

Ombudsman's Determination

Applicant	Mr S
Scheme	Taylor Wimpey Pension Scheme (the Scheme)
Respondent	Taylor Wimpey Pension Trustees Limited (the Trustee)

Outcome

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

Complaint summary

3. Mr S' complaint is that the Trustee is failing to honour a quotation he had when he left the Scheme. Mr S says he should be entitled to a guaranteed pension at retirement of £13,943.09 a year, in line with the Benefits Booklet he was given in 2000, and the illustration he received in 2001.

Background information, including submissions from the parties

4. On 1 August 1979, Mr S joined the George Wimpey Staff Pension Scheme (**the GW Scheme**)
5. In 2000, Mr S received a scheme booklet (**the Booklet**). It stated:

"If you leave the Pension Scheme before retirement you will be entitled to various options depending on your age and length of Scheme service. Each month that goes by means that you are building up extra pension, but if you had left the Scheme on 1 April 2000:

You would have been given the option of either a deferred pension of £6,379 pa increasing by the Retail Price Index up to a maximum of 5% pa until age 65 or;

A transfer value estimated at £39,316 which could be paid either to a new employer's scheme or personal pension policy. (To date your total contributions to the Scheme including interest have been £13,295.)

You should note that the figures shown above are **not guaranteed** [my emphasis]. The transfer value quoted is intended as an indication only and can go up or down depending on current investment conditions. If you leave the Company you will automatically be provided with an updated and guaranteed quotation.”

6. On 30 April 2001, Mr S left employment and became a deferred member of the GW Scheme.
7. On 7 June 2001, the Trustee wrote to Mr S (**the Benefit Statement**), giving him three options: (A) a deferred pension; (B) a transfer to a new employer’s scheme or (C) a buy-out/personal pension. Under option A, it stated as follows:

“Your entitlement is for a deferred pension of £6,968.70 pa payable at your Normal Pension Age [**NPA**] of 65. This is calculated as 1/60th of your pensionable salary for each year of pensionable service. The Guaranteed Minimum Pension [**GMP**] element will be increased by 6.25% a year or by the rise in the National Average Earnings [**NAE**], if lower, and the excess will be increased by 5% or changes in the Retail Price Index [**RPI**] if lower, up to retirement. To give you an indication of the estimated at age 65, we have assumed 3% a year increases will apply to the excess and if this is the case, your pension will amount to approximately £13,943.09 pa.”
8. On 28 August 2001, Mr S was sent a deferred pension statement which confirmed that his pension entitlement was £6,968.70 a year.
9. On 28 September 2007, Mr S received a letter from Aon, the GW Scheme’s previous administrator, which confirmed his pension entitlement of £6,968.70 a year had increased to £8,509.68 a year.
10. On 1 October 2013, members of the GW Scheme were transferred to the Scheme, on the basis that members’ benefits entitlements under the Scheme would be the same as that under the GW Scheme.
11. In September 2017, Mr S requested and received updated figures. He was “horrified” to discover that the update value “fell far short of the sum previously advised”, which prompted him to complain.
12. On 1 August 2018, Mr S raised an appeal under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**).
13. On 3 August 2018, the Trustee issued its response but did not uphold Mr S’ complaint. It referred to the letter dated 7 June 2001 and said that the letter clearly stated that Mr S’ “...entitlement is for a deferred pension of £6,968.70 pa payable at your Normal Pension Age of 65.” The calculation for this benefit is set out in the Deferred Pension Statement provided to Mr S by the GW Scheme dated 28 August 2001. It also referred to the letter stating, “to give you an indication of the estimated pension at age 65, we have assumed 3% a year increases will apply to the excess

and if this is the case, your pension will amount to approximately £13,943.09 pa.” Clearly, this was not a promise or guarantee that a pension of that amount would be paid at retirement. The level of pension at retirement was dependent on the actual inflation increases that would apply. As inflation had been less than 3% for a number of years now, there was a difference between his pension benefits today, and the estimate provided in the 2001 letter.

Adjudicator’s Opinion

14. Mr 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:-

- The basic principle, in the absence of any additional legal claim, is that a pension scheme is not bound to follow incorrect information. For example, retirement quotes or transfer values. A member is only entitled to receive the benefits provided for under the scheme rules; those based on correct information accurately reflecting the scheme rules.
- the Trustee’s letter of 7 June 2001 said, “to give you an indication of the estimated pension at age 65, we have assumed 3% a year increases will apply to the excess and if [my emphasis] this is the case, your pension will amount to approximately £13,943.09 pa.” It would have been reasonable to assume this was not a promise or guarantee about the level of pension at retirement. This was dependent on the actual level of inflation between the time of the illustration, and the time Mr S took his benefits. Further, the Trustee had confirmed that inflation was less than 3% for a number of years, which accounted for the difference between Mr S’ pension benefits today and the estimate provided in the 2001 letter.
- Page 10 of the Booklet stated that, at 1 April 2000, Mr S would have been entitled to a pension of £6,379 a year increasing to age 65; or, an estimated transfer value of £39,316. Both these figures were illustrative of what might be paid if he left the Scheme on 1 April 2000.
- The Ombudsman would provide redress if it could be shown that financial loss or non-financial injustice had flowed from incorrect information given. For example, the member may have taken a decision in the expectation of receiving higher benefits, which they would not otherwise have done, e.g. retiring early. The Ombudsman would consider whether it was more likely than not that a member relied on the incorrect information to their detriment, and whether it was reasonable for them to do so.
- The Adjudicator noted that the Booklet said, “if you leave the company you will automatically be provided with an updated and guaranteed quotation.” But she was of the view that this statement clearly related to the transfer value quotation only, not Mr S’ yearly pension benefits.

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- Mr S is not eligible to receive the pension quoted, i.e. £13,943.09, and is only entitled to receive the correct level of benefits in accordance with the Scheme rules. The Adjudicator did not agree that Mr S had suffered a financial loss because he was never entitled to the overstated pension or cash sum.
 - If a financial loss has occurred, the Ombudsman would expect Mr S to attempt to mitigate his loss. The projections offered in the Benefit Statement assumed that he remained in service until retirement, which he did not. The estimated figures quoted were therefore not applicable; and, in any event, the Adjudicator could see that the terms of the payment of Benefits on early retirement changed for all members in 2003. Mr S' actual pension entitlement could only be calculated when he reached his retirement age, as the exact rate of revaluation between his date of leaving and retirement would only be known at that time.
15. the Trustee provided no further comments. However, Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. 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

16. Mr S says that he should be entitled to receive the level of benefits shown in the quotations provided to him by the Trustee; and, it should make good the difference between the incorrect figures and the correct ones. However, I agree with the Adjudicator's Opinion, neither the Booklet nor the Benefit Statement told Mr S that he would receive guaranteed retirement benefits of about £13,000. The Booklet clearly stated that the level of benefits outlined therein was not guaranteed; it specifically stated that the transfer value, which, in 2000, was estimated to be about £39,000, was not guaranteed. Moreover, whilst it stated: "If you leave the Company you will automatically be provided with an updated and **guaranteed** [my emphasis] quotation", the word "guaranteed" meant only that if Mr S chose to transfer out then the Trustee would guarantee, for a set period of time, that he would receive a stipulated transfer value. No guarantee was given in respect of the quotation that Mr S received.
17. Additionally, the Benefit Statement stated: "Your entitlement is for a deferred pension of £6,968.09 pa payable at your [NPA] of 65... The [GMP] Element will be increased by 6.25% a year or by the rise in the [NAE], if lower, and the excess will be increased by 5% or changes in the [RPI] if lower, up to retirement. To give you an indication of the estimated pension at age 65, we have assumed 3% a year increases will apply to the excess and if this is the case, your pension will amount to £13,943.09 pa." It is only an indication of what Mr S might receive; it is stated to be an indication of an estimated pension, not a guaranteed sum.

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18. I sympathise with Mr S, and I can understand why he might have thought all elements of the Benefit Statement were guaranteed. However, the information provided is clear, whilst the Trustee sought to give him an indication of the benefits he might receive at NRA, the £13,943.09 figure was not guaranteed, and the Trustee did not say that it was guaranteed. Rather, it depended on the future level of inflation, which could not be known, hence assumptions had to be made and were made.

19. Mr S is only entitled to the correct level of benefits in accordance with the Scheme rules, unless he can prove that he suffered direct financial loss as a result of relying on the incorrect figures sent to him and that it was reasonable for him to do so.

the Trustee has explained that the figures contained in the quote were only a “projection” and, as such, are not guaranteed. I agree. The only reference to a guarantee in the Booklet was how long the Trustee would stand behind a certain transfer value should Mr S choose that option. Moreover, the only guaranteed element in the Benefit Statement was Mr S’ deferred pension, £6,968.70; the £13,943.09 figure stated was dependent on the future rate of inflation, so it was not reasonable for Mr S to rely on it.

20. I do not uphold Mr S’ complaint.

Anthony Arter

Pensions Ombudsman
19 December 2018