

Ombudsman's Determination

Applicant	Mr S
Scheme	Westwind Air Bearings Ltd Retirement Benefits Scheme (the Scheme)
Respondent	Origen Financial Services Ltd (Origen)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by Origen.

Complaint summary

2. Mr S' complaint against Origen is that a guaranteed annuity rate is not being applied to his Scheme benefits. He was expecting to receive a pension of about £22,000; he is currently projected to receive a pension of about £17,000.

Background information, including submissions from the parties

3. Initially, Mr S started working for Westwind Air Bearings Ltd (**the Company**) and joined the Scheme, now administered by Phoenix Life Ltd (**Phoenix**). For the avoidance of doubt, Origen was appointed by, and acting for, the Trustees of the Scheme (**the Trustees**) at the time of the events complained of. Only Origen has been named as respondent to the complaint.
4. In November 2012, the Trustees employed Origen to visit the Company and give a presentation to Scheme members. The presentation covered how the Scheme worked and whether members should consider increasing their contributions. On page four of the presentation, it said:

“... this presentation is not intended to be, nor should it be relied upon as, individual independent financial advice...this presentation is only intended as a guide. In the event of a dispute, formal documents will be treated as correct.”
5. In August 2013, as a result of the presentation, Mr S increased his monthly contributions and, in May 2014, he did so again.
6. On 18 July 2014, Phoenix wrote to the Trustees. It said:

"The terms of the policy allow us to make changes to the premium rates and we have decided that it is necessary for us to increase the Master Policy premium rates... As a result of the change, benefits purchased on the new increased rates will not be as high as they have been under the existing rates. This change will only apply to any new, additional benefits purchased under your scheme that are applied for after the change date."

7. On 26 August 2014, Origen e-mailed Capita, which was assisting Phoenix, and asked the following questions about the changes:

"Please explain paragraph 4 'increase in the Master Policy Premium Rates', are these charges?... The schedule of figures provided on 'the document' means nothing to me, can you please explain further? I would appreciate a working example of the application of the new 'Master Policy Premium Rates'... Am I right to assume that the GARs will remain at the current rates (See attached)?... Is it the purchasing power of the fund post August 2014 that will diminish?... Please advise how the fund pre Aug 2014 is calculated and the rates that apply?"

8. On 2 September 2014, Capita responded to Origen. Among other things, it said:

"... The "increase in Master Policy rates" are the rates that will be used from 14/8/14 to purchase guaranteed benefit based on any increase in premium that is being paid.

An example for a Male, aged 40 next birthday. retiring at age 65.
Commencement date of the contributions 01/09/2014 assuming 01/09 was also the scheme renewal date to keep it simple. Contribution £50 per month. RNI basis

$\text{£}50 * 12 / 1.05$ (this is to convert monthly premium to an [sic] yearly equivalent, 5% loading for paying monthly) = 571.4285

Rate from recently issued table $75.70 * 1.06$ (6% loading applies to convert rates from a non return of contributions basis on death to a return with no interest of contributions on death) = 80.242

$571.4285 * 100 / 80.242$ - £712.13 pension

This is converted to a fund by multiplying by the cash conversion factor of 9 = £6409.17

The guaranteed benefit already purchased pre 14/8/14 will not alter.

Any future premiums after 14/8/14 will buy less guaranteed benefit than before...

Isobel is currently out of the office at present, returning Monday 8 September. On her return she will respond to your email regarding Mr [S] and will explain how the fund is calculated.

As discussed on the phone, the guaranteed benefit already secured is payable at normal retirement this amount is not affected by the changed."

9. On 9 September 2014, Origen e-mailed Capita. Among other things, it said:

"... For clarification can you please confirm my understanding of the following:

(1) [Is it] only new retirement benefit premiums (pension contributions) or increments from the 14th August 2014, which will be effected [sic] by the increases in Master Policy Rates.

(2) The GARs attached are the figures still being used to calculate the cash conversion?

(3) That the practice of increasing the cash value of pensions and transfer values so that these are not less than the total retirement benefit premiums (pension contributions) is being removed and this will be applicable to all premiums paid even those prior to the 14th August 2014?

I assume that the breakdown of the benefit calculation for Mr Chris Roberts will enlighten us as to how the benefits are calculated pre 14th August 2014 so that we can establish the impact of the changes.

However, if at all possible it would be really appreciated and very helpful if you could provide the same working example provided below but on the basis that the contribution of £50 pm commenced on the 1st August or 1st July 2014, which I assume would then fall under the pre 14th August basis?

Last but not least, can you please let me know when the individual member statements will be issued to Westwind as we have a Trustee Meeting on the 25th September 2014 and it would be extremely helpful to be able to review some of the statements and the information provided at this meeting..."

10. On 18 September 2014, Capita e-mailed Origen. Among other things, it said:

"... Yes, it is only increases in contributions or any single premiums that are invested from 14 August 2014 that the new rates apply to.

Yes, the removal of premiums paid when calculating transfer values and retirement benefits is applicable to all premiums that are paid for an individual including those that have been paid prior to 14 August 2014.

Yes, the GARs you attached are figures still being using [sic] to calculate the cash conversion at maturity.

Based on the same example below then for rates in force prior to 14 August then it would be as follows:

$\text{£}50 * 12 / 1.05$ (this is to convert a monthly premium to an yearly [sic] equivalent, 5% loading for paying monthly) = 571.4285

Rate = $44.00 * 1.06$ (6% loading applies to convert rate from a non return of contributions basis on death to a return with no interest of contributions on death) = 46.64

$571.4285 * 100 / 46.64 = £1225.19$ pension

Isobel is currently drafting the benefit calculation for Mr [S] and this should be with you shortly.

As requested by Steve, we have drafted a spreadsheet which details the current transfer value at 11/9/14 for all members. This has been sent today."

11. In 2016, Mr S received a pension statement showing that his benefits were lower than expected. As a result, on 7 December 2016 he had a meeting with a representative of Origen, where he was given a breakdown of his contributions and an explanation of how his benefits were calculated. In Mr S' view, a guaranteed annuity rate was not being applied to his benefits. So, he complained to the Trustees.
12. In November 2017, the Trustees arranged for an updated illustration of benefits to be issued to Mr S. They also considered his complaint, however did not uphold it. They also said he could refer his complaint to the Financial Ombudsman Service, which, in turn, suggested that he complain directly to Origen, which he then did.
13. On 18 April 2018, Origen responded and provided further information. It said:

"In answer to your specific complaint, Phoenix has reassured the Trustees that the Guaranteed Rates for [the Scheme] still apply and have not changed since the commencement of [the Scheme]...

The way in which Phoenix arrives at the guaranteed pension income is to firstly apply a pension conversion factor at the date the pension contribution commences. This will be different for each increment as the pension conversion factor takes into account the fact that the death benefit is a 'return of pension contributions with no interest', your age at the date the premium is paid and consequently the length of time to retirement.

As with contributions to a personal pension, the earlier pension contributions will have a longer period of time to be invested and therefore, in theory have the potential to generate greater returns to build up a pension fund and pension income, albeit not guaranteed. This also applies in principle to the pension income secured by the pension contributions paid to [the Scheme].

However, once secured the guaranteed pension income in [the Scheme] will only change if you increase, reduce or cease to make payments, retire earlier than the specified retirement age, or take your pension income on a different basis than that quoted in the above table."

14. In May 2018, Origen responded to the complaint. The key points were:-

- The presentation was carried out to help members understand their benefits and whether they had adequate retirement provision. Origen was only appointed by the Trustees to give “guidance and information”; it was not responsible for the administration of the Scheme, which was down to Phoenix.
 - The presentation made clear the information was not, and should not be treated as, individual advice; it was only “balanced guidance”, not intended to “influence or persuade” but to provide facts so members could make their own decision.
 - The Scheme included (a) a “Guaranteed Annual Pension Income Annuity” for benefits taken from the Scheme and (b) set “Commutation Terms” for members commuting benefits via the open market option. In terms of (a), for each regular contribution to the Scheme, a premium rate would be applied to the contribution for purposes of calculating a guaranteed annuity income at retirement.
 - In terms of (b), if members wished to commute their pension and buy an annuity by the open market option, a “multiple commutation” would be applied to their pension to allow them to buy an annuity on more favourable terms.
 - In July 2014, changes were made to Scheme benefits; specifically, an increase to premium rates applied to contributions when calculating the guaranteed annual pension income annuity. Any contributions made after that would have benefits bought on the new, increased rates, and so be lower than under previous rates.
 - In 2016, Phoenix decided to make further changes to commutation rates applied in the Scheme. These changes were made due to changes in life expectancy and interest rates. But they resulted in more favourable terms for members wishing to convert part of their fund into tax-free cash or take the open market option. These changes were made after the events Mr S had complained of.
 - The presentation was designed to provide basic information about the Scheme in order to help members to make a decision about their provision. The information was correct at the time and based on information supplied by Phoenix. Therefore, Origen did not believe it had acted incorrectly.
15. In November 2018, at our request Origen responded to the complaint. It re-iterated that the information in the presentation was “balanced guidance” only. Accordingly, Mr S would have known he was only being provided with “guidance and information on options available and not specific individual recommendations or advice for him”.
16. Mr S provided further comments. He was expecting a pension of about £22,000 a year but was projected to receive a pension of only about £17,000 a year, with the difference being due to a pension conversion factor derived from a table depending on when the contributions were made, and when benefits would be taken. This table was revised in August 2014 for new contributions, but his complaint referred to contributions made before then. He understood the presentation was for guidance only but it was silent on conversion factors and their effect on additional contribution. By omission of this, he was prevented from making an informed decision.

Adjudicator's Opinion

17. Mr S' complaint was considered by one of our Adjudicators, who concluded that no further action was required by Origen. His findings are summarised below:-

- Origen was engaged by the Trustees to provide general information about the Scheme and whether members should consider saving more. The presentation made clear no individual advice was being given, and that any disputes would be resolved by reference to the formal Scheme documents. So, Mr S could not rely on the presentation when deciding what contributions to make; individual advice, from Origen or a regulated adviser, could have been requested directly.
- Origen was acting for and responsible to the Trustees at the time; it was not responsible to members directly. In any case, the presentation was based on information supplied by Phoenix. Insofar as that information was incomplete, it was for Phoenix, the Trustees or both to redress Mr S, if applicable.
- In July 2014, Phoenix explained that the terms of the Scheme allowed it to make changes to premium rates, and it had decided to increase "Master Policy" rates. This meant that benefits purchased on the new, increased rates would be lower than under existing rates. But there was no sign that Phoenix was not permitted to vary the structure and level of benefits in this way and, in any case, this was nothing to do with Origen and did not amount to maladministration on its part.
- Mr S says he increased contributions as a result of the presentation. So, it was unclear that he had incurred a loss as a result. Further, although he might have further increased contributions, had the presentation been more detailed, there was no evidence to substantiate this. And insofar as he did not further increase contributions, he had had the benefit of a higher salary instead.
- Arguably, the presentation was incomplete in failing to outline how guaranteed benefits would be calculated by reference to conversion rates and contributions. But this was not maladministration by Origen.
- There was no sign that Mr S' benefits had been, or were being, miscalculated. In other words, he was not due to receive lower benefits than he was entitled to, as a result of any errors by Origen (or any other parties).

18. Origen provided no further comments in response to the Adjudicator's Opinion. Mr S did not accept the Opinion and made the following key points:-

- Page three of the presentation said Origen was "appointed by [the Company]", not the Trustees; and, that this was "to provide advice to their employees".
- As a financial professional, Origen should have been fully aware how the Scheme operated before giving any advice. However, based on the e-mail of August 2014, it was "evident" that Origen did not understand the Scheme properly.

- He increased his contributions as a result of the presentation, expecting all his contributions to be added to his fund. In fact, his contributions had reduced, so a loss had been incurred as a result of a factor not made clear in the presentation. Had he not increased contributions, he would have had a higher salary, which he could have invested elsewhere.
 - The inclusion of the conversion rate table would have been general, not specific.
19. Mr S provided his further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and will therefore only respond to the key points made by Mr S for completeness.

Ombudsman's decision

20. Mr S says the presentation indicates Origen was appointed by the Company, not the Trustees; and, that it was appointed to give members advice. But in its response to us, Origen says its "engagement" was with the Trustees, and not the Company.
21. I will first address the question of whether Origen was giving advice to members.
22. This complaint has been accepted and investigated on the understanding that Origen was employed to carry out an act of administration. I will not make findings about whether Origen was giving individual advice to Mr S or about the adequacy of any individual advice which may have been given because that is a matter for the Financial Ombudsman Service. My jurisdiction is limited to considering whether Origen, in carrying out an act of administration explained the Scheme in a way which was clear and not misleading. Mr S says Origen should have understood how the Scheme worked and that it did not. I agree, that as a result of taking on the task of explaining aspects of the Scheme, Origen had a duty to understand it and to explain it correctly to Mr S. I think that is equally so, whether Origen was acting for the Trustee or for the Employer. He says Origen's e-mail of August 2014 indicates that it did not actually understand the "complexities" of the Scheme. I consider that the August 2014 e-mail shows that Origen did not understand Phoenix's letter of July 2014, regarding changes in premium rates. Origen was plainly seeking to clarify that it understood 'premium rates' correctly, and to verify that the changes which were being put in place operated prospectively only. This exchange of correspondence came after the presentation was made and does not in my view cast doubt on Origen's original understanding of the basic scheme structure.
23. Mr S says he increased his contributions as a result the presentation and expected all his contributions to be added to his fund. Mr S' contributions are invested in Phoenix's with-profits fund. Its costs are deducted from the fund and what is left over, the profit, is available to be paid to investors. Members also receive a share of the profits in the form of annual bonuses.
24. On page 10 the presentation, it says if the member pays £75 a month - and the employer pays £75.00 per month - the total amount invested will be £150 a month. I

understand Mr S to be arguing that by not disclosing the Scheme's charging structure, Origen's presentation was misleading. I agree that the explanation on page 10 of the presentation creates the impression that all contributions would be invested. However, it also acknowledges that expenses and charges exist. Page 18 of the presentation contains a column which shows growth 'before expenses and charges' for a number of years. The presentation is silent about how much those charges are or how they will be recovered. Origen has since acknowledged that under new requirements, the Trustee of the Scheme is required to make charges in such a scheme more transparent. However, I do not find that Origen acted incorrectly when it gave the presentation in 2012. I consider Origen's remit was limited to providing general information about the Scheme in order to allow members to consider whether they needed to contribute more to provide adequately for their retirement. It was not tasked with explaining the scheme charging structure. It could have provided more information, for example about conversion factors and their effect on additional contributions. However, given the scope of the exercise and the presentation, I do not find that the omission of this information amounted to maladministration by Origen.

25. Mr S increased his contributions as a result of the presentation. He says had he not paid his increased contributions into the Scheme, he would have had the benefit of a higher salary and could have paid them into a different scheme. However, there is no evidence of where else the contributions would have been paid or that Mr S considered other investments rather than contributing to the Scheme.
26. I cannot conclude that Mr S relied on the statements made to him with the result that he is worse off having invested in the Scheme rather than having had the salary to spend or investing elsewhere. In consequence, there is insufficient evidence that a loss has been incurred overall as a result of the presentation.
27. For all of these reasons, I do not uphold Mr S' complaint.

Karen Johnston

Deputy Pensions Ombudsman
19 November 2019