

Ombudsman's Determination

Applicant	Mr Y
Scheme	Railways Pension Scheme East Coast Main Line Section (the Scheme)
Respondents	RPMI Limited (the Scheme Administrator)

Outcome

1. Mr Y's complaint against Railways Pension Scheme is partly upheld, but there is a part of the complaint I do not agree with. To put matters right the Scheme shall award Mr Y £1,000 for the serious distress and inconvenience caused.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y has complained that the Scheme Administrator failed to correctly implement a Pension Attachment Order (**PAO**). This failure meant that Mr Y received incorrect and misleading information regarding the level of benefit he could transfer out of the Scheme.

Background information, including submissions from the parties

4. Mr Y left the Scheme on 28 August 1999, at which point he became a deferred member. His retirement benefits were payable from his normal retirement date, 26 April 2017.
5. On 31 January 2001, Scarborough County Court issued a PAO, awarding Mr Y's spouse, among other things, a fixed 33% share of his retirement benefits.
6. A PAO differs from a Pension Sharing Order (**PSO**) in that a PSO divides up both parties pension provision at the time of the divorce and leaves both parties to the divorce with their own separate pension funds. A PAO obliges the pension scheme to pay a certain percentage of the monthly pension payments and/or cash lump sum paid out on retirement to the other party.
7. The Scheme Administrator confirmed that this PAO was received on 24 August 2001.

PO-22071

8. As part of his long term financial planning Mr Y appointed Real Financial (**Real Financial**) to act as his financial advisor on 20 May 2015.
9. On 9 October 2015, The Scheme Administrator provided Mr Y with a 'Transfer value quotation' showing a 'Total Transfer Value' of £253,852.42. The covering letter explained that:

"There is a pension attachment order against your benefits and the provisions of the order will be transferred with the benefits"
10. Beneath the total transfer value figure, the following wording was included:

"Our records show that a court order has been received giving instructions to pay some of the pension benefits to the former spouse or civil partner. The transfer value shown above has therefore been reduced accordingly."
11. Real Financial queried this information in two separate telephone calls on 27 October 2015 and 4 November 2015.
12. On 16 November 2015, the Scheme Administrator wrote to Real Financial stating:

"The Court Order is not a pension sharing order. It is a pension attachment order which grants part of Mr Y's retirement benefits, including BRASS [*an in house additional voluntary contribution scheme*], to his former spouse."
13. In the same letter, the Scheme Administrator also said:

"The transfer quotation is based on Mr Y's full benefits. However if the benefits are transferred the provisions of the Court Order would also have to be transferred."
14. On 18 January 2016, the Scheme Administrator responded to another transfer value quotation request submitted by Real Financial. The total transfer value had increased slightly to £257,031.28. The quotation repeated the explanatory statements set out in paragraph 10 and 12 above.
15. A further transfer value quotation was provided to Mr Y on 20 April 2017. The explanatory statement set out in paragraph 12 was not repeated, but the statement in paragraph 10 was. The total transfer value had decreased to £213,614.31.
16. After a period of correspondence between Real Financial and the Scheme Administrator, and believing that the issue had been rectified, Mr Y signed the relevant transfer declaration and discharge form to authorise a transfer to Prudential on 30 June 2017.
17. On 17 July 2017, having received the transfer request and seeing that the transfer value quoted previously did not have the relevant PAO amount deducted, the Scheme Administrator wrote to Prudential explaining that:

“The member’s benefits in the Railways Pension Scheme are subject to a Pension Attachment Order, this grants his former spouse 33% of his lump sum on retirement and 33% of his net pension payments.”

18. Not satisfied with the misleading information he had been provided with Mr Y complained to the Scheme Administrator which responded on 22 August 2017 stating:

“Please accept my apologies for the misleading information provided in the transfer quotes. The transfer quotations previously provided state; “the transfer value shown above has therefore been reduced accordingly”. This is standard wording included in our letter for Pension Sharing Orders, and this wording should have been removed from the correspondence sent to you, as your pension is subject to a Pension Attachment Order. I can however confirm that the transfer quotations are in respect of your full benefits and are guaranteed.

...

The Court Order in your case is not a Pension Sharing Order, and therefore your benefits were not split upon finalisation of your divorce. Your pension is subject to a Pension Attachment Order which grants part of your benefits to your former spouse upon retirement.

...

Please note that the Railways Pension Scheme can only pay benefits to which a member is entitled, and we therefore need to include the Pension Attachment Order as part of the transfer of your benefits.”

19. Still not satisfied, Mr Y subsequently invoked the Schemes internal dispute resolution procedure (**IDRP**).
20. On 12 December 2017, the Scheme Administrator issued an IDRP Stage One response which did not uphold Mr Y’s complaint but did offer £250 in “compensation for the distress and inconvenience” caused.
21. Mr Y did not feel that the Stage One response adequately addressed his complaint and escalated the matter to Stage Two.
22. The Stage Two referral was considered by the Scheme Trustees who issued a response to Mr Y’s complaint on 9 March 2018.
23. Although the Trustees felt that the offer of compensation made by the Scheme Administrator was too low the complaint was not upheld as Mr Y is only entitled to the correctly calculated benefits taking into account any Court Orders or other deductions.
24. Mr Y then brought his complaint to this office.

25. As part of the Scheme Administrator's formal response to this Office, it offered to reimburse Mr Y for any reasonable costs specifically incurred by receiving financial advice as a result of the incorrect information provided, on the premise that Mr Y provided relevant evidence.

Summary of Applicants position

26. Mr Y and his advisors do not agree with the IDRPs responses for the following reasons:
- The Scheme Administrators provided three quotations that "guaranteed" a total transfer value. Each transfer value quotation had wording that categorically stated, "The transfer value shown above has therefore been reduced accordingly."
 - Mr Y had based all his future financial plans on incorrect information and as such he can no longer act in the same way.
 - The Scheme Administrator, while admitting maladministration, had failed to address his loss.
 - There is a "realisable loss of 1/3" of his guaranteed total transfer value.
 - The word "guarantee" denotes a legal obligation to provide him with the sums stated. Sums which he had been told had been reduced to take account of the PAO.
 - Mr Y's retirement planning, undertaken over the last two years, has now been thrown into disarray. Further, he has received no retirement benefits while this matter has been investigated.

Summary of Respondents position

27. The Scheme Administrator has not upheld Mr Y's complaint for the following reasons:
- Although there has been maladministration, Mr Y is only entitled to the correct benefits calculated according to the Scheme Rules.
 - Although misinformation was provided on 9 October 2015 a correction was issued on 16 November 2015.
 - Mr Y's benefits are subject to a PAO, as such his former spouse is entitled to an "earmarked", fixed percentage of his retirement benefits.
 - The letter dated 16 November 2015, made clear that the total transfer value quoted was "exclusive" of the PAO.

Adjudicator's Opinion

28. Mr Y's complaint was considered by one of our Adjudicators who concluded that the Scheme should award Mr Y £1,000 for the serious distress and inconvenience suffered, as well as reimburse any costs specifically incurred due to receiving financial advice based on the incorrect transfer values. However, the Scheme was not required to pay Mr Y the full transfer value. The Adjudicator's findings are summarised briefly below:-

- The Scheme Administrator and the Trustee agree that Mr Y was provided with incorrect or misleading information, so there is no dispute that a problem has occurred and that he has been disadvantaged as a result.
- In this case, the provision of misleading information amounts to maladministration and where maladministration is identified it is the remit of this Office, as far as possible, to put members in the position they would have been in had the maladministration not occurred.
- The error in this complaint was the provision of incorrect information as Mr Y should have been told on 9 October 2015, that his total transfer value of £253,852.42 had to be reduced by 33%. It must then be considered what steps, if any, Mr Y would have taken had he received the correct information.
- A finding of maladministration is not enough on its own to establish negligent misstatement, detrimental reliance or change of position. For these arguments to succeed, it will be necessary to establish that it was reasonable for Mr Y to have relied on the incorrect information to his detriment and that having received the incorrect information he suffered a direct loss as a result of the actions he took.
- In the Adjudicator's view, the loss of £70,000 Mr Y was claiming is a perceived loss as this amount represents 33% of the last valuation of £213,614.31 (£70,492.72). The PAO is legally binding on all parties awarding Mrs Y a fixed percentage, so the "loss" is in line with the PAO.
- Mr Y's claim that he would have been able to draw down on the value of his pension and pay off his mortgage sooner did not amount to an actual financial loss due to the misinformation, as he would have had to pay this off regardless as it was a pre-existing financial agreement.
- It is an established legal principle that a member is only entitled to receive the correct benefits, calculated according to the scheme rules, with due consideration being given to any Court Orders. Given this, Mr Y has suffered a loss of expectation as he was not entitled to receive a benefit not catered for by the Scheme Rules and relevant PAO.
- Mr Y has also suggested that the term 'guarantee' created a binding contract between him and the Scheme Administrator. The Adjudicator considered whether

a contract exists and in order to establish this it would need to be shown that the key elements needed for an enforceable contract were present. These include:

- Offer
 - Acceptance
 - Consideration
 - Intention to create legal relations
 - Certainty of terms
-
- The Adjudicator did not believe that certainty of terms was fully established. Before receiving the transfer value statements, Mr Y would have known he had to surrender 33% of his retirement benefits as per the PAO. The Adjudicator accepted that being told that a transfer value was guaranteed and reduced to take account of the PAO seemed definitive. However, on 16 November 2015, Real Financial were informed that a PAO was applicable and that, contrary to what was advised, the transfer quotation shown in the 9 October 2015 statement was Mr Y's full benefits, without the PAO being applied.
 - The subsequent transfer valuation issued on 18 January 2016 of £257,031.28 showed a slight upturn in the value, and despite the literature suggesting it had been reduced, given the 16 November 2015 letter it was not unreasonable that Mr Y could rationally have suspected that a similar issue had occurred.
 - The third transfer value issued showed a decreased transfer value of £213,614.31, but the decrease was not in the region of the 33% stipulated by the PAO so again it could be suspected that a further error had occurred. This is not to absolve the Scheme Administrator from its basic and continued errors but, in the Adjudicator's view, demonstrated that certainty of terms could not be said to have been established.
 - The Adjudicator did not believe that Mr Y provided enough evidence to demonstrate that he took steps that irrevocably changed his position in expectation of receiving a higher benefit. But, Mr Y had suffered a loss of expectation in that he was led to believe his benefits would be higher than they in fact were. It stands to reason that he should be compensated for this loss of expectation. However, awards in such cases are typically modest in nature and are not intended to punish the respondent. In this case, the compensation amount already offered by the Scheme Administrator is insufficient given the circumstances.
 - It was the Adjudicator's opinion that this complaint should be upheld but only in part, and Mr Y should be awarded £1,000 for the serious distress and inconvenience suffered due to the loss of expectation.

29. 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, set out below:-

- He accepts that he has an obligation to cede a fixed percentage of his Scheme benefits to his former spouse. His argument is that the information he received from the Scheme Administrator was incorrect, and contained guarantees that he relied on for his retirement planning. But he disagrees that a finding of maladministration alone is not enough to establish detrimental reliance, nor does he agree that certainty of terms was not fully established.
- In particular, Mr Y highlighted that he had received three statements, all of which guaranteed a transfer value, and all contained wording that indicated the value had already been reduced to take into account the PAO. After Real Financial queried the first value he received, he received confirmation his transfer value was the entirety of his benefits, and additional 33% would also need to be transferred. He therefore believed any further values would be adjusted correctly, so it would be unreasonable to assume that the two-subsequent transfer values he received were incorrect. On the contrary, Mr Y argues that receiving these two further transfer values with the same wording reinforced his belief that they were correct.
- In addition, his financial advisor had received discharge forms to guarantee the transfer value. In light of this, Mr Y believes that certainty of terms has been established.
- Mr Y also disagrees that he has suffered a loss of expectation rather than an actual financial loss. It was Prudential who alerted his financial advisor that the terms of the PAO in fact prohibited any transfer at all. This should have been known by the Scheme Administrator. Mr Y says that he had made retirement plans on the basis of the transfer going through on that day, based on the values he was told.
- Overall, Mr Y believes that the wording of the letters, the discharge forms being issued and his acceptance of the guaranteed transfer values constitutes a legal requirement on behalf of the Scheme Administrator to "fully compensate my loss".

Ombudsman's decision

30. Mr Y received his initial transfer value of £253,852.42 on 9 October 2015. After Real Financial queried this value with the Scheme Administrator, Mr Y still received two erroneous transfer values which contained wording that implied that the PAO had already been accounted for.

31. I consider that the two explanatory statements set out in para 9 and 10 above are mutually inconsistent, the first implying that the transfer value will remain subject to the PAO and the second that it will not. They are confusing. They are not a clear statement about how the PAO has been or will be dealt with.
32. I do not agree that Mr Y can establish a contract arising out of the valuation statements. The guarantee statements are required to comply with the Transfer Value Regulations, which require the calculation to be conducted on a statutory basis and notice of the result of that calculation to be provided and 'guaranteed', in the sense of not being subject to fluctuations in fund value, for a set period of time. A CETV is not a freestanding offer capable of contractual acceptance. Moreover, as set out in the Opinion, the legal principle applicable in such cases is that the receipt of incorrect information about benefits confers no right to incorrect benefits. I agree that the Scheme Administrator should have been aware that the PAO still needed to be applied to the transfer value. But Mr Y is only entitled to the correct transfer value subject to the terms of the PAO. In this instance, I find that there are no circumstances in which Mr Y is entitled to a transfer value of £213,614.31. Therefore, the question turns to whether Mr Y acted to his detriment due to the misinformation.
33. Mr Y has said that his retirement plans have been affected by the erroneous transfer quotes, as they were based on the transfer value of £213,614.31. However, this quote was issued in April 2017, and it was quite soon after, in July 2017, that he was informed that this value was still subject to the PAO. Mr Y has also produced no evidence to show that he has made any financial decisions during this period solely based on this transfer value, so I cannot find that a financial loss has been suffered due to the incorrect transfer value statement.
34. Turning to non-financial injustice, I accept that Mr Y has undoubtedly suffered a loss of expectation due to the incorrect transfer values provided. I also accept that his financial advisers incurred some work trying to clarify the position. However, I have not been provided with evidence of any additional advice costs billed as a result, so I can find no financial loss directly flowing from the need to rework advice in light of the correct figures. I will leave it open to Mr Y to approach the Scheme Administrator and provide this evidence if he wishes. However, I take the additional effort required to deal with the confusion into account when arriving at the amount of compensation for distress and inconvenience.
35. In the circumstances, I find that an award of £1,000 is appropriate in recognition of the serious distress and inconvenience suffered.
36. Therefore, I uphold Mr Y's complaint in part.

PO-22071

Directions

37. Within 21 days of the date of this determination, the Scheme Administrator shall:-

- Award Mr Y £1,000 for the serious distress and inconvenience suffered.

Karen Johnston

Deputy Pensions Ombudsman
13 March 2019