

Ombudsman's Determination

Applicant	Mr A
Scheme	The ExxonMobil Pension Plan (the Plan)
Respondent	The Trustee of the ExxonMobil Pension Plan (the Trustee)

Outcome

1. I do not uphold Mr A's complaint and no further action is required by the Trustee.

Complaint Summary

2. Mr A's complaint is that his Plan entitlement is lower than he was expecting and less than he was promised.

Background information, including submissions from the parties

3. On 5 August 1985, the Trustee wrote to Mr A after he left the Plan with an entitlement to a deferred pension (**the Deferred Statement**). The Trustee stated Mr A's pension comprised of a Guaranteed Minimum Pension (**GMP**) of £566.80 a year and a pension, in excess of GMP, of £2,636.57 a year at his date of leaving. The Trustee stated that Mr A's pension, revalued using statutory revaluation rates, at Normal Retirement Date (**NRD**) would be £9,187.53 a year.
4. On 21 July 1992, a representative of Esso (one of the Plan's sponsoring employers) wrote to Mr A (**the 1992 Letter**) stating his deferred pension would be revalued to £9,187.53 a year at NRD. The representative also said Mr A's pension would then be further augmented with Financial Aid (**FA**) to £12,589.67 a year. This is incorrect. FA is a discretionary increase granted by the Plan's sponsoring employers each year. It is outside the Plan Rules. At retirement a member's entitlement is calculated as the higher of their deferred pension revalued by either FA or the statutory minimum.
5. On 4 October 1994, Hogg Robinson, the Plan Administrator, sent Mr A a Cash Equivalent Transfer Value (**the 1994 CETV**). It stated Mr A's Plan entitlement was estimated at NRD to be £18,513.23 year. The Notes included with it stated that:

"Your pension under (the Plan) increases from the date you left to retirement. This increase is in line with the Retail Price Index (**RPI**) (subject to a maximum of 5%

p.a.) and applies to your pension in excess of GMP. The estimated pension assumes that RPI increases at 5% p.a. If you left service before 1.1.91 but after 1.1.86 this revaluation is limited to your pension earned since 1.1.85. Pre-86 leavers receive discretionary increases”.

6. On 20 February 2004, a representative of the Trustee sent Mr A's Independent Financial Adviser (**IFA**) an updated statement of his revalued, deferred entitlement (**the 2004 Statement**). It stated that Mr A's pension at retirement could not be accurately quoted more than 18 months in advance of the proposed retirement date, but his current deferred pension had increased to £5,672.63 a year.
7. On 22 February 2011, Towers Watson (now Willis Towers Watson (**WTW**)), the Plan administrator, sent Mr A an updated statement of his revalued, deferred entitlement (**the 2011 Statement**). It stated that his pension had increased to £6,726.76 a year.
8. On 22 July 2015, WTW sent Mr A a retirement estimate (**the 2015 Estimate**) stating his deferred pension at NRD would be £9,187.53 a year.
9. On 31 July 2015, Mr A wrote to WTW querying why his entitlement had not been revalued by FA in the 2015 Estimate. Mr A quoted the 1992 Letter and said he expected his pension at NRD to be £12,589.67 a year.
10. On 20 January 2016, the Trustee wrote to Mr A after investigating his complaint. It said that Mr A's entitlement at NRD would be calculated using the higher of statutory revaluation factors or FA and that the former would be used in Mr A's case. The Trustee also said that the 1992 Letter incorrectly over-stated Mr A's entitlement by combining both types of revaluation. The Trustee noted that subsequent statements issued to Mr A and his IFA were calculated correctly and said his Plan entitlement could only be calculated in accordance with the Trust Deed and Rules.
11. On 12 February 2016, Mr A's complaint under the Plan's Internal Dispute Resolution Procedure (**IDRP**) is summarised below:-
 - a. The Trustee had not communicated the Plan Rules or its practices to him clearly.
 - b. He had sustained a financial loss because of the delays and maladministration in answering his queries.
 - c. The 1992 Letter and 1994 CETV gave him a legitimate expectation of receiving the higher pension.
 - d. Mr A adjusted his retirement planning accordingly and he had not always received Plan correspondence personally because some had been sent directly to his advisers.
12. On 29 June 2016, the Trustee provided its IDRP Stage 1 response which is summarised below:-

- a. The Trustee acknowledged that it had taken several months to provide a response. It had researched 30 years' worth of interaction between Mr A and various administrators to correctly understand the position.
 - b. The incorrect information in the 1992 Letter was not re-stated in the 1994 CETV. The revalued pension quoted in the latter was an estimate based on anticipated, future RPI factors. The Trustee argued that the Notes supplied with the 1994 CETV stated the method of revaluation applicable to pre-1986 leavers like Mr A.
 - c. It was not reasonable for Mr A to rely upon an estimate calculated over 20 years ago, based on anticipated inflation levels that are no longer credible. The assumptions used were stated in the estimate.
 - d. All statements of Mr A's Plan entitlement issued after the 1994 CETV were calculated in accordance with Trust Deed and Rules and were substantially lower.
13. On 29 November 2016, Mr A asked for his complaint to be considered at Stage 2 of the IDRP. He maintained that the Trustee, as a large organisation with professional advisers, had taken too long to deal with his complaint and he had sustained a financial loss due to the time taken. Mr A argued that the entitlement quoted in the 2015 Estimate is not in accordance with past promises and his pension in excess of GMP should be revalued by FA.
14. On 23 March 2017, the Trustee provided its Stage 2 IDRP response which is summarised below:
- a. The value of Mr A's Plan entitlement had not changed since the 2015 Estimate and he was able to accept the quoted entitlement and then continue his complaint with the Trustee.
 - b. As a pre-1986 Leaver, discretionary FA increases will only be used to calculate Mr A's pension at NRD if FA factors are higher than statutory revaluation at that point. FA must be implemented in the way the sponsoring employers direct and is "outside the scope of the Trust Deed and Rules".
 - c. The Trustee endeavoured to "provide error free communications to members, however, unfortunately mistakes do occur".
 - d. An incorrect estimate does not create an entitlement and Mr A's pension can only be calculated in accordance with the Trust Deed and Rules.

The Pensions Ombudsman's position on the provision of incorrect information

15. The basic principle for negligent misstatement (in the absence of any additional legal claim) is that a Trustee is not bound to follow incorrect information, e.g. retirement estimates, transfer values or early retirement quotes. A member is only entitled to

receive the benefits provided for under the Plan Rules, i.e. those based on correct information accurately reflecting the Plan Rules.

16. Broadly, the Ombudsman will provide redress if it can be shown that financial loss or non-financial injustice has flowed from incorrect information given. For example, the member may have taken a decision in the expectation of receiving the higher benefits which they would not otherwise have done, such as retiring early. The Ombudsman will also consider whether it is more likely than not that a member relied on the incorrect information to their detriment and that it was reasonable for them to do so. An example of this is where the member had already decided to take early retirement before receiving the incorrect information. In this case it is unlikely that any claim for financial loss would be upheld on that basis alone.
17. The above sets out the Ombudsman's views very generally on the application of, negligent misstatement. It is for guidance only; each case will turn on its own facts.

Adjudicator's Opinion

18. Mr A's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-
 - a. The Adjudicator appreciated that Mr A did not directly receive the correspondence sent to his advisers by the Trustee before 2015. However, it would still have been available for him to review. Mr A directly received the 2011 Statement. Mr A acknowledged he was aware that WTW could only provide retirement quotes within 18 months of his NRD.
 - b. Although the statutory revaluation factors applicable to Mr A's Plan entitlement were known in 1985, the relevant FA factors were revised annually. The FA factors applicable to Mr A's NRD would not be announced until the year before he reached NRD.
 - c. The Plan entitlement stated in the 2011 Statement was almost half the figure stated in the 1992 Letter. It was also nearly a third of the estimate stated in the 1994 CETV. In view of the significant disparity, Mr A should reasonably have queried the correct position with the Trustee after receiving the 2011 Statement.
 - d. The Trustee has accepted that Mr A was provided with incorrect information in the 1992 Letter. The Adjudicator appreciated that Mr A was disappointed to learn the correct position. However, Mr A's Plan entitlement must be calculated in accordance with the Plan Rules. Furthermore, his Plan entitlement was correctly stated in the 2004 Statement, the 2011 Statement and the 2015 Estimate. Consequently, Mr A should have discovered the correct position much sooner than he did.
 - e. The Trustee admitted it provided Mr A with incorrect information. However, the Adjudicator said the distress and inconvenience caused to Mr A was nominal and

insufficient to warrant an award for non-financial injustice. The Adjudicator also said an Ombudsman would likely not make an award based on the facts.

19. Mr A did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr A 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 A for completeness.

Ombudsman's decision

20. Mr A says that he had no reason to question statements produced by the Trustee before 2015 and the correspondence he did see did not cause him to query the position. Mr A is correct that statutory revaluation was fixed and known when he became a deferred member in 1985. However, FA factors are revised annually and could have changed substantially between 1985 and Mr A's NRD.
21. The 1992 Letter and the 1994 CETV were overstated, albeit for different reasons, which the Trustee has acknowledged. However, the Trustee also sent Mr A, and his advisers, several statements that were calculated in accordance with the Plan Rules. Consequently, Mr A and his advisers were notified of his correct entitlement.
22. There is a great disparity between the entitlements stated on the Deferred Statement, the 1992 Letter and the subsequent 2004 and 2011 Statements. Mr A received the 2011 Statement directly. Having reviewed the papers, I cannot see a reasonable justification for Mr A not querying why the 2011 Statement was roughly half of the entitlement stated in the 1992 Letter. For the reasons noted by the Adjudicator, I agree that Mr A should have learnt the correct position much sooner than he did.
23. Mr A argues that the 1992 Letter and the 1994 CETV confirm that the Trustee "committed" to revalue deferred pensions, in excess of GMP, by FA for pre-1991 Leavers. The Plan Rules do not provide for revaluation above statutory levels for pre-1991 Leavers. FA is a discretionary increase outside of the Rules, which is not guaranteed. The Trustee has not written a governing document to determine how FA is applied. However, the Trustee has explained that the terms and conditions of FA are an "established practice" between the Trustee and the sponsoring employers. Having reviewed the papers, the 1992 Letter does not provide evidence that FA factors were used to revalue pensions in excess of GMP in the 1990's. I have seen no evidence that FA factors should be used to revalue Mr A's deferred pension in the way that he has argued.
24. The over-stated entitlement in the 1992 Letter resulted from Mr A's pension in excess of GMP being double-counted. The 1994 CETV contains an estimate of Mr A's pension at NRD using RPI revaluation that he is not entitled to under the Rules. I appreciate that the information provided by the Trustee in the 1992 Letter and the 1994 CETV about FA is incorrect. Mr A has certainly suffered a loss of expectation because of it. However, the correct position has also been stated to Mr A numerous times in subsequent Plan correspondence. Consequently, I agree with the

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Adjudicator that Mr A has suffered nominal distress and inconvenience and consequently I will not make an award for non-financial injustice.

25. I do not uphold Mr A's complaint.

Anthony Arter

Pensions Ombudsman
19 August 2019