

Ombudsman's Determination

Applicant	Mr S
Scheme	ACCO Europe Pension Plan (the Plan)
Respondent	ACCO Europe Trustee Company Limited (the Trustee)

Outcome

1. I agree that part, but not all, of this complaint should be upheld. To put matters right for the part that should be upheld, the Trustee shall pay Mr S £1,000 to recognise the serious distress and inconvenience caused to him.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S' complaint is that the Trustee told him that his pension at Normal Retirement Age (**NRA**) would be £6,419.19 a year, revalued at a rate above the statutory minimum. Whereas he has now received figures showing his pension at NRA as £4,134.10 a year, revalued using lower rates.

Background information, including submissions from the parties

4. On 26 February 1990, a representative of Ofrex Group Holdings Plc (**Ofrex**), Mr S' employer, wrote to him stating his Plan entitlement had changed (**the Announcement**). As a Director, Mr S accrued pensionable service at double the rate of a normal Plan member, up to the limits set by Inland Revenue at that time.
5. On 30 November 1990, Mr S left the Plan with an entitlement to a deferred pension.
6. On 22 January 1991, Mr S received a Preserved Pension Certificate (**PPC**) which outlined the value of his Plan entitlement at his date of leaving. It stated that at NRA, Mr S was entitled to a revalued Guaranteed Minimum Pension (**GMP**) of £1,674.92 per year, and a basic pension at date of leaving of £1,400.99, per year. The PPC stated Mr S' entitlement would be revalued on the basis outlined in the explanatory notes (**the Notes**). The Notes said that basic pension, in excess of GMP, would be "subject to increases of 5% per annum compound for each complete year from the date of leaving to the date of retirement". The Notes further said that "individual entitlements must be calculated in accordance with the Rules of the Scheme".

7. At the time the Rules of the Scheme were silent. The revaluation entitlement was explained in the Ofrex Group, Pension, Benefits and Employment Manual dated January 1989 as follows:

‘The GMP element will increase at 7.5% per cent per annum compound and the increases will be added to your preserved pension.

The part of your preserved pension (in excess of the GMP) which relates to service after January 1985, will increase by 5% per annum compound or by the increase in the Retail Price Index if lower’.

8. Rules made in February 1995 later expressed the entitlement to revaluation on pensions in excess of GMP in Rule 17(7) as follows:

‘the lower of 5% per annum compound and the percentage increase in prices (such increase in pension to be calculated in accordance with section 52A and Part 1 of Schedule 1A to the 1975 Act).’

9. On 8 February 2000, after querying his Plan entitlement, Mr S received a letter (**the Letter**) from the Pensions Manager of ACCO Europe, the Plan’s sponsoring employer after the merger of ACCO Europe and Ofrex. The Letter stated Mr S’ Plan entitlement would be £6,419.19, per year, at NRA. The letter does not provide any explanation about the revaluation method used, or contain any caveat that the figures provided are estimated.
10. On 22 February 2016, Mr S received a retirement quote (**the Quote**) stating he was entitled to a pension of £4,134.10 a year from his NRA.
11. On 17 October 2016, Mr S reached NRA at age 62.
12. On 19 October 2016, after further exchanges of correspondence, Mr S complained to the Trustee under the Plan’s Internal Dispute Resolution Procedure (**IDRP**). Mr S said there was a significant disparity between the entitlement stated in the PPC, the Letter and the Quote. He argued that he had received “accurate and definite information” about his expected Plan entitlement 30 years ago and had based his retirement planning upon the higher, expected figure. Mr S also said he believed the Trustee was unaware of the enhanced Plan benefits he was entitled to as a Director. He argued that the Trustee had revalued his Plan entitlement incorrectly.
13. On 27 October 2016, the Trustee responded to Mr S’ complaint. It said that his Plan entitlement could only be calculated in accordance with the Rules. The February 1995 Rules applied to Pensionable service between 1 May 1977 and July 1995 and therefore applied to Mr S. The Trustee was aware of the difference in benefit basis for the Director’s scheme and had taken them into account in the benefit calculation. The change from RPI to CPI was announced by the government in April 2010 taking effect from April 2011. CPI was used as the measure of indexation until 1 January 2011 when the new statutory revaluation order took effect. Years up to 2011 were revalued at RPI. No Rule changes had taken place that detrimentally impacted Mr S’s benefits.

The Trustee argued that the figures provided on the PPC were estimated. The Trustee acknowledged this point should have been expressed more clearly in the PPC. However, it also noted that accurate information on the revaluation of deferred pensions was available contemporaneously in the Plan Booklet, referred to in the Announcement.

14. On 4 November 2016, Mr S wrote to the Trustee arguing some aspects of his complaint had not been addressed. Mr S asked for his complaint to be considered at IDRPs Stage 2. Mr S said the Trustee had not referred to the Letter in its previous response. He argued that he could only reasonably rely upon information provided by the Trustee and he had not queried the PPC's contents because it stated all revaluation was calculated at fixed, compound rates.
15. On 9 November 2016, the Trustee provided its Stage 2 IDRPs response which is summarised below:
 - The Letter incorrectly overstated Mr S entitlement and should have contained a similar caveat to the PPC.
 - The Trustee considered regularly consolidating the Trust Deed and Rules to account for mergers and statutory changes to be best practice.
 - The ACCO/Ofrex merger necessitated a consolidation of the Plan Rules.
 - Apart from a different accrual rate, all the other provisions of the Plan Rules applied to Directors.

Adjudicator's Opinion

16. Mr S' complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee. The Adjudicator's findings are summarised below:-
 - Mr S' entitlement can only be calculated in accordance with the Plan Rules. In cases where a member has been given incorrect information, the Ombudsman typically starts from the position that receiving an over-stated pension quote does not convey an entitlement to receive that incorrect, higher amount.
 - Mr S argues that he had been given a strong expectation of receiving a pension of £6,419.19 per year by the Trustee. Mr S says that all of the correspondence he received from the Trustee prior to the Quote supports that view. He contends that he based his retirement planning upon the higher figure, and that he had to find another job and not join his wife in retirement.
 - Mr S only received the original PPC and the Letter from the Trustee in the 25 years between leaving employment, and receiving the Quote in February 2016. That information was too limited and outdated for a member to reasonably rely upon. A final salary pension is a valuable benefit and, as part of considering

retirement, Mr S should have ascertained the correct position much sooner. It would have been reasonable for Mr S to have requested a statement of his Plan entitlement before reaching NRA.

- It is common practice and a fundamental responsibility for trustees to regularly consolidate the Trust Deed and Rules to account for changes in legislation and other significant events. The Trustee is required to apply the Rules in force at the time eligibility arises. Thus, Mr S' deferred benefits were calculated in accordance with the Rules in force at the date he left the Plan, and the revaluation factors are calculated in accordance with the Rules in force at his retirement date.
 - Mr S argued that the information he received from the Trustee gave him a legitimate expectation of receiving the higher pension figure at NRA. Mr S says he based his retirement planning upon the higher figure. In the Adjudicator's view, information in the Letter and Notes was wrong, rather than just being misleading or ambiguous. The Plan Rules have never stipulated that deferred pensions, in excess of GMP, should be re-valued at a rate of 5% compound, per year. From the evidence available, it is not possible to conclude why this information was included in the Notes. Any caveat in the Notes would not be apparent to a member with limited pensions knowledge, as the information immediately preceding it is explicitly wrong.
 - The over-stated estimates should reasonably have been identified in 2000 when Mr S queried his entitlement. The information provided to Mr S in the Letter was poor in quality and quantity. No reference was made to the rates of revaluation referred to, and the Letter did not state that Mr S' entitlement at retirement would be calculated in accordance with the Plan Rules.
 - The Adjudicator concluded that Mr S was provided with misinformation that caused him a loss of expectation over many years. Errors could have been rectified by the Trustee sooner. Consequently, Mr S suffered serious distress and inconvenience, and the Trustee should pay Mr S £1,000 in recognition of this.
17. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. After the Adjudicator provided his Opinion, the Trustee located copies of the original 1974 Trust Deed and Rules, as well as the Announcement. Mr S 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 S for completeness.

Ombudsman's decision

18. In his comments, Mr S argues that because the Notes and the Letter are genuine documents, his Plan entitlement should be calculated in accordance with them. Mr S argues that the PPC did not contain estimated figures and that revisions to the Trust Deed and Rules by the Trustee have prejudicially affected his Plan entitlement. He

says it is unreasonable for the Trustee to calculate his entitlement in accordance with Rules created many years after he left employment, and following several company mergers.

19. I am satisfied that the 1995 Rules apply to Mr S' service. The 5% figure was expressed in the 1989 booklet as a cap on indexation in times when the RPI, then the statutory measure of indexation, was above that level. In times when RPI was below 5% RPI was the measure to be used. The same position is set out in the 1995 Rules. I am therefore satisfied that the Rule change has not detrimentally impacted Mr S' benefits. I find that on the balance of probabilities the statements provided to him were an incorrect, over-simplified, statement of the underlying basis of his entitlement.
20. Mr S argues he sought appropriate clarification of his entitlement in 2000. He does not consider that he should reasonably have sought further clarification before retirement because he was informed that the revaluation rates applicable to his entitlement were not complex or variable. I can see why Mr S formed the view that the figures he had been given were unlikely to change. However, he sought no retirement estimate before 2016, and I consider that he should have ascertained the correct position before basing a serious financial or lifestyle decision upon what he had been told. The Trustee noted in its further comments, the Letter was produced by a representative of Mr S' former employer and not by the Trustee. Consequently, I do not find that it would be reasonable to hold the Trustee liable for correspondence it has not produced.
21. Mr S has argued that he would have transferred his benefits out of the Plan if he had understood the true basis of revaluation. I understand why he now holds that view. However, I have to consider what he would have done if he had been told the correct facts at the time, without the benefit of hindsight. If the true basis of revaluation had properly been explained to him in 1991 or 2000 he would have been told that he was entitled to the lower of 5% or RPI (which was then the statutory revaluation basis). From that earlier standpoint it would have been extremely difficult for him or anyone else to predict whether he would have been better or worse off transferring his benefits. I am not satisfied, on the balance of probabilities, that he would have transferred them. I think it likely that the factors which he said he considered at the time, such as who would bear the management charges if he transferred out, would still have been uppermost in his mind.
22. I agree that Mr S was provided with misinformation by the Trustee and this caused him a loss of expectation and serious distress and inconvenience. The £1,000 award recommended by the Adjudicator is appropriate and in line with the guidance I have issued.
23. Therefore, I partially uphold Mr S' complaint.

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Directions

24. Within 21 days of the date of this Determination, the Trustee shall pay £1,000 to Mr S, in recognition of the serious distress and inconvenience he has suffered.

Karen Johnston

Deputy Pensions Ombudsman
11 July 2019