

Ombudsman's Determination

Applicant	Ms N
Scheme	Bristol Polytechnic Students Union Staff Pension Scheme (the Scheme)
Respondents	Clerical Medical

Outcome

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

Complaint summary

3. Ms N's complaint about Clerical Medical is that they provided her with an incorrect pension quotation in 2012. She relied on this to her detriment when deciding to retire at her normal retirement date.

Background information, including submissions from the parties

4. Ms N was a member of the Scheme from September 1986 until June 1994. The Scheme invested pooled contributions in funds with Clerical Medical.
5. In 1994, Clerical Medical provided a retirement benefit illustration indicating a pension of £8,336.88 a year.
6. In 1999, in response to a request from Ms N's solicitor, Clerical Medical sent an illustration of benefits to the Scheme Trustees indicating a pension of £5,884.68 a year.
7. The Scheme was wound up on 11 February 2004, and Ms N's benefits were secured under an individual deferred annuity with Clerical Medical.
8. In 2007 Ms N accepted redundancy from her post as Head of Student Services. She says she declined the opportunity to apply for two new posts that had been created in a reorganised commercial vehicle, on principle. She became self-employed. She has provided an invoice from 2008 showing £1,000 per day fees, which demonstrates that there was substance to her plan at the time. But she says her earning capacity was

subsequently adversely affected by the recession. She continued to look for employment as a result and has provided evidence of continuing to apply for employed roles between 2010 and 2013, unfortunately without success. She downsized from a property in Falmouth to another in Sheffield in 2011.

9. In 2012, Ms N says she contacted Clerical Medical expressing misgivings about whether the information she had about her pension was reliable and asking for an accurate picture of her future finances.
10. On 13 February 2012 (the **February 2012 letter**), Clerical Medical sent an annuity illustration to Ms N, payable from her normal retirement date of 26 February 2017. The February 2012 letter indicated she would receive a pension of £8,584.07 a year, of which £2,088.84 was in respect of a guaranteed minimum pension (**GMP**). The February 2012 letter went on to say that there was also an option to take a tax-free cash sum with a reduced annuity pension, but that can only be calculated 21 days before the retirement date. In February 2017, some weeks before her normal retirement date, when she had not received any correspondence from Clerical Medical regarding her pension, Ms N contacted Clerical Medical on several occasions for confirmation of her benefits.
11. On 16 February 2017 (the **February 2017 letter**), Clerical Medical wrote to inform Ms N of her options. Based on a retirement date of 26 February 2017, she could receive a full annuity of £6,495.25 a year (or take a cash lump sum of £32,986.89 and a reduced annuity of £4,738.02 a year). This was a reduction of £2,088 a year, compared to the illustration in the February 2012 letter.
12. Ms N contacted Clerical Medical about the reduced benefits in the February 2017 letter.
13. Clerical Medical subsequently informed Ms N that there had been an error with the February 2012 letter, and the correct pension was £6,495.25 a year inclusive of the GMP.
14. Ms N complained about the reduction of her benefits and the error in the February 2012 letter.
15. On 24 March 2017, Clerical Medical apologised for the upset and inconvenience caused to Ms N. They accepted that her expectations had been raised by the February 2012 letter. However, they said that the illustration was not binding and it cannot pay the incorrect amount. It offered to pay £1,000 to her, in respect of the significant impact the error had on her.
16. On 9 August 2017, Clerical Medical informed Ms N that her pension of £4,808.99 had been put into payment from 24 July 2017, and a cash lump sum of £33,525.90 had been paid to her.
17. Ms N says that her plan was to retire from self-employment at 60 and she had calculated that she would have enough to live on from her occupational pension until

she achieved a more manageable income through a state pension. Her son had been diagnosed with a terminal illness and she wanted to retire to care for him. The reduction of a third in her pension from the Scheme will have a significant impact on her circumstances. The offer of £1,000 is unsuitable and will not compensate her personally or financially.

18. She explained that she started winding down her self-employed business in 2016, in preparation for retirement in 2016, and she became her son's full-time carer. a statement of savings and working tax credit; a copy of her tax returns for the 2016-2017 tax year.
19. Ms N says that contacting Clerical Medical in 2012 is evidence of her retirement planning, as there is no requirement to check her benefits beforehand and seek clarification.
20. In January 2017, Ms N told HMRC that she planned to cease trading. However, she has not been able to retire due to the error and continues trading. She is currently not earning any income from her employment, although she is investigating a possible new business idea. Her only income is working tax credit and the pension of £400.75 a month. If she had not been misinformed and assumed that she would have the financial security of taking her pension at 60, she would not have invested the savings from downsizing in her business, or taken herself out of the job market in 2007. She is extremely risk averse and would not have spent large amounts of money on travel and things for her son after his diagnosis, if she thought that she would not have enough money to live on at age 60.
21. In mitigation, Ms N says that she has taken a university course and made a minor investment in materials to explore new business avenues.

Adjudicator's Opinion

22. Ms N's complaint was considered by one of our Adjudicators who concluded that no further was required by Clerical Medical. The Adjudicator's findings are summarised briefly below:-
 - Ms N's downsizing of her property, her redundancy, and commencement of self-employment, were all events that occurred prior to the receipt of the incorrect illustration in February 2012 and could not have been in reliance on it.
 - Ms N became her son's carer from 2014, when he was diagnosed with a terminal illness. It is reasonable to infer that she would have wanted to spend more time with him in her retirement, so it is always likely that she would have retired at age 60 in February 2017.
 - Ms N ran her business from home and, although she started winding it down in 2016, she has been able to restart it. Her business is something that she could

have continued regardless of the start of her pension, and she did not have to close it down to take her pension.

- Ms N acted on a relatively dated illustration from February 2012 and did not ask for an up-to-date illustration before making such a life-changing decision. Although she checked her benefits in 2012, the fact that she did not do so closer to her retirement, shows that it is more likely than not that she would have gone ahead with retirement regardless of the final amount.
- The Adjudicator was not persuaded that a difference of approximately £2,000 a year would have resulted in a vastly different decision by Ms N in her circumstances.
- Ms N has been able to resume her self-employment and is in a position to mitigate any loss.
- The offer of £1,000 is reasonable considering the significant impact of the error on Mrs N.

23. Ms N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms N provided her 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 Ms N for completeness.

Ombudsman's decision

24. Ms N says that the figures received in the February 2012 letter were not an illustration. She says that her retirement age changed due to changes announced by the government in 2011 and this was significant in her decision to take her benefits at age 60. Moreover, Clerical Medical did not send her a 'wake-up' pack prior to reaching age 60. She considers that the removal of £2,000 a year from her benefits would have made a difference to her decision to retire, and the assumption that she would have retired regardless of her pension income, to care for her son, may amount to indirect discrimination.
25. The figures provided to Ms N in the February 2012 letter were an indication of what she would receive on retirement in February 2017. Although the figures were not stated as being guaranteed, Ms N had a reasonable expectation that they would be correct. Unfortunately, the figures in the February 2012 letter were incorrect, but Mrs N could not have known it at the time. The February 2012 letter also said that Clerical Medical would contact Ms N before her retirement date with details of her options. This did not happen and Ms N initiated the contact which led to the February 2017 letter. Provision of the incorrect figures, and the omission to contact Ms N prior to her retirement date, amount to maladministration. The question I have to consider is what injustice flowed from that.

26. The basic principle for negligent misstatement, in the absence of any additional legal claim, is that a scheme is not bound to follow incorrectly calculated retirement quotes or transfer values. A member is only entitled to receive the benefits provided for under the scheme rules, that is those based on correct information accurately reflecting the scheme rules.
27. I can only depart from that principle if a complainant can demonstrate that somebody reasonably relied to their detriment on the misstatement and financial loss has flowed directly from that reliance..

In this case, Ms N says that she would not have taken herself out of the job market as she did in 2007 had she known the correct figures at that time. I do not think that claim can succeed because it is impossible for Ms N to show a clear link between her decision making and the figures provided by Clerical Medical at that point in time. It is rarely straightforward to determine what someone might have done if presented with different information at the time of significant personal change, especially complex decisions about whether to apply for a particular job, which they may or may not have been successful in obtaining, or to become self-employed instead. The burden of demonstrating reasonable reliance on a misstatement rests with the complainant, and I have to apply the relevant tests without benefit of hindsight. In this case I have seen no evidence that the 2007 decision was made in reliance on statements about what Ms N's pension was going to be in 2017.

28. Ms N also says that she relied on the incorrect figures in the February 2012 letter when deciding to retire at age 60 and giving up her self-employed business. I appreciate that Ms N would have taken the pension figures, in the February 2012 letter, into account when thinking about her impending retirement and when making the decision finally to wind her business down in 2016. However, I also have to consider her statement that it was by then hard to obtain work in any event and the fact that she has since been able to continue to seek it. I have not seen any evidence that her decisions would have been different had she been aware of the correct figures in 2016.
29. Ms N did not retire earlier than planned in reliance on the incorrect figures; she had always planned to retire at age 60. The difference is that her income is lower than she anticipated and she has therefore had to continue to try to obtain work past the age at which she expected not to have to. Unfortunate though that situation is, I cannot conclude that the decision to retire at 60 was made in reliance on the 2012 statement or that any financial loss has flowed directly from that decision. I have considered Ms N's point that the money she realised from downsizing was intended to tide her over until 60, and her contention that she would not have spent as much money as she did generally had she known the correct position about her income at that age. She has provided some evidence of spending between 2012 and 2015 which she says she did not need to incur and would not have incurred had she known the correct figures, but while I can see that some of those choices may subsequently have been regretted, I cannot see a picture of different spending choices made as a

direct consequence of the statement made in 2012. In the case of home improvements and IT spend I consider that these were likely to have been needed at some point in any event.

30. I note that Ms N took the option of a tax-free cash sum with a reduced annuity pension. As stated in the February 2012 letter, that calculation can only be made within 21 days of the retirement date. There had been no previous figures indicating what the annual pension benefit would be if the reduced annuity option was taken and Clerical Medical did not provide any indication of what Ms N could expect to receive. Therefore, I consider that Ms N could not have placed any reliance on the unknown figures leading up to her retirement. Because I am not satisfied that Ms N can demonstrate that she made particular decisions to her detriment in reliance on the 2012 misstatement, the difference of approximately £2,000 a year does not amount to direct financial loss. The usual principle applies that Ms N is only entitled to correct pension due under the Scheme rules.
31. Ms N suggests that it could amount to indirect discrimination that the Adjudicator mentioned the likelihood that she would have retired at 60 to care for her son, regardless of the figures in the February 2012 letter. I am satisfied that this suggestion was not discriminatory as Ms N mentioned that she was her son's carer and it was her intention to retire and spend more time with him. Furthermore, all her circumstances were considered before the Adjudicator reached the opinion it was more likely than not that she would have continued with that plan, regardless of the pension figures. Ms N is entitled to disagree with the Opinion, but I do not find that this amounts to discrimination which should affect the outcome of the decision.
32. Ms N is now in receipt of a pension that has been correctly calculated and the injustice suffered is her distress and inconvenience at discovering late in the day that her pension is smaller than she anticipated. I have reviewed the reasonableness of the compensation offered for that distress and inconvenience. This is an unfortunate case, because I completely accept that for some years Ms N held a genuine belief that she would receive the benefits shown in the February 2012 letter and her understanding was not corrected in the immediate run up to her retirement age. To that extent Clerical Medical compounded the effect of the original misstatement. Clerical Medical took account of her challenging circumstances, apologised for the error, and offered £1,000 to her.
33. Ms N believes the award offered by the Trustees of £1,000 is insufficient. I would normally award £500 where significant distress and inconvenience has been caused by an administrative error. However, in cases such as this I consider that a higher award of £1,000 is appropriate. Clerical Medical has already offered this amount and I do not make a further award. If she wishes to accept the offer, Ms N should contact Clerical Medical directly.

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34. Therefore, I do not uphold Ms N's complaint.

Karen Johnston

Deputy Pensions Ombudsman

16 August 2018