

Ombudsman's Determination

Applicant	Mr N
Scheme	St Georges Superannuation Fund (the Fund)
Respondent	Trustees of the St Georges Superannuation Fund (the Trustee)

Outcome

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

Complaint summary

3. Mr N complains that the Trustee caused a delay in him receiving his pension benefits from the Fund.
4. As a result of this delay, Mr N says he exceeded his Lifetime Allowance (**LTA**) by an amount greater than he otherwise would have done. This has resulted in a tax charge which Mr N considers the Trustee to be liable for.

Background information, including submissions from the parties

Background

5. Mr N is a member of the Fund, which is a defined benefit pension scheme.
6. The Fund is now administered by Punter Southall but, at the time of the events being complained of, Hymans Robertson was the Fund Administrator.
7. The Fund has a normal retirement age of 60. Mr N attained age 60 in February 2014.
8. Mr N has other pension provision in addition to the benefits provided by the Fund. The other pension provision does not form part of the current complaint, but is mentioned as it is relevant to the background of this Determination.
9. In early 2013, Mr N was in correspondence with his then financial adviser, Michael Davey Financial Management Limited (**MDFM**). With MDFM's assistance, Mr N was exploring the possibility of combining his pension provision and taking a retirement income using phased income drawdown. Email correspondence between Mr N and

MDFM dated: 25 February 2013, 27 February 2013, and 13 March 2013, references the benefits available from the Fund.

10. On 15 August 2013, six months before his 60th birthday, Hymans Robertson sent Mr N a 'wake up' letter. This indicated that, at age 60, Mr N could receive an annual pension of £18,170.28 and tax-free cash of £35,375.10, from the Fund. This represented 26.59% of the LTA.
11. From 6 April 2014, the LTA was reduced to £1.25 million from the level of £1.5 million in the 2013/14 tax year. As Mr N's overall pension provision was such that he was likely to be affected by the reduction in LTA, he applied for, and was granted, Fixed Protection 2014 (**FP2014**). As a consequence of FP2014, Mr N has an individual LTA of £1.5 million.
12. In November 2015, Mr N became aware that his benefits from the Fund had not come into payment, so he contacted Punter Southall to arrange this.
13. On 1 December 2015, Punter Southall issued a retirement illustration. As Mr N had deferred taking benefits past age 60, the benefits from the Fund had increased. The retirement illustration indicated that Mr N could receive an annual pension of £20,932 and tax-free cash of £38,735. This represented 35.89% of Mr N's LTA.

Summary of the Trustee's position

14. The Trustee provided Mr N with a copy of the 'wake up' letter Hymans Robertson said was sent in August 2013. It also offered to allow Mr N's benefits to be backdated to age 60, but says that he declined this on the basis that it would, "create most unhelpful tax problems."

Summary of Mr N's position

15. Mr N disputes receiving the 'wake up' letter dated 15 August 2013. Consequently he was unaware that he needed to take action in relation to his deferred pension from the Fund.
16. Mr N faces a greater tax liability as a consequence of his pension coming into payment after age 60, since the value of the benefits, and consequently the proportion of LTA used, had increased.
17. The copy of the 'wake up' letter the Trustee sent in response to his complaint is clearly a draft. This, Mr N says, is evidenced by missing and incomplete information, missing enclosures and reviewing marks which would not be typical with a finalised document. Mr N questioned why a further letter was not issued when he reached age 60, but had not taken benefits.
18. At the time it is alleged the 'wake up' letter was posted, Punter Southall was replacing Hymans Robertson as Fund Administrator. Mr N considers that dispatching the letter was, "simply overlooked."

Adjudicator's Opinion

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

- The Adjudicator acknowledged that Mr N disputed receiving the 'wake up' letter and that he commented that it was produced around the time of the transition of administrative responsibilities from Hymans Robertson to Punter Southall, so it could, conceivably, have been overlooked. However the Trustee has been able to produce a copy of the letter it says was issued and has provided a system print out evidencing that the letter was generated in 2013, that it was correctly addressed and which indicates that the letter was posted. The Adjudicator found this to be compelling evidence which strongly indicated that the letter was correctly dispatched.
- It is accepted that the Trustee has not been able to evidence proof of postage, for example with evidence of a recorded delivery. However this is not, in and of itself, unusual and does not amount to poor administration. In order to save on costs, it is usual for pension arrangements to send correspondence such as 'wake up' letters by conventional mail, rather than recorded delivery.
- Mr N commented that the letter produced by the Trustee has information missing, such as details of the relevant year and LTA. However, the Adjudicator was not persuaded that these discrepancies prove the letter was not generated or posted. The Adjudicator considered it to be more likely than not that the missing information needed to be manually entered on the letter template, so it was possible that these changes were either not made, or were not properly saved on the record retained by the Trustee.
- Likewise, the Adjudicator did not consider the fact some of the enclosures referred to in the 'wake up' letter, had not been included with the copy provided to Mr N as part of the complaint, was an indication that the letter was not sent. It was more likely than not that these enclosures would have been ordered from a printers in bulk, to be included in the envelope with the letters. So it would not necessarily follow that the enclosures would be stored on the same record as the actual 'wake up' letter.
- On the balance of probabilities, the Adjudicator considered it more likely than not that the 'wake up' letter was correctly sent to Mr N. Consequently the Adjudicator did not conclude that the Trustee had made an administrative error in this regard.
- From the correspondence in February and March 2013, it was clear that Mr N and his adviser, MDFM, were carefully planning how Mr N could structure his retirement income. Thus it follows that they were aware of the benefits available from the Fund. Further, as a defined benefit arrangement, the eventual benefits at age 60 could be forecast with a fair amount of certainty. On this basis, MDFM was

aware that Mr N would be entitled to benefits from the Fund at age 60 and knew what the value of these benefits would have been.

- Consequently, the Adjudicator did not consider that Mr N, or MDFM on his behalf, was reliant on the Trustee to issue the 'wake up' letter in order to acquire this knowledge. For similar reasons, the fact a follow-up to the 'wake up' letter was not sent, does not change the Adjudicator's view.
 - The Adjudicator was satisfied that Mr N was aware he was entitled to benefits from the Fund at age 60. It would be usual to expect Mr N, or his adviser, to have known that he would have needed to elect, in writing, to take benefits, as opposed to the pension automatically coming into payment on his 60th birthday. So, notwithstanding the fact Mr N says he did not receive the 'wake up' letter, the Adjudicator considered that he ought reasonably to have known that action was required on his part in order that benefits from the Fund be put into payment.
 - There is no evidence to suggest that the enquiries were made with the Trustees, around the occasion of Mr N's 60th birthday, to establish why payment of the benefits had not commenced. It was not until around 1 year and 9 months later that enquiries were made. In view of the fact that it was known by Mr N and MDFM that he had little or no headroom on the LTA, the Adjudicator considered that it would have been prudent for Mr N, or MDFM on his behalf, to have made enquiries with the Trustee sooner. Had this happened benefits from the Fund would likely have come into payment earlier, thus either reducing, or eliminating the LTA tax charge.
 - Mr N and MDFM did not require the Trustee to issue the 'wake up' letter dated 15 August 2013, to know of his entitlement to benefits from the Fund. Mr N and MDFM would, more likely than not, have known the benefits from the Fund would interact with the LTA and FP2014. On this basis the Adjudicator could not find a direct causal link between the alleged failure to issue the 'wake up' letter and the additional tax Mr N has incurred.
 - Mr N had a duty to mitigate his loss, for example by making enquiries around his 60th birthday when he realised the benefits he was expecting from the Fund had not come into payment. Additionally, in response to the complaint, Mr H was provided with the opportunity to have his pension income backdated to age 60, which would reduce the amount of LTA used and would put him back into the position he now says he should have been in. As Mr N did not take any action to mitigate his position, the Adjudicator was of the view that the Trustee was not responsible for the loss Mr N has incurred.
20. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

21. There is considerable dispute on whether Mr N received the 'wake up' letter the Trustee has said was issued. Whilst I do not doubt Mr N's recollection that he does not remember receiving this, based on the evidence I find it more likely than not that the letter was correctly issued.
22. I do acknowledge that Mr N disagrees that the copy 'wake up' letter the Trustee has provided has information missing which may have needed to be entered manually. Mr N has said:-

"I would question this as there is not enough space on the draft/copy for the missing figures."
23. But I am not persuaded by this statement. Unlike typewriters where a field left blank for information to be added is fixed in length, a common feature of word processors is that information can be added and the area will automatically expand as required.
24. Similarly, Mr N has said that the Trustee did not follow-up on the 'wake up' letter, closer to his normal retirement age. Under regulation 20 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, it was Hymans Robertson, as the then Fund Administrator, that was responsible for issuing the 'wake up' and 'at retirement' benefit illustrations. I cannot consider any complaint about Hymans Robertson's alleged inactions as part of this complaint which is against the Trustee. However, I do not find that the receipt of the 'wake up' letter is the sole consideration.
25. The correspondence in February and March 2013, between Mr N and MDFM indicates that both parties clearly knew about the benefits available from the fund, the estimated value of the benefits and that the benefits were available to Mr N from age 60. Further, I find that Mr N ought reasonably to have known that he would have needed to elect to take benefits from his 60th birthday, as opposed to the pension automatically coming into payment. In any event, Mr N was being assisted by MDFM and I would expect a suitably qualified financial adviser to have known this.
26. The fact that Mr N was actively considering combining his pension provision, in order to enter into a phased income drawdown arrangement, and that he had applied for FP2014 demonstrates that he and his adviser were aware that his overall pension provision, including benefits from the Fund, could exceed the LTA. Moreover, as Mr N was considering combining his pension provision into a drawdown arrangement, I think it would have been evident that some action on Mr N, or his adviser's, part would have been required for the transfer to proceed.
27. Consequently I consider that the onus was on Mr N, or his adviser, to enquire why, around the time of his 60th birthday, the benefits Mr N was expecting from the Fund had not come into payment. Or, alternatively, for Mr N or MDFM to have contacted the Trustee to request a transfer of benefits into the drawdown arrangement.

PO-18398

28. Based on the evidence, I do not find that Mr N, or MDFM on his behalf, were reliant on receiving the 'wake up' letter in order to have identified that the benefits from the Fund had not come into payment at age 60, or that they could interact with the LTA and FP2014.
29. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
26 February 2018