a loss of expectation instead of an actual financial loss because the Administrators had no choice but to reduce the benefits when it discovered the GMP had been overstated. The Trustee has however recognised the distress and inconvenience the Administrators' maladministration had caused both Mr D and Ms H and it has offered £1,000 in recognition of this.
  - In the Adjudicator's opinion, I would not make any further award to Ms H, as the compensation offered is in line with what I would direct for similar complaints.
17. Ms H did not accept the Adjudicator's Opinion and provided further information which she considered evidenced that Mr D had made decisions regarding how much to invest into his FSAVC because of the incorrect statements he had received from the Administrators. In response to the Adjudicator's Opinion, Ms H also made the following points:
- It has been difficult, in this computer paperless age for her to gather information to support her and her late husband's case. Her husband passed away earlier than expected and she has been left without computer passwords and access to information.
  - There was no doubt that her husband had a personal goal to maximise his pension provision and reach the lifetime allowance (**LTA**) of £1 million. Her IFA has informed her that her husband was close to reaching the LTA limit.
  - Her husband had stated clearly in correspondence to the Trustee and the Pensions Advisory Service that he regarded the Scheme benefits as the mainstay of his pension provision. This was not unreasonable as he had worked for BAE Systems for two thirds of his life.
18. The 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 Ms H for completeness.

**Ombudsman's decision**

19. My starting point is that Mr D is entitled to the correct level of benefits under the rules unless he can prove that he suffered direct financial loss as a result of relying on statements made to him. There is no dispute that maladministration occurred when Mr D was sent incorrect benefit statements, that the maladministration had occurred since 2001, nor that the correct figures came to light in 2016. However, for the reasons set out below I conclude this has not resulted in Mr D incurring a financial loss which I can quantify. In those circumstances I can only provide an award in recognition of distress and inconvenience.
20. I accept that Mr H was an active financial planner and have reviewed all of the information that Ms H has provided to support the claim that Mr D decided to make certain contributions into his FSAVC as a result of the incorrect statements he had received. There is clear evidence that Mr D wanted to boost his retirement income and that he had used the benefit figures quoted to him as an integral part of his calculations about what his retirement income might in future be. In particular I can see that he used the figures quoted when performing calculations in 2007. But I cannot get from there to a finding that he would have increased his contribution to any particular amount had he known the correct figure. In fact, his contribution rates varied over time and there is no evidence of them being fixed to a particular calculation done in 2007.
21. In 2016 he specifically told the Administrators that he wanted an updated figure because he was considering his lifetime allowance. The evidence shows that he used the figure he was given to calculate an additional amount which he intended to pay into his pension scheme. Clearly he was tax planning and it is apparent that the information he was given caused him to calculate that he had less headroom in his lifetime allowance than he in fact had. However, there is no evidence of how much more he might have paid into his pension had he known the correct figure. The direct financial loss flowing from the 2016 misstatement would be limited to any additional tax liability which may have been incurred and I can see no evidence that Mr D incurred any specific additional tax liability as a consequence of his reliance on the incorrect figure provided to him.
22. There is no dispute that the issuance of incorrect benefit figures would have caused both Mr D and Ms H significant distress and inconvenience, particularly as Mr D was battling with terminal cancer at the time that the maladministration was discovered. However, I find that the compensation previously offered by the Trustee was in line with the scale of awards I would have made at the time and in the circumstances, I do not consider it appropriate to make any higher award.

**PO-18109 & PO-18602**

23. Therefore, I do not uphold Ms H's complaints and make no further award.

**Karen Johnston**

Deputy Pensions Ombudsman

28 March 2018