Ombudsman’s Determination

Applicant	Mr Y
Scheme	Clugston Group Pension Scheme (the **Scheme**)
Respondents	1. Capita 2. the Trustees of the Clugston Group Pension Scheme (the **Trustees**)

Outcome

1. I do not uphold Mr Y’s complaint and no further action is required by Capita or the Trustees.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y’s complaint concerns overstated pension figures. Mr Y says he made life changing decisions, which he would not otherwise have made, in reliance on those figures.

Background information, including submissions from the parties

4. Mr Y left the Scheme with a deferred benefit entitlement. He reached his normal pension age (**NPA**) in May 2018, aged 63. The Scheme is administered by Capita.

5. In 2015, the Trustees and Clugston Group Limited (the **Company**) agreed that the Scheme would offer eligible members the option to exchange the Scheme’s fixed 3% per annum pension increases on excess pension over the Guaranteed Minimum Pension (**GMP**), for higher non increasing pension (the **PIE** exercise).

6. In 2016, Mr Y requested a pension quotation with the intention of retiring. After initially receiving an email from the Company, saying that it had queried the illustration obtained from Capita, Mr Y received a quotation from the Company dated 6 July 2016 (the **6 July Quote**).

7. The Company expressed concerns about the figures in the 6 July Quote and asked for confirmation from an Actuary at Capita. Following this, Mr Y was given a new quote, dated 15 July 2016, showing updated PIE options (the **15 July Quote**). It stated that the figures were not guaranteed and subject to change. Later the same month, the Company confirmed that the 6 July Quote contained an error. The Company said that Capita had provided its assurance that the new quote with updated figures was correct.

8. Following further exchanges with the Company, during which Mr Y queried the figures provided in the 15 July Quote, Mr Y received a detailed explanation from an Actuary at Capita via the Company on 10 August 2016. After Mr Y inquired why he had been quoted a significantly higher lump sum in 2015, on 15 August 2016, the Actuary confirmed, that his retirement illustrations were correct. The Actuary said:

   "I fully appreciate that the way the Scheme is administered is extremely complicated and can be difficult to understand. But I would like to assure you that the retirement quotations that [Mr Y has] been provided with are correct, and hopefully the explanations given will give [Mr Y] the reassurance he wants given his valid concerns about the retirement quotations he has been provided with."

9. Mr Y left the Company at the end of October 2016, haven taken the decision to live off his savings until his Scheme pension came into payment in May 2018.

10. On 2 January 2018, Mr Y requested updated pension figures. The Company said that it had raised further queries with an Actuary at Capita. On 28 March 2018, the Company informed Mr Y that his PIE options as at 31 May 2018, quoted to him in July 2016, had been overstated. The next day, Mr Y received corrected pension figures (the **March 2018 Quote**).

11. Under the PIE option, Mr Y's corrected lump sum and residual pension is £39,344 and £5,901 gross per annum respectively. His pension will be increased by a "step up" pension of £1,241 per annum gross from age 65.

12. Mr Y's corrected lump sum is £3,521 lower when compared with the lump sum quoted to him on 6 July 2016 and restated on 15 July 2016. The difference represents a reduction of approximately 8%.

13. Mr Y's corrected residual pension of £5,901 per annum, is £528 per annum lower than the residual pension of £6,429 per annum quoted to him on 6 July 2016 and restated on 15 July 2016. The percentage variance is also approximately 8%.

14. The Trustees have clarified that the retirement calculations for the Scheme is complicated, partly because of the legislative requirements regarding the treatment of GMP for male members. The calculation basis differs depending on whether retirement is before, at, or after NPA.

15. Mr Y has explained that, on attaining age 60 in 2015 he began to seriously review his retirement options with the intention of taking his benefits from his NPA. He obtained pension figures from his various pension providers and repeated the same process in 2016. At the time, he was taking a “broad view” of all his pension provision. Having only ever worked part time, his wife had very little pension savings. Consequently, all their planning was based on his projected pension values. The difference in his lump sum and residual pension from the Scheme would have therefore been sufficient reason for him to continue working until his NPA.

16. Mr Y says he was reassured that the figures in the 15 July Quote were correct, and that his PIE options had been recalculated and checked by an Actuary. However, by the time he received the 15 July Quote, he had little faith in the figures as Capita had by then produced three different sets of figures. He asked for further clarification in late July 2016, and accepted his preferred option in good faith. Based on those figures, he decided to stop work at the end of October 2016 and live off his savings in the reasonable expectation that he would receive the amounts quoted by Capita from his NPA. When he received the March 2018 Quote, he was “horrified” as the figures were significantly lower than those detailed in the 15 July Quote.

17. Mr Y’s further comments are set out below:-

- His plan was to finish work early as life had been difficult since the death of his son 10 years ago.

- By the summer of 2016, he had got to a stage in his life when he was considering taking early retirement. He was feeling stressed, and finding it difficult to keep up with the demands of his job, which involved working away from home in a stressful environment.

- His decision to stop work in October 2016, was also influenced by his wife’s need for additional support and assistance around the home as her medical conditions were worsening with age. His wife suffers from fibromyalgia and has also been diagnosed with chronic kidney disease.

- In May 2018, aged 63, his “mitigating strategy” was not to try and find work, which given the circumstances, would have been very stressful, but to take one of his other pensions early. This decision has had financial implications for him.

- He would have needed to continue in work for a further four to five months to make up for the loss of the expected lump sum. Had he done so, he would also have been able to continue saving approximately £1,000 each month.

- He could get work now, but his decision to stop working was on the expectation that he would receive the pension benefits quoted to him. As far as he is concerned, he has mitigated his financial position by taking one of his other pensions early.

- The difference in the Scheme pension represents a significant amount over a projected lifespan. He would therefore have remained in work until age 63 had he been in possession of correct figures, continued with his monthly savings and paying into his employer's pension scheme.

- While Capita is to blame for the mistakes made, the Trustees have a duty to resolve the issue.

18. The Trustees have acknowledged that the wrong calculation basis was used when calculating Mr Y's PIE options as at his NPA. The Trustees accept that Mr Y's lump sum and residual pension were overstated as a result. They have acknowledged that Mr Y raised several queries at the time concerning the various options that had been quoted to him and that he was provided with a further explanation of the figures and was reassured that they were correct. They also accept that the error in the calculation remained unnoticed until his retirement options were subsequently calculated the following year.

19. Further comments from the Trustees are set out below:-

- The Trustees recognise that Mr Y's decision not to take his pension early in 2016 was made in good faith in reliance on the overstated figures. However, he has no legal right to those benefits, as his full and correct entitlement are as detailed in the March 2018 Quote.

- If the Trustees were to honour the higher misquoted figures, it would be a dereliction of their duty to ensure that members only receive their correct entitlement under the Scheme's provisions.

20. To remedy the non-financial injustice, the Trustees offered Mr Y £500. Capita has since offered a revised award of £1,500 in recognition of the severe non-financial injustice it caused to him.

21. Mr Y claims that he has been financially disadvantaged because of decisions he made in reliance on the 15 July Quote. By taking his pension early from one of his other pension arrangements, when he had intended to take it from May 2020, he has ended up with a lower total pension. In his view, he should be compensated for the alleged financial loss he has already suffered and any further loss he could potentially incur over his lifetime.

22. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Capita, or the Trustees. The Adjudicator's findings are summarised below:-

- Other factors influenced Mr Y's decision to end his employment with the Company. While the level of retirement income would have been a contributing factor in his decision making process, the non-financial considerations, and Mr Y's desire to retire early, also played a role.

- While Mr Y's lump sum is lower by approximately £3,500, that difference does not equate to an actual financial loss as he was never entitled to the higher misquoted pension benefits.

- The Adjudicator felt that the difference in the residual pension was not significant in monetary terms. Mr Y was prepared to give up work and live off savings for 18 months, and in doing so, forego a salary that allowed him to save £1,000 each month. An Ombudsman would likely take the view that he would not have altered his plans to stop work had he known his pension would be lower by approximately £10 per week gross.

- Rather than mitigate the loss of the expected pension by looking for paid work, Mr Y took one of his other pensions early. This supports the view that it is likely he would have retired when he did anyway.

- The revised offer of £1,500 is in line with what the Ombudsman would direct for non-financial injustice in similar cases.

23. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y has provided his further comments, but these 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.

Ombudsman's decision

24. Mr Y maintains that Capita's repeated failure to provide correct figures, ultimately led to him taking decisions which have adversely impacted his financial future. He is unhappy that neither Capita nor the Trustees have been made accountable for the alleged financial injustice caused to him.

25. Mr Y has explained that he and his wife knew exactly what they needed in terms of savings and pension provision. His financial provision for his retirement was carefully planned and frequently reviewed. As the pension figures were so crucial to their plans, he has tracked their "financial situation" using various spreadsheets since 2014.

26. Once he had what he was told were accurate figures, Mr Y says he ceased work in the knowledge that he and his wife could live off £24,000 of their savings until his Scheme pension came into payment in May 2018. This decision was carefully considered so as not to deplete their savings further.

27. Mr Y accepts that there were several factors influencing his decision to stop work early. However, he has explained that the overriding factor, and key consideration, was always "when" his various pensions could provide him with "an adequate level

of financial security". Mr Y says that this was the only factor that prevented him retiring earlier. This, in his view, is clearly demonstrated by the fact that he repeatedly sought assurances in August 2016 concerning his pension options. His reasons for mentioning the other factors in play, was to show the level of stress the matter has caused him. Had he known the true position he would have continued working until he knew his “income and financial plan was correct and adequate.”

28. Mr Y has pointed out that he only became aware of the correct position in March 2018, by which time he had been retired for 18 months. The “added stress at that point contributed to physical symptoms resulting in weight loss and a number of hospital scans to determine if there was an underlying physical issue...” Notwithstanding this, it would have been highly unlikely that he would have found employment commensurate with the one he left in October 2016. To avoid using up any more of their savings, it seemed logical to take one of his other pensions early. However, that pension was reduced for early payment. In his view, the financial impact of him having to take that pension early should also be taken into account.

29. Mr Y considers the percentage variance in the pension figures of 10% to be significant, as it equates to a 2.5% reduction in his annual budget, effectively a 2.5% “pay cut.” According to his calculations, if he lives for a further 20 years, the shortfall in his expected pension benefits would equate to a loss of £14,000. Had he remained in work until his NPA, and continued saving £1,000 each month, it would have negated that loss. However, he did not have accurate pension figures at the time he made his decision to leave a job that was extremely well paid.

30. Mr Y states that his complaint shares several similarities with that of Hallard: PO-84855/2, which was upheld by the then Pensions Ombudsman.

31. The general principle is that trustees of pension schemes have a duty to act within the constraints of the applicable scheme provisions and the law. Unless Mr Y can show that he reasonably relied on the incorrect figures to his financial detriment, the PIE options that were misquoted to him do not change those obligations, nor do they override his correct entitlement under the Scheme rules.

32. In the case Mr Y has referred to, my predecessor Tony King upheld the complaint against the scheme administrators. He concluded that the variance of approximately 9%, between Mr Hallard’s expected gross income and actual income, were critical to his ability to live his chosen lifestyle. Consequently, he would not likely have retired when he did had he received correct figures.

33. I acknowledge that the circumstances of Mr Y’s complaint share some similarities with that of Mr Hallard. Both left paid employment and lived on savings in the intervening period in reliance on pension figures subsequently found to have been overstated.

34. Mr Y relied, in part, on the misstatement when taking the decision to leave employment. I also acknowledge that, by the time he was notified that a mistake had been made, he had left his job several months earlier, far too late to retract his notice. That said, I am not convinced that his reliance led to the irreversible financial loss he is claiming.

35. While the figures misquoted to him in July 2016 likely played a significant role in his decision making, to succeed in his claim for financial loss Mr Y also needs to be able to demonstrate, on the balance of probabilities, that he would have acted differently had he known the true figures without the benefit of hindsight. Having considered the evidence, I do not consider that he can satisfy this burden of proof. While I do not question his credibility, Mr Y has not provided convincing evidence that he would otherwise have continued in work until May 2018.

36. Mr Y maintains that adequacy of retirement provision was an overriding consideration. However, the evidence does not indicate that he was targeting a specific amount of retirement income or lump sum from the Scheme before concluding that he could afford to leave employment. Even if he could provide this, I do not consider that it would materially change the outcome as various non-financial factors were also in play in his decision making. On this point, I think his case materially differs from that of Mr Hallard.

37. The percentage variance in the pension figures is approximately 10%. In the case of the pension, the difference amounts to approximately £44 per month gross. Mr Y had financial resources to fund his retirement until his Scheme pension came into payment. Given that he was prepared to forgo his salary and use up £24,000 of his savings, I find it difficult to conclude that he would have continued in work had he known his Scheme pension would be lower by £44 per month gross.

38. In forming my view, I have considered that Mr Y accepts that he has an ongoing ability to return to work to mitigate the loss of the expected benefits but has instead chosen to take one of his other pensions early, and by doing so accept an actuarially reduced benefit from that pension arrangement. This further tends to support that he would not have acted materially any differently had he been in possession of correct figures.

39. Mr Y was deprived of the opportunity to plan for his retirement in possession of correct figures, and has suffered a loss of expectation of the higher benefits misquoted to him. Although it was only an estimate and not guaranteed, Mr Y was entitled to expect that the 15 July Quote would provide him with a reasonable indication of what his final entitlement would be. Capita should have been confident that the figures were accurate before issuing them. I am mindful that the mistake did not come to light until shortly before he reached his NPA. It is right that Capita make an award in recognition of the severe non-financial injustice it has caused Mr Y.

40. I agree that Capita's offer of £1,500 is appropriate in this case and therefore I do not make any additional award. Mr Y should contact the Trustees if he wishes to accept the offer.

41. I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman
30 January 2019