PO-22000

Ombudsman's Determination

Applicant	Mr Y
Scheme	Canada Life UK Division Staff Pension Fund (**the Scheme**)
Respondents	The Trustees of the Canada Life UK Division Staff Pension Fund (**the Trustees**) Aon Hewitt (**Aon**)

Complaint Summary

Mr Y complains that the Trustees and Aon, the Scheme administrator, provided him with a series of incorrectly overstated illustrations of the benefits available to him on retirement from the Scheme which he had requested over the years after becoming a deferred pensioner. He says that he had relied upon these erroneous illustrations to his financial detriment by:

- securing a mortgage on his home and using the funds to assist his daughter buy a new home;
- ceasing rather than increasing his regular contributions into his A J Bell self-invested personal pension (**A J Bell SIPP**); and
- spending money on several expensive holidays.

To put matters right, he considers that the Trustees and Aon should honour the incorrectly estimated higher benefit figures available to him assuming he retired on his Normal Retirement Date (**NRD**) of 31 March 2020 as shown on an illustration which he received in November 2014.

Summary of the Ombudsman's Determination and reasons

The complaint should be partly upheld against the Trustees and Aon. To put matters right for the part that is upheld, the Trustees and Aon should pay Mr Y £1,000 in recognition of the significant distress and inconvenience which he has suffered in dealing with this dispute.

Detailed Determination

Material facts

1. Mr Y's date of birth (**DOB**) is 15 March 1955.

2. He became a deferred pensioner in the Scheme on 26 September 2001.

3. Aon sent Mr Y illustrations in December 2010, November 2013, November 2014, September 2016, October 2016 and December 2017 showing incorrectly overstated estimates of the benefits available to him from the Scheme at various proposed retirement dates.

4. The estimated benefits available to Mr Y at his NRD of 31 March 2020 as shown on the illustration which he received in November 2014 were as follows:

    - a full pension of £41,739.24 pa comprising of £17,240.27 pa and £24,498.97 pa from his memberships of the "Manager" and "Field" sections of the Scheme respectively; or
    - a maximum tax-free cash sum of £215,045.71 consisting of £101,536.68 and £113,509.03 from his memberships of the "Manager" and "Field" sections of the Scheme respectively; plus
    - a residual pension of £25,194.34 pa comprising of £13,638.71 pa and £11,555.63 pa from his memberships of the "Manager" and "Field" sections of the Scheme respectively.

5. The November 2014 illustration clearly stated that:

    > "This quotation is for illustration only and does not confer any right or entitlement to the benefits shown.
    >
    > We (Aon) administer your benefits for the Scheme trustees in line with the Scheme's trust deed and rules. We're not authorised by either the trustees or your employer to pay any benefits over and above your Scheme entitlement.
    >
    > …We've done all we can to make sure that the figures shown are accurate, but if there are any errors your benefits will be limited to your Scheme entitlement."

6. Having received the December 2017 illustration, Mr Y questioned Aon about the figures shown which "looked too good to be true". Aon replied by sending him another illustration in February 2018 which unfortunately also contained a mistake.

7. In response to Mr Y's subsequent complaint, Aon explained that:

    - the Normal Retirement Ages (**NRAs**) of the "Field" and "Manager" sections of the Scheme were 65 and 60 respectively;
    - it had made numerous errors over the years calculating the estimated benefits available to him from the Scheme as detailed on the illustrations provided up to December 2017;

- these mistakes were caused by its failure to correctly split his pensionable service between the "Manager" and "Field" sections of the Scheme and allow for the different NRAs; and
- the estimated pension available to him at age 65 shown on the February 2018 statement was calculated correctly but the tax-free cash figure did not include his AVC fund value.

8. In April 2018, Aon sent Mr Y a statement showing the correct benefits available to him from the Scheme assuming he retired on 31 March 2020 to be as follows:

   - a full pension of £33,968.28 pa plus an AVC fund value of £79,685.66 which he could take either as a taxable lump sum or transfer it to another pension arrangement; or
   - a tax-free cash sum of £193,770.38 (including the AVC fund value) plus a residual pension of £29,065.56 pa.

9. Mr Y was unhappy that the pension and tax-free cash figures shown on the April 2018 statement were lower than those previously quoted to him by Aon. His appeal, however, was declined by the Trustees at both stages of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) in June and July 2018 respectively for the following reasons:

   - Mr Y was entitled only to the retirement benefits provided by the Scheme Trust Deed and Rules (**the Scheme Rules**) and relevant regulations governing the Scheme;
   - they could not consequently pay him the incorrectly calculated higher benefits as shown on the November 2014 illustration;
   - the estimated benefit figures sent to him over the years were not guaranteed and for illustration purposes only;
   - details of the actual benefits available to him from the Scheme would only be available nearer to his retirement date; and
   - the £500 goodwill compensation offer made by Aon in recognition of the significant distress and inconvenience which it had caused to him by its mistakes was reasonable given his circumstances.

10. Mr Y was dissatisfied with the outcome of his IDRP appeal and complained to me.

Summary of Mr Y's position

11. He had relied in good faith on the figures shown on the illustrations provided by Aon and the Trustees over the years being accurate for retirement planning purposes. Since 2014, he had made several financial decisions based on the incorrect information provided which can no longer be reversed.

12. He says that:

   - all the illustrations issued up to and including the one in November 2014 provided him with "confidence about his retirement funding";

- it is reasonable for him to rely on figures shown on the illustrations for retirement planning purposes particularly when the Scheme is a final salary pension arrangement;
- he decided that he could help his daughter buy a new home following her separation from her husband and arranged a fixed rate mortgage on his home with the Halifax for £108,000 on an interest only basis for a term of five years (relevant details from the Mortgage Offer Letter, Fact-Find Report, and Suitability Report are shown in the Appendix below);
- he envisaged repaying the loan using the tax-free cash sum available to him from the Scheme shortly before its repayment was due;
- other financial decisions which he had made based on the incorrect information were: (a) ceasing contributions into the A J Bell SIPP because he calculated that his total pension income would be adequate on retirement and (b) spending money on holidays which he could have saved for his retirement instead
- if correct retirement benefit figures had been provided by Aon and the Trustees, he would not have made the financial decisions described above;
- the incorrect illustrations are binding and constituted a contract between him and the Trustees;
- by refusing to pay him the higher incorrectly calculated benefits, the Trustees and Aon are breaking the "contract" and he is entitled to claim compensation on the amount promised without having to prove actual financial loss;
- by comparing the figures shown on the November 2014 and April 2018 illustrations, he has calculated that he will be receiving a pension and tax-free cash at NRD of approximately £3,200 pa and £44,100 lower than expected; and
- he will potentially suffer a huge financial loss if the Trustees and Aon do not put matters right.

13. Mr Y says that:

> "I would just like to point out that every communication from them over the years has been riddled with errors. It is quite clear that the running of the Scheme falls well short of acceptable standards…
>
> I am bewildered by the compensation of £1,000…As a matter of good faith I would like to think Canada Life would make a significant improvement in their offer."

Summary of the Trustees' position

14. The Halifax Mortgage Offer Letter dated 29 April 2015 showed that Mr Y intended to use the proceeds from a "Stocks and Shares ISA" to pay off all or part of his mortgage at the end of the term. It did not mention that he would also be relying on the tax-free cash lump sum available from the Scheme on retirement to do this.

15. The Fact Find Report dated 14 April 2015 showed that Mr Y had informed the IFA that his “preferred repayment method” was “interest only” and that the tax-free cash available to him from the Scheme on retirement of around £215,000 would be adequate to cover repayment of the mortgage loan. But in response to question, “If interest, how do you propose to repay the mortgage?”, Mr Y answered, “From savings”.

16. There is no evidence to demonstrate that the IFA had reviewed the illustrations to check whether the benefit figures shown were reliable and could be used to assess suitability for repayment of Mr M’s mortgage loan in the Suitability Report.

17. The tax-free cash including AVCs currently projected to be available to Mr Y at NRD of £193,770 will be more than adequate to cover the Halifax mortgage loan (including interest) of £108,999 and the cost of the other financial decisions which he says that he made based on the incorrect figures.

18. Although Mr Y has not suffered any actual financial loss by relying on the incorrect illustrations, they accept that the administrative service which Aon has provide him over the years has been substandard and are prepared to increase the goodwill compensation offer made to Mr Y from £500 to £1,000 to try settling his complaint on an amicable basis. Mr Y has rejected this improved offer which he considers derisory.

Conclusions

19. In Mr Y’s case, there is no dispute that Aon and the Trustees have sent him illustrations showing incorrect information about the retirement benefits available to him from the Scheme on numerous occasions over the years. This clearly constitutes maladministration on their part. However, a misstatement of benefits does not of itself give rise to an entitlement to the benefits. Although Mr Y received incorrect details as to his entitlement, it does not confer on him an absolute right to the benefits erroneously quoted.

20. Mr Y argues that he has changed his position irreversibly as a consequence of the incorrect information given to him and for that reason should be entitled to the benefit as misstated. That is a claim which a court would recognise as promissory estoppel. I therefore need to decide whether Mr Y can prove all the elements of that claim. For the reasons below, I do not consider that he can.

21. To provide a remedy for promissory estoppel I have to be satisfied that:

- there has been a clear promise or a representation on which it was reasonably foreseeable that the person to whom it was made would rely;
- the person to whom it was made acted in good faith and relied on the representation;
- as a result, he acted to his or her detriment; and
- the person who made the representation or promise is now pursuing a claim which is inconsistent with the representation or promise.

22. The statements provided were undoubtedly inaccurate. However, they also contained clear warning that they were not promises of payment and what was payable was only that due under the Scheme rules. It was, in my view, foreseeable that the statements would be used to inform retirement planning but I do not consider it was foreseeable that they would be used as the basis for undertaking specific financial commitments such as taking out a mortgage. In the face of the warnings given I would have expected him to make further specific checks before relying on them in that way.

23. I must consider the extent to which Mr Y would likely have acted differently had he known the correct figures at the point when he made his financial decisions, without using the benefit of hindsight. For the reasons below, I am not persuaded, on the balance of probabilities, that Mr Y can show he would have made different decisions had he known the correct figures in 2014.

24. Mr Y says that he would not have secured the Halifax mortgage on his home or spent so much on holidays had he known that he had less money to spend from his pension and tax-free cash available at his NRD. However, the lump sum which was payable was still larger than the mortgage debt and overall not so much smaller that I can infer that Mr Y's decisions would probably have been any different had he known the correct figures. It is apparent that he had funds from other sources which would also likely have influenced his decisions on whether he could afford to secure a mortgage on his home and how much to spend on holidays. I also take account of the fact that in making the most significant decision, that is to take out the mortgage, he was acting out of concern for his daughter's housing needs. I cannot consequently see a direct causal link between what Mr Y was told about the pension and tax-free lump sum available to him from the Scheme at NRD and the financial decisions which he chose to make. It is always difficult for a person to prove what they would have done differently had they believed something different to what they did in fact believe. In the circumstances I am not persuaded that the misstatements were a significant cause of the financial decisions taken by Mr Y.

25. It is evident however that Mr Y has suffered considerable distress and inconvenience because of the maladministration identified. In recognition of this, I note that the Aon and the Trustees have increased their award from £500 to £1,000 as recommended by one of my Adjudicators investigating Mr Y's complaint. By doing so, the Trustees and Aon have accepted that they caused Mr Y serious distress and inconvenience over a prolonged period through their mistakes and were slow to put matters right. In my view, the improved award is fair and in line with what I would direct the Trustees and Aon to pay Mr Y for the level of non-financial injustice which he has suffered.

26. It is therefore my decision that this complaint is partly upheld against Aon and the Trustees and I make the appropriate direction below.

Directions

27. Within 21 days of the date of this Determination, Aon and the Trustees shall pay Mr Y £1,000 in recognition of the serious distress and inconvenience which he has suffered in dealing with this matter.

Karen Johnston

Deputy Pensions Ombudsman
18 June 2019

APPENDIX

Halifax's Mortgage Offer letter dated 29 April 2015

3. Your mortgage requirements

This offer is based on borrowing £108,000 plus £1,294 for fees that will be added to the loan...

The term of the mortgage will be 5 years.

The mortgage will be on part repayment and part interest only.

The purchase price of the property is £600,000.

6. What you will need to pay each month

These payments are based on a loan amount of £109,294 and include the fees…

You have told us you are using the following repayment plan(s) to pay off all or part of your mortgage at the end of the term:

- Stocks and Shares ISA

Suitability Report dated 14 April 2015 to Mr and Mrs Y from their Independent Financial Adviser (IFA), Lighthouse Wealth Limited

Basis of advice

You asked that I only provide advice concerning interest only arrangements as you stated that you would be using either your savings or pension to redeem the loan.

Your needs and circumstances

… you are both home owners and currently do not have any mortgage on your property. You would both like to release some equity from your property to assist with your daughter's property purchase. You have confirmed that you would like to keep the initial monthly repayments down until you deem it the right time to use the tax-free cash from your pension or utilise some of your savings. You have confirmed that your intention is to repay the loan within 5 years.

Attitude to mortgage risk

You prefer to accumulate savings to repay your mortgage when it is due. You understand there is a risk that your savings may not be sufficient to do so.

My recommendations

Having researched the market, I recommended you take out a mortgage with Halifax as they are one of the only few lenders on the market that can offer an interest only facility based on a residential mortgage…Halifax will also be able to accept pension or savings as the loan repayment strategy.

Fact Find Form signed by Mr and Mrs Y on 14 April 2015

In order that we may advise you regarding your mortgage requirements, it is essential that we obtain from you current and relevant information. Please therefore complete the following details as comprehensively as you are able…

<u>New Mortgage Details</u>

Preferred Repayment Method…Interest Only – You have advised me that your tax-free cash from pension with Canada Life will be in the region of £215,000 and therefore adequately repay the debt

If Interest Only how do you propose to repay the mortgage? – From savings

<u>Mortgage Features</u>

Do you have any savings you could use to reduce the amount of mortgage interest you are charged? - Yes

Are you likely to repay part or all your mortgage in the short term – Yes – with tax free cash from pension or savings

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