

Ombudsman's Determination

Applicant	Mr E
Scheme	Delta Pension Plan (the Plan)
Respondents	Capita Employee Benefits (Capita) The Trustee of the Delta Pension Plan (The Trustee)

Outcome

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

Complaint summary

3. Mr E complains about the incorrect illustration of his benefits that he received in 2009. He was unaware that this value was wrong until 2016, when he asked for an updated illustration. Mr E claims that he relied on the 2009 figure when he planned his retirement. As a result, he has to continue working for longer than he had anticipated, to try and make up this loss. Therefore, he would like an award to cover some of the loss.

Background information, including submissions from the parties

4. Mr E is a member of the Plan and has a normal retirement date of 29 June 2023. The Plan was previously administered by an in-house administration team, but in 2006, the administration responsibilities were transferred to Capita, who is the current administrator.
5. On 11 June 2009, Capita wrote to Mr E and stated that when he left the Plan on 4 March 1983, he had a preserved pension of £196.50, which included a Guaranteed Minimum Pension (**GMP**) of £60.84. Capita revalued this and said that Mr E had a preserved annual pension of £686.34, of which £550.68 was the GMP. It explained that Mr E's GMP increased by 8.5% for each complete tax year between him leaving the Plan and the State Pension Age (**SPA**).
6. On 21 March 2016, Capita sent Mr E the requested estimate. It stated that after revaluation, Mr E had a preserved pension of £448.47.

7. On 29 April 2016, Capita issued another letter, as Mr E had contacted them about the differing figures. Capita confirmed that when it sent the estimate in 2009, it had calculated this based on the information it had at the time, which suggested that Mr E held a GMP within the Plan. However, when it had contacted HM Revenue & Customs (**HMRC**) to accurately calculate Mr E's estimate, HMRC informed Capita that there was no GMP liability held for Mr E. This was because a Contributions Equivalent Premium (**CEP**) had been paid once Mr E left the Plan. As a result, Mr E had been reinstated into the State Earnings Related Pension Scheme (**SERPS**), and the benefits from this would be included in his State Pension. Nevertheless, Capita had written to HMRC to obtain further information about Mr E's membership details within the Plan.
8. On 15 June 2016, Mr E received confirmation from Capita that a CEP had been paid for Mr E's employment period, meaning that there was no GMP liability in the Plan. HMRC's letter dated 4 June 2016, confirmed that a CEP of £698.65 had been paid for the period of 1 September 1980 to 4 March 1983.
9. On 20 June 2016, Mr E contacted Capita in relation to the GMP liability. He asked whether Capita thought it was reasonable for it to set an expectation so long ago and then not take responsibility for the error. Mr E explained that if that was the case, he would have to mitigate his loss of expectation in the remaining seven years he had to work.
10. Capita treated this as a complaint and responded to Mr E on 29 September 2016. It reconfirmed what it had explained in its letter of 29 April 2016 and said that the records it inherited in 2006 had not been updated to reflect the CEP that had been paid. It stated that GMP records would not normally be questioned until a member reached their Normal Retirement Age and whilst the GMP would not be paid from the Plan, Mr E would receive an entitlement from SERPS in relation to this. Furthermore, Capita said that any benefits taken from the Plan must be paid in accordance with the Plan's Trust Deed and Rules.
11. On 24 October 2018, Mr E responded to highlight how the expectation had been set by Capita and that its processes do not allow for updates to be sent unless requested by a member. As such, had he not contacted Capita in 2016, he would have only found out about the error when he retired. He questioned whether Capita thought its approach to managing client expectations was reasonable.
12. Capita replied on 13 January 2017. It stated that there was, "no requirement to automatically issue benefit updates" in defined benefit pension schemes, such as the Plan. However, Capita would provide a statement each year if the member requested it.
13. On 10 February 2017, Mr E wrote to Capita's CEO with the same points he raised in his letter dated 24 October 2018, as he did not understand why Capita was not accepting the errors it had made.

14. On 15 February 2017, Capita responded and agreed that incorrect information had been provided to Mr E in 2009. It said that when a scheme changes administrators, “there has to be some element of trust that what is passed from the previous administrators is correct”, and reconfirmed that the information had indicated a GMP liability. However, Capita said that this was identified in 2016, and that the money was not lost, but rather it would be paid as part of Mr E’s State Pension when he reaches 66.
15. On 27 February 2017, Mr E contacted the Trustee of the Plan with the same points raised in his letter to Capita’s CEO.
16. On 9 March 2017, the Secretary to the Trustee of the Plan replied. The Secretary agreed that it was unfortunate that the information Capita inherited was incorrect, but the Trustee did not expect Capita to have carried out detailed checks on the GMP element of a member’s record when this was transferred across. The Secretary said that it is industry practice not to provide annual updates to deferred members of a defined benefit scheme such as the Plan and concluded that Mr E had not lost the benefit, as this would be paid as part of his State Pension from age 66.
17. Following this, Mr E contacted The Pensions Advisory Service (**TPAS**) on 20 March 2017. He stated that his concerns were:-
 - Capita set an expectation in 2009, on which he had based his pension planning.
 - In the seven years since, Capita did not contact Mr E to inform him of the error. Had he not requested for an update, the error would not have come to light until he reached his normal retirement date.
 - Capita has no intention of improving its processes so that this is avoided in the future.
18. On 10 April 2017, Mr E contacted the Secretary to the Trustee of the Plan to instigate its Internal Dispute Resolution Procedure (**IDRP**), on TPAS’s advice. The Secretary to the Trustee acknowledged this and proposed moving to Stage 2, as he believed the response from 9 March 2017 covered Stage 1 of the Plan’s IDRP. Mr E agreed to this on 12 April 2017.
19. On 13 June 2017, Capita wrote to Mr E about his complaint with the Plan. It offered £250 for the distress and inconvenience caused to Mr E. In response, Mr E sent a number of emails questioning whether Capita thought this was a reasonable settlement considering his projected pension would be £500 a year as opposed to £2,000 a year.
20. On 14 September 2017, Capita responded to Mr E’s emails regarding its offer. It explained that this was intended to reflect the distress and inconvenience that Mr E experienced when Capita tried to explain the revised figures to him. However, as it

did not make the original error, it could not compensate Mr E for errors caused by other organisations.

21. On 23 September 2017, Mr E emailed his response with the following points:

- He disputed that Capita had not made an error as the quote he received in 2009 was wrong and had been issued by Capita.
- Capita's responses were all similar and did not answer his questions, which were:-
 - Is it reasonable to misinform a member and only check the information once the member asks for a further update?
 - Why would Capita not accept liability when it was clear it had misinformed him?
 - When there was such a difference between expectation and reality, should Capita not compensate the client for putting them into a false sense of security?
 - Had Capita put in place any remedial processes to ensure this does not happen again?
- Capita appeared to be avoiding the issue.
- It seemed that Capita was not confirming with The Pension Regulator's points about internal controls.
- Capita had set an expectation that could not be fulfilled, based on unsubstantiated information and then did nothing to address the failure. This suggested that it was not taking its corporate responsibility seriously.

22. On 8 December 2017, Mr E wrote to Capita's new CEO, as he had not received a response to his email of 23 September 2017. Mr E outlined the background of his complaint and reconfirmed his concerns.

23. Capita issued its response to this on 22 January 2018. It reiterated how and why the error came about and that guidance from TPAS and this Office explain that if there is an error, the member is not entitled to those figures. The member would only be entitled to the correct benefits. However, the offer of £250 remained open in full and final settlement of Mr E's claim against Capita and the Trustees of the Plan. It said that this was to reflect the distress and inconvenience caused by the revised quote and not intended to cover the actual reduction in his annual pension.

24. On 27 January 2018, Mr E contacted Capita and explained that he had raised his concerns to Capita's CEO as he got the same responses from Capita, and he wished to resolve the problem.

25. Following this, Capita wrote to Mr E on 28 February 2018 to inform him that his complaint had been escalated to the CEO and that the case would be discussed at a meeting the following week, with the Trustee of the Plan.
26. On 6 April 2018, Capita wrote to Mr E and confirmed that the Trustee of the Plan had agreed that the £250 offer would be the final offer. If Mr E wanted to take the case further, he would need to refer the matter to the Trustee of the Plan, under the Plan's IDRP.
27. On 13 April 2018, Mr E complained to this Office. He explained that he had planned on the amounts quoted in 2009 for retirement, so he would now need to work longer than planned to accrue this additional level of income. As he had tried to resolve this with Capita, he hoped a resolution could be obtained through this Office. As a result of what had happened, he wanted Capita to help him create an additional pension pot.
28. Whilst this Office has been investigating the complaint, the Trustee provided some additional information. It did not agree with Mr E's claims that Capita did not change its procedures. It stated that Capita had been committed to an ongoing data cleansing programme to improve the integrity of membership data so that it is accurate and up to date, in line with The Pensions Regulator's requirements. This included a reconciliation of the GMPs held in the Plan's records. Additionally, whilst Capita does not accept that it is liable for providing Mr E with a false expectation, it is apologetic for the initial error nine years ago.
29. In response to this, Mr E said that it was not acceptable for Capita to try and hide behind an inadequate audit system.

Adjudicator's Opinion

30. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by Capita or the Trustee. The Adjudicator's findings are summarised below:-
 - Mr E's records should have been updated when the CEP was paid. As such, an error did occur, and the Trustee is responsible for it.
 - Without information demonstrating that Mr E was informed about being reinstated in SERPS, it was reasonable for Mr E to believe that the information from June 2009 was correct. However, as Mr E is only entitled to receive the benefits provided for under the Plan Rules, there has not been an actual financial loss, but there appears to have been a loss of expectation.
 - Although Mr E was expecting to receive this additional benefit from the Plan, the benefit was not lost as Mr E was reinstated into SERPS and so would receive it from the State instead. As such, the distress and inconvenience has been limited

and so was not significant. Based on this, the £250 that has been offered is satisfactory.

31. Mr E did not accept the Opinion and explained that he had contacted the Department for Work & Pensions (**DWP**) for an estimate of his State pension. He had added this sum to the figures from the Plan and so the loss of expectation was not limited. Mr E provided information to show his financial planning, as well as the estimates that he had received from DWP. In addition to this, Mr E reiterated that the false expectation was set by Capita and that it should accept liability for this. Had he not contacted Capita, he would still have the false expectation.
32. After considering this, the Adjudicator's Opinion did not change for the following reasons:
- The information Mr E provided did not evidence that his financial planning was based on his State Pension entitlement and his benefits in the Plan combined.
 - The information provided by DWP contained figures that were an estimate and never guaranteed, so it could be argued that the scope or ability to make financial decision based on this is limited, especially when part of the expectation was based on Mr E's own calculations of projected benefits.
 - As the false expectation had been set by combining the benefits from the Plan with the State Pension, which was an estimation, it was not reasonable to base financial decisions on this. As Mr E had not yet reached his State Pension Age, he could mitigate his circumstances.
 - Capita was not aware of the error until Mr E contacted it in 2016, so it would not have been able to inform him of the error at an earlier point, unless it checked the information it held on file. As this did not happen, it cannot be taken into account, but there was an error and the Trustee was responsible for it.
 - The error did cause some distress and inconvenience, but as the expectation was formed with an estimated State Pension combined with Mr E's calculations of his projected benefits, the £250 offered was sufficient.
33. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E has 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 E for completeness. Mr E's comments are summarised below:-
- Mr E stated that the indication was not just unfortunate but was an injustice. The £250 did not compensate him for the expectation of an additional £1,500 a year.

Ombudsman's decision

34. Mr E was provided with incorrect information on 11 June 2009, as he should not have been informed that he was entitled to a GMP from the Plan. This is because a CEP

was paid, which reinstated Mr E into SERPS and released the GMP liability. Mr E claims that he relied on this information when he planned his finances and believes Capita should compensate him in the form of an additional pension arrangement. However, when an error has occurred, a member is only entitled to the correct benefits under the Plan's governing provisions.

35. Based on the information provided, I am satisfied that Mr E is not entitled to a GMP and Capita has provided Mr E with the correct figures in 2016. As a result, Mr E is only entitled to be compensated to the extent that he would have acted differently to the way that he has, had he been given the correct figures. However, this is dependent on whether Mr E acted reasonably when relying on the incorrect figures.
36. Ordinarily, a member would not receive a GMP from a scheme and an Additional State Pension (**ASP**) for the same period of employment. This is because a GMP was designed to replace the ASP if the member contracted out of SERPS, moving the responsibility from the State to the scheme. As a result, if a member had contracted out for a period of time, they would receive a reduced ASP. Had Mr E been given information from DWP that specified his ASP based on a period of time when he had been contracted out, I consider that it would have been reasonable for him to identify the error. However, the State Pension estimates Mr E has provided do not specify this and so I cannot find that Mr E ought to have known an error had been made. As a result, Mr E's expectation of the additional GMP amount had been set.
37. As the expectation is reliant on the State Pension and Mr E's benefits in the Plan, I am required to consider these together. Mr E has explained that he executed some financial planning based on this information, but the calculations do not include his State Pension figures. Nevertheless, I consider that overall, it was unreasonable for Mr E to rely on these figures when he carried out his financial planning. Capita did not provide projected benefits to Mr E, but it provided a GMP figure of £550.68 in 2009 and stated that this would increase by 8.5% each year. Mr E used this to calculate his projected benefits, and whilst it was reasonable for him to do so, there is always a chance that human error could occur. Furthermore, the State Pension figures were estimated and not guaranteed, meaning the total figure of approximately £2,000 that Mr E relied on would have been subject to change. Moreover, what is a salient point to this complaint is that Mr E has not provided any information that demonstrates that he has experienced a financial loss by relying on Capita's information.
38. Mr E calculated his pension up to his State Pension Age of 66 years. Although, I do not consider that there has been a financial loss based on the information provided, there has been a loss of expectation. However, at the time Capita made Mr E aware of the error he had over eight years until he reached age 66, so I find that this would have given him the opportunity to make up the shortfall in his pension that the expectation had set. It follows that I consider the distress and inconvenience could have been mitigated.
39. With regard to the delay in informing Mr E of the error, as the Plan is a defined benefit scheme, there is no legal requirement for the Trustee to send annual statements to

the members of the Plan. There is also no legal obligation for a pension scheme to audit all of its records. Whilst it is regrettable that a mistake was made, I do not find that an additional error was made by Capita when it delayed a detailed check of Mr E's records until his request for another benefit statement in 2016. Furthermore, as I am limited to Capita's and the Trustee's actions in relation to the administration of Mr E's pension, I am unable to comment on Mr E's general and broad point that Capita has no intention of improving its processes. As Mr E has not highlighted any further errors, stemming from Capita's (in)actions, I will not comment on this further.

40. Overall, I agree that there was an error which set up a loss of expectation. However, as this was based on a combined, estimated figure, I do not consider that it was reasonable for Mr E to rely on this when he executed his financial planning. With regard to non-financial injustice, I will make an award only if I believe the distress and inconvenience suffered was significant. As Mr E has a further five years to try and mitigate the expectation set, any distress and inconvenience is limited. I consider Capita's offer of £250 to be appropriate and if Mr E wishes to accept the offer, he should contact Capita directly.
41. Therefore, I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
30 January 2019