PO-21731

Ombudsman's Determination

Applicant	Mr N
Scheme	AGA Range Master Group Pension Scheme (**the Scheme**)
Respondents	Mercer Limited (**Mercer**) ARG Pensions (1974) Limited (**the Trustee**)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Mercer or the Trustee.

Complaint summary

2. Mr N's complaint concerns a number of points, however there are three main issues. The first is that the cash equivalent transfer value (**CETV**) that he received in 2015 had been reduced. The second issue is about the lack of information he has been provided with regarding his pension benefits, and his belief that the pension he is receiving is too low. Lastly, Mr N is unhappy with the service he has received from both respondents.

Background information, including submissions from the parties

3. On 14 December 1992, Mr N joined the Scheme, which is a trust-based, defined benefit, occupational pension scheme. It is administered by Mercer, on behalf of the Trustee.

4. Mr N was an active member of the Scheme until 24 February 2006, and had a normal retirement date of 3 December 2027.

5. On 31 January 2008, Mercer issued a preserved benefit statement (a copy of its contents is in Appendix A). This said that as at 24 February 2006, Mr N had a preserved pension of £4,316.08 in the Scheme, which would become payable on 3 December 2027.

6. In May 2015, Mr N requested a CETV. Mercer issued this on 29 June 2015, quoting a 'full transfer value' of £122,015.00. However, the 'total current transfer value offered' was £102,009.00. The quotation stated that the current transfer value was less because "the Scheme presently has a deficit and therefore does not have enough assets to pay full transfer values to all members." It said that it was able to reduce the

CETV under paragraph two, Schedule 1A of the Occupational Pension Schemes (Transfer Values) Regulations 1996[1] (**the Regulations**). Mr N did not proceed with the transfer.

7. On 11 December 2017, Mr N emailed Mercer saying, "I wish to take early pension as I am now 55. Like lump sum & monthly [sic]."

8. On 15 December 2017, Mercer issued a retirement benefit statement which outlined Mr N's benefit options. These were:-

   - An annual pension of £2,884.44; or

   - A reduced annual pension of £1,959.00 with a cash lump sum of £13,057.89.

9. General notes were included with the benefit statement, that said that the calculation assumed that Mr N would retire early. As a result, the benefits had been adjusted to take into account that they were going to be paid early.

10. On 22 January 2018, Mercer wrote to Mr N to confirm his benefit choice. The letter stated that his first payment would be made on 2 February 2018. Mr N called Mercer on 29 January 2018, to query the difference between the benefits he was due to receive and the CETV. He also asked for a complete breakdown of his pension and wanted to know how his benefits had been calculated.

11. Between 9 February 2018 and 19 March 2018, Mr N contacted Mercer in relation to his benefits on a number of occasions. These are outlined in more detail in Appendix C. In his correspondence of 26 February 2018, Mr N notified Mercer that he had a complaint. This concerned the early retirement factor and also that if he were to die within the first five years of receiving his pension benefits, the lump sum payment would be limited to the remaining payments due within the five years. Mercer responded to these points on 12 March 2018 and included information to confirm the method used for its calculations of Mr N's benefits.

12. On 4 April 2018, Mercer issued a breakdown of Mr N's benefits and provided the Scheme Rules that confirmed "to whom a pension can be paid i.e. to a spouse or eligible child." Mercer also explained the early retirement pension calculation and how the GMP part of Mr N's pension was revalued at a different rate. It provided the following:-

    "GMP - £278.72 x 4.5% for 21 years = £702.44 per annum.
    Excess pension - £4,037.36 x 1.295 (actual known revaluation for 11 years) x 1.28008 (assumed revaluation for 10 years @ 2.5%) = £6,692.75 per annum.

    Total pension = £702.44 + £6,692.75 = £7,395.19 per annum x 0.39 (early retirement factor) = £2,884.12 (rounded up to £2,884.44 per annum).

[1] A copy of this is in Appendix B.

You were then able to exchange some of this pension for a cash sum of £13,057.89 with a residual pension of £1,959.00 per annum which is the option you chose.

The formula for calculating your cash sum is set out in legislation and is;

$$\frac{\text{Pension x 20}}{(3+(20/\text{cash exchange factor}))}$$ The cash exchange factor for age 55 is 14.11

$$\frac{£2,884.12 \text{ x } 20}{(3+(20/14.11))} = £13,057.90”$$

13. In response, Mr N emailed Mercer on 9 and 10 April 2018. He argued that the breakdown should have been provided when he claimed his pension in December 2017. In addition to this, he reiterated his concern about the difference between his current pension benefits and the CETV. Mr N said that this was an ‘official complaint’ and that he wanted ‘compensation’ for the lack of information provided with his retirement benefit statement, the lack of statements in general and the changes made to his pension that he was not made aware of. Furthermore, Mr N wished to complain about the length of time it took Mercer to provide the breakdown of his pension.

14. On 12 April 2018, Mercer responded to say that the information Mr N received in December 2017, was the standard information provided to all members. It stated that retirement benefit statements would not include a breakdown of how the benefits had been calculated. Lastly, it provided contact information for independent financial advisers who could help explain the differences between the CETV and Mr N’s pension benefits.

15. On 8 May 2018, Mr N emailed Mercer to invoke a formal complaint under the Scheme’s internal dispute resolution procedure (**IDRP**). At this point, Mr N had included that he had received poor service in relation to getting a resolution to his complaint. Following this, on 18 June 2018, Mr N submitted a stage one application form for the IDRP. He listed his complaint points as follows:-

- The CETV was reduced, which meant that he would have lost £20,000. Had this been a ‘full’ CETV, he would have transferred out of the Scheme and had a pension pot of approximately £150,000. He believed he had suffered a financial loss as a result.
- When he asked for his pension in 2017, he was only given two options.
- There had been changes to his pension that he had never been informed about. Further, he had never received any statements from the Scheme.
- He should be receiving more from his pension and had never received a breakdown of his benefits.
- He had received ‘very poor’ service from Mercer.

- Based on his calculations, he was not receiving what he contributed to the Scheme.

16. On 17 August 2018, the Trustee issued its stage one IDRP response. It said that Mr N had been in pensionable service for a total of 13 years and two months, and during that time he had contributed a total of £5,991.77 to the Scheme. Further, as this was a defined benefit scheme, there was no ‘obvious’ cash equivalent value. With regard to Mr N’s other points, it responded with the following:-

    - The CETV was reduced because pension liabilities were ‘essentially valued’ by reference to yields on UK Government gilts. In 2014, gilt yields fell dramatically which significantly inflated the value of pension liabilities. However, the value of invested assets did not increase to the same extent. The reductions were applied following the applicable law and regulatory requirements.

    - There was no record that Mr N had raised any issues with the options provided in December 2017. Mr N had completed the forms, which indicated that he wished to take an early pension. Mercer settled Mr N’s pension benefits following this request.

    - The Scheme Rules had not changed since Mr N joined the Scheme. Further, there had been regular communications from the Scheme sent to Mr N, none of which had been returned as undelivered.

    - Although Mr N believed he was due more, the calculations used had been checked and no error had been made.

    - Mr N had not provided evidence of the poor service he claimed he had received. So, the Trustee could not respond to this in full, other than to say that there was nothing on file that suggested that there had been poor service.

    - If Mr N wanted his complaint to be considered under the IDRP, he should fill in a stage one application form [it appears that this was done in error].

17. On 21 August 2018, Mr N escalated his complaint to stage two of the IDRP. The Trustee confirmed this by letter on 30 August 2018.

18. On 4 September 2018, Mr N wrote to the Trustee to reiterate that he wished to escalate his complaint.

19. On 17 October 2018, the Trustee issued its stage two response under the Scheme’s IDRP. It concluded that Mr N was receiving the Scheme benefits that he was entitled to and so no further action was required. Its position on Mr N’s previous complaint points had not changed, but it added the following:-

    - The Scheme Rules outlined the benefits payable once a member passed away. These stated that if a member died within five years of his pension coming into payment, a lump sum equal to the further payments of the pension that would have been paid during the remainder of the 5-year period, would become payable to all/any of the member’s beneficiaries. This would be divided at the Trustee’s discretion. Further, the Scheme Rules provided for a survivor’s pension to be payable to the member’s surviving spouse and eligible children.

- Mr N’s early retirement pension and lump sum were correctly calculated in accordance with the Scheme Rules and the applicable law. Mr N was not entitled to anything different to this. Further, Mr N had decided to take his benefits based on the information in Mercer’s letter dated 15 December 2017.
- A breakdown of Mr N’s benefits was provided in April 2018, in response to his request made in January 2018.
- Mr N’s benefits under the Scheme had been calculated on a defined benefit basis, where his pensionable service and final pensionable earnings were taken into account. This provided Mr N with a retirement income for life, which was different to a defined contribution scheme.

20. Following this, Mr N brought his complaint to us. Whilst we have been investigating the complaint, both Mr N and Mercer have provided additional information and comments. These are listed below.

<u>Mr N</u>

- He did not receive the public announcements/communications from the Scheme.
- He had asked for a breakdown of his pension benefits before he claimed his pension in December 2017. However, he never received this. When he did receive the breakdown, it was four months after he had claimed his benefits, so he had been unable to make an informed decision.
- Ringing Mercer had been a ‘nightmare’ as the representatives he spoke to could not answer his questions.

<u>Mercer</u>

- Mercer had no record of any breakdown requests from Mr N in December 2017.
- Mercer logged a complaint for Mr N on 27 February 2018, and its letter dated 12 March 2018, was the complaint response. However, the letter did not acknowledge that Mercer had treated Mr N’s correspondence as a complaint. A further complaint was logged on 10 April 2018, and Mercer’s letter dated 19 April 2018, was its complaint response.
- Mercer provided copies of the Scheme Handbook from 1990, 1994, 1995 and 1997. These all explained that if Mr N were to pass away within the first five years of retirement, a lump sum equal to the unpaid part of the five years’ pension payments would be available. In addition to this, there was a spouse’s pension and a child’s allowance if applicable. With regard to early retirement, all of the Scheme Handbooks stated that if the members retired under the age of 60, a

reduction would apply to the benefits to reflect the possibility of a longer payment period.

Adjudicator's Opinion

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

- Mr N's complaint fell into three main parts: the CETV reduction; the calculation of his current pension benefits; and the service that he had received.

- In certain conditions, the applicable law allowed the Trustee to reduce a member's CETV. So, this was not done in error.

- In a defined benefit pension scheme, members are given two retirement options when claiming their benefits. At the time Mr N claimed his benefits, he was provided with the same information that other deferred members of the Scheme would have been given. There was no requirement on the Trustee to provide a breakdown of how the quoted figures were calculated.

- There was no evidence that Mr N had asked for a breakdown before claiming his benefits. There was also nothing to show that he was prevented from questioning the quoted figures either. Additionally, as a CETV was a separate option to claiming benefits from the Scheme, Mr N would have had to have asked for this.

- Although Mr N believed his pension was incorrect, this was based on an inaccurate comparison. Mr N had compared what he could expect to receive over a number of years with the 2015 CETV, which was only guaranteed for three months. There was no information suggesting that his pension was incorrect.

- The information that Mr N claimed he did not receive, was outlined in the Scheme Handbooks and in the letter dated 31 January 2008. So, the Trustee did inform him and it confirmed that there had been no changes made to the benefits in question.

- Mercer did not receive any returned post in relation to Mr N. So, it was more likely than not that Mr N did receive the announcements and communications sent to him. Nevertheless, Mr N could have contacted Mercer if he did not think he was being kept up to date. With regard to the annual statements, there was no legal obligation for the provision of statements to deferred members of a defined benefit scheme.

- The service that Mercer provided could have been improved, but Mercer's actions did not cause a significant level of distress and inconvenience to warrant an award. Further, although Mercer took a number of months to provide a breakdown of Mr N's pension, the pension was already in payment because Mr N had accepted the figures provided in December 2017. So, the breakdown could not have been a significant factor for Mr N.

- The responses provided by the Trustee were within what the Pension Regulator considers to be a reasonable timeframe.

22. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N and the Trustee provided 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. Mr N's additional submissions are summarised below:-

- He was advised by a third party that he should have received an annual statement from the Scheme, but he did not.

- He claimed that his complaint had impacted a third party's employment.

23. The Trustee's response to these were as follows:-

- The Scheme issued annual Summary Funding Statements in accordance with legal requirements. Mercer had no record of any communications from the Scheme, sent to Mr N, being returned undelivered. Mr N was correct to say that he had not received a Summary Funding Statement since August 2017. This was because the next one due to be issued was in respect of a triennial actuarial valuation that had not yet been concluded.

- Terms and conditions of employment and termination of employment were matters between the employer and its employee. Neither the Trustee, its support staff nor a third-party administrator would have any involvement in such matters. There had been no communication with "any employer" about Mr N's complaint, nor was any information sought from "any employer" in respect of Mr N. Moreover, the Trustee, its staff and its third party administrator did not have records to identify third parties known to Mr N, and their employers.

Ombudsman's decision

24. The potential impact of this complaint on another individual's employment is not something that I can consider, for a number of reasons. Firstly, this did not form part of the complaint to which the Trustee has issued a response. Secondly, the Trustee cannot be held responsible for another entity's acts or omissions, which in this case is the employer. Further, this does not impact Mr N directly.

25. Mr N has stated on a number of occasions that the Trustee reduced the 2015 CETV to prevent him from transferring out of the Scheme. As the Scheme was in a deficit in 2015, it applied a reduction permitted by the Regulations. Had Mr N accepted the transfer value quoted in 2015, he would have been able to transfer out of the Scheme. Although Mr N would have received slightly less, there is nothing to suggest that Mr N was prevented from transferring. Moreover, if Mr N had wanted to transfer

his benefits at a later date, he could have asked for a further CETV quotation in the following year. While I understand that this may be frustrating for Mr N, the Trustee was allowed to reduce the 2015 CETV and so has not made an error in doing so.

26. When a deferred member of a defined benefit occupational pension scheme, such as Mr N, asks about claiming their benefits, they will only be presented with two options. If Mr N was unsure of these or wanted additional information such as a breakdown, he could have contacted Mercer or an independent financial adviser. I say this as there is no current requirement that this information must be provided alongside the options. Alternatively, Mr N could have considered transferring his benefits out of the Scheme at this point, by asking for a CETV quotation. If the breakdown had been important to Mr N, he would not have claimed his benefits until he was in receipt of this.

27. Mr N has also claimed that there has been a lack of information provided to him as a deferred member of the Scheme. As identified in paragraph 21 above, the Trustee is not legally required to provide annual statements to deferred members of the Scheme. So, it has not made an error in this regard. Mercer also confirmed that the information it sent to Mr N by post had not been returned. This indicates that Mr N was in receipt of the Scheme's communications. Additionally, I do not agree that Mr N had not been informed about the "changes" he has claimed occurred during his membership. Information about these were available to him when he joined the Scheme, as demonstrated by the Scheme Handbooks.

28. I agree that Mercer could have done more in relation to the service it provided Mr N. Its responses should have acknowledged Mr N's complaints and provided him with relevant referrals. Additionally, it should not have taken Mercer approximately four months to provide the breakdown Mr N had asked for. Nevertheless, Mr N was still able to progress his complaints and bring the matter to us. So, I cannot see that this has caused him significant distress and inconvenience, taking into consideration the individual circumstances.

29. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
9 September 2019

Appendix A

Copy of the preserved benefit statements dated 31 January 2008

[…]

As at 24 February 2006 you have earned a pension preserved in the scheme of £4,316.08 a year which becomes payable at your Normal retirement date of 3 December 2027.

Will my pension increase before I retire?

The basic pension shown above will be increased over the period from your date of leaving to age and will be assessed for tax purposes against the Lifetime Allowance in force at that time.

- Your guaranteed minimum pension of £278.72 increases at 4.50% per year compound for each completed tax year between your date of leaving and age 65. A tax year runs from 6 April to the following 5 April.

- Your benefits in excess of your guaranteed minimum pension increase by the lower of increases in the retail prices index of 5% a year compound (measured in complete years), over the period between your date of leaving and age.

What if I die before retiring?

- If you die before retirement, the benefit payable to your widow of £2,861.67 a year will be increased between your date of leaving and the date of death at the same rate as your own pension.

In addition a lump sum of £5,991.77 would be payable.

In some circumstances a child's pension may be payable, more details can be found in the scheme booklet.

What if I die after retiring?

If you die after retiring, a pension may be payable to your widow. We will provide you with full details when you retire and further information is available in your scheme booklet.

Other information about your pension

This statement is based on the information currently held by the administrator of the scheme and is produced for information only. It is not proof of entitlement and confers no right to benefits. All benefits must be calculated and paid only in accordance with the trust deed and rules of the scheme and the law, and are therefore subject to review before payment..

Once in payment, your pension will be increased on a regular basis.

Appendix B

Occupational Pension Schemes (Transfer Values) Regulations 1996, Schedule 1A, paragraph 2

2 In the case of a scheme to which Part 3 of the 2004 Act (scheme funding) applies, the member's initial cash equivalent may be reduced by the trustees if—

(a) the insufficiency conditions are met; F155 ...

(b) the insufficiency report has an effective date which is no earlier than the effective date of the most recent actuarial valuation received by the trustees in accordance with section 224(4) of the 2004 Act (scheme funding); [F156 and

(c) the guarantee date shown in the statement of entitlement is at least one year before the member attains normal pension age in relation to the rights to benefits covered by the statement of entitlement.]

Appendix C

Timeline of the correspondence between Mercer and Mr N

9 February 2018 -	Mercer wrote to Mr N. It explained that Mr N's normal retirement age was 65 years old, so Mr N had retired early. With regard to his benefits, his annual pension was a different option to a CETV and so could not be directly compared.
14 February 2018 -	Mr N called Mercer to ask why his dependants were not getting a pension. Mercer explained that this would only become applicable in the event that Mr N passed away. During this conversation, Mr N stated that he was unhappy that he was not informed that his pension would be reduced as a result of taking it early.
16 February 2018 -	Mr N emailed to request that his widow's pension go to his daughter.
26 February 2018 -	Mr N emailed Mercer to chase his request for a breakdown of his pension benefits. At this point, Mr N stated that this was a complaint about two issues: the early retirement reduction to his pension benefits and how if he were to die within five years of receiving his pension, it would be 'lost'.
12 March 2018 -	Mercer said that Mr N's pension was payable for the entirety of his life, but if he passed away within five years of receiving his pension, a lump sum payment would become applicable. In relation to Mr N's benefits, Mercer provided a Scheme Details Form which confirmed the method used for his early retirement pension calculation, and the benefit payable on death in retirement.
19 March 2018 -	Mr N called to query the figures Mercer had provided. The representative offered to refer this matter on as they were unable to answer Mr N's calculation queries and his question about not being given four pension benefit options. However, the representative attempted to explain the options regarding paying his pension to his daughter in the event that he passed away. Following this, Mercer attempted to call Mr N on 26 March 2019.