

Ombudsman's Determination

Applicant	Mr N
Scheme	The Meggitt Pension Plan (the Plan)
Respondents	Meggitt Pension Plan Trustees Limited (the Trustee) Meggitt Plc

Outcome

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

Complaint summary

3. Mr N complains that the Trustee and Meggitt Plc failed to provide adequate information about the calculation of his Plan benefits. Mr N does not feel the difference between early retirement from active and deferred member status was made clear. As such, he was unable to make a fully informed decision when deliberating whether retiring on 31 March 2016 from active service would be in his best interests. He contends that if the Trustee and Meggitt Plc had not failed to do this, he would have retired on 31 March 2016 instead of deferring his retirement.
4. In order to put matters right, Mr N would like the Trustee and Meggitt Plc to pay him a backdated early retirement pension from the Plan, assuming he had retired on 31 March 2016 from active service.

Background information, including submissions from the parties

5. Mr N was an active member of the Plan from 1 April 1994 whilst working for Meggitt Plc. He accepted voluntary redundancy on 31 March 2016 and requested a quotation for early retirement from active member status assuming he retired on this date (**the 2016 Quotation**).

6. In May 2016, the Plan administrator, Mercer, sent Mr N the 2016 Quotation showing that he was entitled to an estimated full pension of £15,058.68 pa plus an additional tax-free cash sum of £461.70 or a maximum tax-free cash of £72,360.48 plus a reduced pension of £10,854.36 pa.
7. In the “General Notes” section of the 2016 Quotation it stated that:
 - a Second State Pension Offset (**S2P Offset**) of £990.94 pa increased at 2.5% pa or RPI if less, between Mr N’s date of retirement and when he attained age 65 would be deducted from his pension at age 65;
 - the estimated figures shown were calculated assuming early retirement began immediately on leaving service;
 - a different calculation method would be used if he asked for a quotation after he had left service;
 - it was prepared for his information only and was not proof of entitlement; and
 - all benefits must be calculated and paid in accordance with the Plan Trust Deed and Rules (**the Plan Rules**) and were subject to review before payment.
8. Mr N says that he chose to defer his retirement because:
 - he had acted “in reliance of a principle” that early retirement factors (**ERFs**) would increase over time up to his Normal Retirement Age (**NRA**); and
 - “the words, tenor and examples” in the Plan Booklet which he received supports his contention
9. Mr N therefore became a deferred pensioner of the Plan on 31 March 2016 and in November 2017, requested details of the benefits available to him based on an early retirement date (**ERD**) of 5 March 2018.
10. Mercer provided Mr N with a quotation (**the 2017 Quotation**) showing that he was entitled to an estimated full pension of £15,645.48 pa plus an additional tax-free cash sum of £762.43 or a maximum tax-free cash of £75,916.42 plus a reduced pension of £11,387.52 pa.
11. Mr N was disappointed that the full pension had only increased to £15,645.48 pa from £15,058.68 pa in two years. He says that the figures showed that he had sacrificed two years’ pension payments in the Plan for a lower starting pension than the one available if he had retired on 31 March 2016, after allowing for pension increases.
12. Mr N queried the figures shown on the 2017 Quotation with Mercer. In its letter dated 23 January 2018, Mercer explained that:

“As previously communicated, the Plan has a different set of factors and method of application for active and deferred members. Your quote in 2016 was prepared using the active factors and methodology, whereas your most recent quote used the deferred factors and methodology...”

The biggest difference in approach is how the S2P Offset is allowed for. The S2P is a deduction from the Plan introduced for pension earned from April 2009 due to the fact that the Plan became contracted-in to the State Pension Scheme from this date and members earned additional state pension.

For active early retirements, it is not deducted from the member's benefits until the Male State Pension Age (**MSPA**) relevant to a member's date of birth, whereas when a member becomes deferred, the S2P Offset is immediately deducted from the member's benefit (and this is explained in the Plan Booklet).

Hence the quote you received in 2016 as an active member did not include a deduction for the S2P Offset in the pension you would have received from age 55 (however your pension would have reduced at MSPA) whereas your recent quote as a deferred member included a deduction for the S2P Offset in the pension you would have received from age 57 (i.e. there would be no further deduction at MSPA).

...please note that the S2P Offset that would have been deducted at your MSPA had you retired as an active member would have had inflationary increases added between retirement and your MSPA annually, so the deduction when you reached MSPA would have been higher."

13. Mr N was dissatisfied with Mercer's response and made a complaint under the Plan's Internal Dispute Resolution Procedure (**IDRP**) which was not upheld. In its letter dated 16 March 2018 to Mr N, the Trustee explained that:

"The early retirement reductions applied to the pensions set out in the 2016 and 2017 quotations were calculated in accordance with ERFs that are determined by the Trustee, in accordance with advice from the Plan's actuary. ERFs are subject to periodic review and are updated from time to time to reflect factors such as changes in average life expectancy and the Plan's funding position...The Trustee currently uses different ERFs depending on whether a member is retiring from active or deferred member status. This practice is very common among defined benefit pension schemes and reflects the difference in the actuarial basis for calculating the cost to the Plan of providing pensions for members who retire from active/deferred status...

The Plan Rules also contain different provisions for active and deferred members in relation to the application of the S2P Offset...further information about how it works is set out in the member booklet that was issued to all active members in 2011 (**the Plan Booklet**)...An important feature of the S2P Offset which is mentioned in the member booklet and also explained in Mercer's letter of 23 January 2018 is that the reduction for the offset for the S2P Offset is made at the MSPA (currently age 65) where a member retires from active status, but immediately at the point of retirement for members retiring from deferred status. This difference in treatment arises as a result of

differences in the way the Trustee is legally required to calculate benefits in respect of periods of contracted out service for active and deferred members...

As explained in Mercer's letter of 23 January 2018 the application of the S2P Offset had a more significant impact on the difference between the 2016 and 2017 Quotations than the different ERFs for active and deferred members.

When providing retirement quotations to active members, trustees are not under a duty to provide comparison figures setting out the equivalent benefits for deferred members (nor is it common practice to provide such a comparison).

You have also complained about the delay you have experienced in escalating this matter to the status of a formal complaint under the Plan's IDRP. We understand that you first telephoned Mercer to raise this as a complaint on 18 January 2018...However it was not until 6 February 2018, and after some further correspondence, that you were issued with a copy of the Plan's IDRP form...

...the Trustee...acknowledges that the delays you have experienced...have caused you distress and inconvenience. In recognition of this, as a gesture of goodwill we would like to offer you a payment of £250..."

Mr N's Position

14. He did not receive any information from the Trustee/Mercer indicating that the ERFs applying to deferred and active members in the Plan were "substantially different" until November 2017.
15. There appears to be a "covert policy" which disadvantages deferred members of the Plan. The ERFs for active and deferred members are "hidden to all but those closely associated with the administration of the Plan". The impact of the S2P on his early retirement pension was another issue which he was unaware when he received the 2016 Quotation. The lack of clear information "makes it impossible even for those with some financial acumen to make informed decisions". The Trustee/Meggitt Plc have a duty of care to provide him with clear information when he was considering early retirement from 31 March 2016 about the options available, "specifically the consequence of active versus deferred retirement".
16. If he had been given the relevant information by the Trustee/Mercer/Meggitt Plc, he would have made a different decision and taken early retirement from 31 March 2016.
17. "The actuarial lifetime value of the benefits" which he has been offered from retiring at age 57 are "very significantly reduced in comparison to the lifetime actuarial value of the retirement benefits from retiring at age 55".

18. He has not accepted the Trustee's goodwill compensation offer of £250 to settle his complaint on an amicable basis.
19. Mr N says that:

"My complaint hinges on my contention that the scheme rules unfairly discriminate against deferred members of their pension scheme...I now wish to address the issue of the unfair treatment of deferred members to the appropriate authority Meggitt Plc. Without a clear answer on this point I do not feel that my complaint has been addressed...

...Whilst I understand a pension quotation cannot be expected to spell out the implications of specific scenarios I do think it is entirely reasonable and proper to expect a clear warning that a very significant reduction in early retirement factors is applied to deferred members...I do recall the reference to alternative calculation methods for deferred members and at that time I understood this to allude to the fact that early retirement factors would increase up to normal retirement age, in fact this was the basis of my expectation which led me to defer in the first place....

Financial advice was an option for me and given the deviousness of the scheme I can see a strong case to make advice essential and not optional to retirees. I should say however my personal experience of financial advice has not been good...I would go further and say recent history of the financial services industry is tarnished. It would not be the first time the industry has unfairly exploited a weak regulatory regime. There is considerable financial incentive for companies like Meggitt Plc operating final salary pension schemes with shortfalls in funding to seek to reduce the financial burden of their pension schemes..."

"...I can envisage no possible scenarios where it is advantageous for scheme members to defer pensions because such an action immediately, permanently, significantly downgrades benefits. For this reason, the action of deferring a pension should more accurately be described as financial folly and not a financial risk. In the light of this the scheme should provide a simple and clear warning that deferring a pension is an act of self-harm...

In my case the window for taking advice was extremely limited as Meggitt Plc wanted employees off the books and off site prior to the end of the financial year 31st March 2016 and company records will bear out the time between me having my voluntary redundancy accepted and me leaving was very short. The pension retirement quotation I received on leaving dated 5th May 2016 arrived a full 5 weeks after my last working day at Meggitt. This timing certainly clouded any distinction between active and deferred status.

...having decided to offer an attractive final salary pension...with its provisions and associated rules doesn't Meggitt Plc have an obligation to its employees to operate its pension scheme in a transparent and fair manner?

The Position of Meggitt Plc

20. Meggitt Plc says:

"Mr N has now brought a complaint against the Company, as principal employer of the Plan. The Company understands that the substance of Mr N's current complaint ...concerns ...in particular...his perceived unfair treatment of deferred members as compared against active members.

...he thinks such injustice undermines the true and fair basis of the financial services industry and the Plan, irrespective of whether these practices are permitted under the regulatory regime.

...Mr N's benefits have been calculated correctly in line with his entitlement under the Plan rules and applicable law. The Company notes that he is therefore not legally entitled to anything additional....

...the benefit structure of an occupational pension scheme like the Plan is a decision for the Company, as the employer, and in the Company's view, the Plan provides a generous offering for its members.

...the early retirement factors for active and deferred members are determined by the Trustee, having taken actuarial advice. The Trustee uses different factors for active and deferred members. The Company agrees with the Trustee that it is not an unusual practice and it reflects the difference in the actuarial basis for calculating the cost to the Plan of providing benefits for members who retire from active or deferred status."

Adjudicator's Opinion

21. Mr N's complaint which was originally against the Trustee only, was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised briefly below:

- Mr N did not dispute that the Trustee had correctly calculated the early retirement pensions available to him based on ERDs of 31 March 2016 and 5 March 2018 from active and deferred member status respectively in accordance with the Plan Rules.
- His complaint was that the Trustee improperly failed to provide him with sufficient information about how the calculation of the early retirement benefits available from active and deferred member status differed in order for him to decide whether retiring on 31 March 2016 from active service would be in his best interests.

- It was clear from the evidence that the Trustee had brought to Mr N's attention that the method of calculating his early retirement pension would be different from active and deferred member status. In the "General Notes" section of the 2016 Quotation, it was explained that the figures shown were calculated assuming early retirement began immediately on 31 March 2016 and a different calculation method would be used if he asked for another quotation after he had left service. The Plan Booklet which was issued to all active members, including Mr N, in 2011 confirmed this and provided further information on how the S2P Offset worked, including its different treatment in the pension calculations, for active and deferred members.
- It had therefore been open to Mr N to research the early retirement option in more detail, seeking independent financial advice, where appropriate, should he have wished to do so. He could also have elected to defer his decision not to retire from 31 March 2016 until he was completely satisfied that it was the correct option for him. By deciding not to explore that possibility, Mr N chose not to make a more informed comparison. If Mr N had done so, he would have received full details of the different ERFs and methods used to calculate early retirement pensions for members of the Plan retiring from active and deferred member status much earlier than November 2017.
- The Trustee was required under the Disclosure Regulations to disclose certain documents and information to Plan members. Most information needed to be disclosed only at the request of the member although some information (most notably the basic scheme information) must be provided, as a matter of course, regardless of whether a request was made. The revised "basic scheme information" about the Plan was detailed in the Plan Booklet which Mr N received in 2011. If Mr N required a Plan quotation showing the early retirement benefits available on 31 March 2016 from deferred member status, the onus was on him to request it because there was no obligation on the Trustee to provide it automatically.
- Mr N also contended that it was unfair that the early retirement benefits available in the Plan for deferred members seemed inferior to those for active members. However, it was for the Plan's principal employer, Meggitt Plc, and not the Trustee to decide what benefits it wished to provide its employees. The Trustee was obliged to administer the Plan benefits in accordance with those designed by Meggitt Plc, as reflected in the Plan Rules and within the framework of the law. Furthermore, the Trust's duty to act in the beneficiaries' best interests meant only to take those actions which it is authorised to take by the Plan Rules.
- The Administrator concurred with the view of the Trustee that it would have been inappropriate for it to have commented under the IDRP on Mr N's concerns about the Plan benefit design including any actual or perceived differences in treatment between active and deferred members in accordance with the Plan Rules because it did not have the power to make decisions on such matters.

- Although the Administrator did not attribute Mr N's failure to make a more informed comparison to maladministration on the part of the Trustee, it was clear that Mr N had suffered some distress and inconvenience because of the delays incurred during IDRPs which constituted maladministration.
 - In recognition of the maladministration identified, the Trustee had offered Mr N £250 compensation as a gesture of goodwill which was fair given Mr N's circumstances.
22. Mr N did not accept the Adjudicator's Opinion and added Meggitt Plc as an additional respondent to his complaint which was passed to me to consider. The formal response received from Meggitt Plc and Mr N's further comments, in my view, do not change the outcome. I agree, in the main, with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

23. The general duties of all occupational pension scheme trustees can be summarised as follows:
- to act in accordance with the trust deed and rules of the scheme, within the framework of the law;
 - to act prudently, conscientiously and honestly and with the utmost good faith;
 - to act in the best interests of the beneficiaries and strike a fair balance between the interests of different classes of beneficiaries;
 - to take advice on technical matters and any other matters which they do not understand; and
 - to invest the funds.
24. One of the main duties of the Trustee is therefore to pay out the right benefits at the right time in accordance with the Plan Rules which, in my view, is what has happened in Mr N's case.
25. The Trustee had a duty to seek appropriate professional advice on matters which it is not an expert and does not understand. The early retirement reductions applied to the pensions set out in the 2016 and 2017 quotations sent to Mr N were calculated in accordance with ERFs that were determined by the Trustee, in accordance with advice from the Plan's actuary. I am therefore satisfied that the Trustee has also properly complied with this particular duty.
26. The Trustee must consider the interest of all classes of beneficiaries such as active members, deferred pensioners and pensioners. It also must act impartially between the different classes and give appropriate weight to the interests of each class according to the issue which is being considered. That is not to say that all classes of beneficiary must be treated in an identical manner; the balance is a matter of judgement of the Trustee.

27. In the Court of Appeal in *Edge v Pensions Ombudsman*, the judge confirmed that the duty to act impartially:

“...is no more than the ordinary duty which the law imposes on a person who is entrusted with the exercise of a discretionary power...If pension fund trustees do that, they cannot be criticised if they reach a decision which appears to prefer the claims of one interest – whether that of employers, current employees or pensioners – over the others. The preference will be the result proper exercise of the discretionary power” (paragraph 50).

28. Furthermore, there is in law no general duty to provide information or advice to prevent economic loss. Where all the relevant information is available to the employee to make his own informed choice, the employer’s implied obligation of good faith does not require it to draw the member’s attention to the fact that he might have done better financially by changing the timing of his choice.

The information which the Trustee provided to Mr N was correct. I do not consider that the Trustee or Meggitt Plc were under a duty to provide comparative information to Mr N. Therefore, I do not uphold Mr N’s complaint.

Karen Johnston

Deputy Pensions Ombudsman
26 March 2019