

Ombudsman's Determination

Applicant	Mr Y
Scheme	Universities Superannuation Scheme (the Scheme)
Respondent	Universities Superannuation Scheme Ltd (USS)

Outcome

1. Mr Y's complaint against USS is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld), USS shall pay £500 to Mr Y.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y has complained about the misinformation given by USS, the Scheme administrator, which led him to believe he would receive a higher lump sum and pension income.

Background information, including submissions from the parties

4. On 9 February 2016, USS wrote to Mr Y in response to his request for his Scheme benefit details. The cover letter said:

"The estimated value of your benefits on your 66th birthday based on your current service and the future benefits of your full time post (**assuming you remain in continuous full time employment**)[original emphasis] is as follows:

A pension of £19,540 gross per annum

plus

a tax-free lump sum of £58,620

As your post with the Open University is variable time, we cannot predict the future benefits for this. However the current value of your benefits accrued from that post is:

a pension of £484.94 gross per annum

plus

a tax-free lump sum of £1,454.82”

5. Working for the Open University is defined as ‘variable time employment’ by USS. On its relevant online factsheet, it said:

“It is important to note that the emerging benefits paid in respect of a period of concurrent employment will be calculated by reference to the pensionable service from the regular employment plus the additional pensionable service from the variable-time employment; but the pensionable salary used will be from the regular employment only.”

6. On 6 June 2016, at Mr Y’s request, USS issued him with a retirement quote (**the 2016 Quote**), based on a retirement date of 31 July 2016. This quote stated that Mr Y’s pensionable salary was £76,658. Mr Y said he chose the option that would pay a lump sum of £120,711 and a monthly pension income of £1,508.89 (equivalent to £18,106.68 per annum).

7. In February 2017, a ‘Final Salary section Benefit Statement’ was issued to Mr Y, showing benefits as at 31 March 2016.

8. This statement explained:

“...your pensionable service of 21 years and 250 days is divided by the scheme’s pre 1 April 2016 accrual rate of 80 and then multiplied by your pensionable salary at 31 March 2016 of £61,424.00”.

9. The calculation was then set out to show an annual pension for Mr Y of £16,649.69. The statement explained that the standard lump sum was three times the annual pension, giving £49,949.07.

10. The pensionable service details, as at 31 March 2016, were given as:

Service accrued in [the Scheme] – 18 years 297 days

Total transferred-in service – 2 years 69 days

Total variable time service credit – 0 years 249 days

Total pensionable service – 21 years 250 days

Total number of transfers-in – 1

Pensionable salary at 31/03/2016 - £61,424

Date of CPA [Contractual pensions Age] – 17 December 2020

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11. On 9 June 2017, USS received Mr Y's retirement notification, stating that he wished to retire on 30 June 2017. Mr Y's form said that he wanted to take the maximum tax free lump sum, and that he did not require an updated quotation.
12. On 31 July 2017, USS wrote to Mr Y setting out his final retirement benefits as at 30 June 2017. These were an annual pension of £15,350 and a lump sum of £102,333.
13. Mr Y has said that he relied upon the 2016 Quote when considering Bradford Universities' (**the Employer**) option to apply for a Mutually Agreed Resignation Scheme (**MARS**), which offered employees a lump sum to terminate their employment.
14. Mr Y has argued that, had he received the correct information in the 2016 Quote, he would not have terminated his employment and instead he would have stayed in employment with the Employer until age 66. Mr Y has calculated his net loss in income up to this time as £144,727.
15. The Employer has confirmed to Mr Y that his employment cannot be reinstated.

Adjudicator's Opinion

16. Mr Y's complaint was considered by one of our Adjudicators who concluded that USS should award £500 to Mr Y for the distress and inconvenience caused by its error. The Adjudicator's findings are summarised briefly below:-
 - The benefits statement Mr Y received in February 2016 showed greatly different figures to those in June 2016, which ought to have raised questions for Mr Y.
 - Mr Y ought reasonably to have known his salary was not £76,658.
 - Mr Y ought to have requested updated figures before retiring in 2017.
 - USS is not obligated to authorise benefits higher than those to which Mr Y is entitled.
 - USS did provide incorrect information which has caused significant distress and inconvenience to Mr Y, so it should award £500 to him in recognition of this.
17. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y 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 Y for completeness.

Summary of Mr Y's response

18. The decision to apply for the MARS was made in 2016 and, once accepted, could not be withdrawn. Mr Y was asked to stay with the employer for longer in order to complete a particular project, which is why he did not actually retire until 2017. Mr Y

argues that any information received after the 2016 Quote could not have impacted his decision to retire.

19. Mr Y has said that he did question the figures in the 2016 Quote with the Employer's payroll department. He has said that he was told the higher pensionable salary was a combination of his USS salary and his variable time income. Further, Mr Y has said the payroll team told him the pensionable salary was index-linked on the quotations to normal retirement age.
20. If Mr Y had not relied upon the 'negligently produced' 2016 Quote, he would not have entered into the MARS agreement and would still be in employment. He asks that USS awards him half of his projected earnings up to normal retirement age.

Ombudsman's decision

21. I acknowledge Mr Y's argument that any information issued by USS after 2016 could not have influenced his decision to retire, as he had already committed to this.
22. However, I find that Mr Y had sufficient correct information available to him before making the decision in 2016, in order to know that there were errors in the 2016 Quote. I also find the sharp increase in estimated benefits from the statement four months earlier ought to have alerted Mr Y to an issue. Mr Y should have then queried this with USS.
23. I note that, included with the 2016 Quote, was a historic list of Mr Y's pensionable salary from 1997 to 2015. The highest of these was £55,389 as at 1 August 2015. This history did not include any reference to additional income variable-time employment.
24. Mr Y has said that the Employer's payroll department provided a feasible explanation as to why the pensionable salary was so high. I have not seen any documentary evidence of this conversation, but in any event, this was not a representation made by USS, so it is not responsible for any misinformation that Mr Y has claimed was given concerning the over-inflated pensionable salary. Further, the estimated figures for the variable time retirement benefits, provided in February 2016, would not have explained the significant increase in lump sum quotation from nearly £60,000 to £120,000.
25. USS did make an error in the 2016 Quote, and I consider that this caused significant distress and inconvenience to Mr Y.
26. However, I find that Mr Y had sufficient information available to him at this time to know that there were errors, and he ought to have queried this directly with USS. I do not find USS responsible for Mr Y's decision to retire early, and therefore do not find it responsible for paying a higher level of benefits than those to which Mr Y is entitled.
27. Therefore, I partly uphold Mr Y's complaint.

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Directions

28. Within 21 days of the date of this Determination, USS shall pay £500 to Mr Y in respect of the significant distress and inconvenience its error caused.

Anthony Arter

Pensions Ombudsman
26 September 2018