

Ombudsman's Determination

Applicant	Mr Y
Scheme	BASF UK Group Pension Scheme (the Scheme)
Respondents	BASF Pension Trustee Ltd (the Trustee) Willis Towers Watson (the Administrator)

Outcome

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

Complaint summary

3. Mr Y has complained that, following a full transfer out of the Scheme, he received information indicating that he retained benefits within the Scheme over an extended period of time.

Background information, including submissions from the parties

4. On 19 April 2002, Mr Y became a deferred member of the Scheme.
5. In early 2007, Mr Y looked into the possibility of transferring his accrued pension benefits in the Scheme to his current employer's pension plan.
6. On 6 March 2007, the Administrator produced a cash equivalent transfer value (**CETV**) of Mr Y's accrued pension benefits showing a value of £55,289.97.
7. On 4 June 2007, Mr Y signed a 'Statutory Option to Transfer to an Occupational Pension Scheme Form of Request', authorising the transfer to the 'ConocoPhillips Pension Plan'.
8. By signing this document, Mr Y formalised his transfer request and confirmed that:

"...the Trustees will be discharged from any obligation to provide benefits under the Scheme to which the cash equivalent is related. The Trustees will have no responsibility for and will not be required to enquire into the use and/or application of the assets transferred."

9. When the transfer was finalised, the Administrator failed to adequately update its records to reflect the change in circumstance or complete the relevant CA form informing HM Revenue & Customs of the change in liability. As a consequence, Mr Y continued to be recorded as being a member of the Scheme.
10. Over the next ten years, Mr Y continued to have access to the Scheme's online facilities and each year, received a deferred benefit statement showing escalating benefits in excess of £12,000 per annum.
11. In 2017, believing that he retained benefits within the Scheme, Mr Y requested a CETV.
12. The CETV Mr Y received quoted a figure in excess of £300,000. Which Mr Y queried with the Administrator.
13. It was as a result of this query that the original error from 2007 was discovered. Mr Y was subsequently informed that he held no retained benefits in the Scheme.
14. Understandably distressed by this, Mr Y formally complained under the Scheme's internal dispute resolution procedure (**IDRP**).
15. The Administrator issued a stage one IDRP decision on 8 June 2017. The Administrator acknowledged that an error had occurred in that "the administrator's system was not updated" when Mr Y transferred out. The Administrator also offered Mr Y £1,000, in "acknowledgment of the distress and inconvenience" this will have caused him but did not uphold the complaint.
16. A stage two IDRP decision was issued by the Trustee on 8 August 2017. The Trustee apologised for the error and any distress caused but again, the complaint was not upheld.
17. Not satisfied with either response, Mr Y brought his complaint to this office.

Adjudicator's Opinion

18. Mr Y'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:-
 - The Administrator's failure to update Mr Y's record correctly following his transfer out amounted to maladministration.
 - Having failed to correctly update its records, the Administrator then provided Mr Y with misleading information over an extended period of time.
 - The basic principle for negligent misstatement (in the absence of any additional legal claim) is that a scheme is not bound to follow incorrect information.

- A member is only entitled to receive the benefits provided for under the scheme rules, i.e. those based on correct information accurately reflecting the scheme rules.
 - Broadly, an Ombudsman will provide redress if it can be shown that financial loss or non-financial injustice has flowed from incorrect information given. An Ombudsman will also consider whether it is more likely than not that a member relied on the incorrect information to their detriment, and that it was reasonable for them to do so.
 - As maladministration has been established, it stands to reason that Mr Y should be compensated for the distress this will have caused him.
 - Where a member's distress and inconvenience is said to be significant, the starting point for a compensatory award is £500. In this case, the current offer of £1,000, is in excess of that amount, and it is unlikely that an Ombudsman would make a higher award.
 - Although Mr Y received misleading information, it was not unreasonable for him to have at least queried this information, given that he had requested to transfer his benefits and had signed a request form discharging the Trustees of any liability for providing him with pension benefits.
 - Other than an understandable emotional impact, Mr Y has been unable to provide evidence of an actual financial loss, or any particular steps he took in expectation of the incorrectly stated benefits.
19. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y 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 Y for completeness.

Ombudsman's decision

20. That Mr Y was provided with misleading information for almost ten years is not in dispute. Nor is the fact that, but for Mr Y's request for a CETV in 2017, the error may not have been discovered.
21. However, despite the information he received to the contrary, Mr Y retained no benefits within the Scheme, having transferred his entire Scheme pension entitlement in 2007. This transfer thereby increased the benefits payable to him under the ConocoPhillips Pension Plan.
22. The question then is to what degree Mr Y relied on the incorrect information he was provided with and, importantly, if he was right to place such reliance on that information.

23. When Mr Y formalised his transfer request, he signed a form which specifically discharged the Trustee from any obligation to provide benefits under the Scheme “to which the cash equivalent was related”. Having signed this declaration, Mr Y should then have known, or been reasonably aware, that he retained no further benefits in the Scheme.
24. That he subsequently received information suggesting he had retained benefits should then have come as a surprise to Mr Y, and prompted him to enquire as to the veracity of the information he received. Instead, Mr Y chose to assume that the benefit statement guaranteed that he held deferred benefits, despite being aware that he had transferred those benefits in 2007. Had Mr Y queried the first benefit statement, the issue might well have been resolved far earlier. However, that does not absolve the Administrator or the Trustee from the failure to update Mr Y’s record correctly.
25. Thereafter, Mr Y continued to receive benefit statements every year. This error was further compounded by the fact Mr Y was still able to access the Scheme’s online facilities to update nominees etc.
26. Despite asserting that he relied on the misinformation, Mr Y has been unable to show any specific steps he took, or did not take, in expectation of the benefits detailed in the various benefit statements. In any event, Mr Y’s loss is one of expectation rather than financial, because he was not entitled to receive the benefits he was incorrectly informed that he retained in the Scheme, and to credit him such would unduly enrich him, as he had already transferred the benefits he had been entitled to from the Scheme.
27. However, the basic and prolonged nature of the error shows a fundamental failing by the Administrator, and it stands to reason that Mr Y should be compensated for the distress and inconvenience this matter will have caused him.
28. Whilst I accept that Mr Y has spent a significant amount of time attempting to resolve this matter with the Trustee, and acknowledge this has been a difficult time for him and his family, a payment for distress and inconvenience is typically modest. It is not intended to be compensation in the legal sense of the term, rather it is an ex gratia payment intended as tangible recognition that mistakes and delays have been intrusive, eaten into Mr Y’s time, and caused upset. In this case Mr Y has already been offered £1,000, which given the circumstances I consider is a fair amount. Mr Y should contact the Trustee if he wishes to accept its offer of £1,000 in recognition of the distress and inconvenience that he has suffered.
29. I do not uphold Mr Y’s complaint.

Anthony Arter

Pensions Ombudsman
29 August 2018