

Ombudsman's Determination

Applicant	Mr D
Scheme	Ibstock Pension Scheme (the Scheme)
Respondent	Ibstock Pensions Scheme Trustees (the Trustees)

Outcome

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

Complaint summary

2. Mr D's complaint concerns the overpayment of pension he received from the Scheme between September 2017 and July 2018, because of the Scheme's error. Mr D does not think the Trustees' offer of £1,000 is sufficient, for the distress and inconvenience he has experienced, as a result of the error.

Background information, including submissions from the parties

3. Mr D had two periods of membership in the Scheme. He first became an active member of the Scheme on 1 November 1996, following a bulk transfer into the Scheme from a separate scheme. He left pensionable service on 31 December 1998 (**Period 1 benefits**). Mr D re-joined the Scheme on 6 October 1999, and remained in pensionable service until it closed to future accrual on 31 January 2017, (**Period 2 benefits**).
4. In 2011, Ibstock Brick Limited (**the Company**) took part in an enhanced transfer value exercise (**ETV**), in respect of the Scheme. The Company wrote to Mr D and offered him an ETV of £67,418.50, together with an enhancement of £40,936.31. Mr D had the option to add this enhancement to his transfer value or instead, receive up to £25,000 in cash.
5. The documentation that Mr D was sent concerning the ETV, made it clear that the offer related to his Period 1 benefits, and included pre-1988 Guaranteed Minimum Pension (**GMP**), which related to his transferred-in pensionable service from the previous scheme. Mr D also received independent financial advice from Pension Capital Strategies, in connection with the ETV offer.

6. On 20 March 2011, Mr D completed an option form electing for his Period 1 benefits to be transferred to a defined contribution fund with Aviva (**the Aviva fund**). He also requested that the enhancement was paid as a cash sum of £25,000, less income tax and National Insurance, with the remainder added to his transfer value. On 21 June 2011, the Trustees wrote to Mr D and confirmed that the transfer value payment had been completed. The Trustees also explained that this was "in full and final settlement of [his] total pension entitlement under the Ibstock Pension Scheme".
7. As a result of the transfer, Mr D only had Period 2 benefits remaining in the Scheme.
8. In mid 2017, Mr D requested an early retirement quotation (**the Quotation**) from the Scheme administrators (**the Administrator**), as he was considering taking early retirement on his 60th birthday. On 2 August 2017, the Quotation was sent to Mr D. The cover letter sent with the Quotation said: "The Trustees recommend that you seek independent financial advice regarding your retirement benefits before making any decision."
9. The Quotation was separated into two parts under the headings: "service period 1", which related to Period 1 benefits and "service period 2", which related to Period 2 benefits. In each case the date of entry to pensionable service was specified.
10. The Quotation was incorrect because: (i) it included Period 1 benefits, that had been previously transferred to the Aviva fund in 2011, and (ii) it had incorrectly included Mr D's transferred in benefits that formed part of his Period 1 benefits, in his Period 2 benefits calculation. Essentially, the Quotation overstated the benefits Mr D was entitled to from the Scheme.
11. Mr D completed the option form and chose retirement benefits that combined both Period 1 and Period 2 benefits. On 24 August 2017, the Administrator, on behalf of the Trustees, wrote to Mr D and confirmed that his pension of £1,374.83 per month, would commence on 30 September 2017. This was the total sum of Period 1 and Period 2 benefits.
12. On 30 July 2018, the Trustees wrote to Mr D and informed him that an error was made in the calculation of his retirement benefits (**the July letter**). This was because his Period 1 benefits had been incorrectly included in his retirement benefit calculations, when those benefits were previously transferred to the Aviva fund in 2011. The quotation had also included incorrect service for Period 2 benefits. The Trustees explained that Mr D was only entitled to retirement benefits from Period 2, and that the error had resulted in him receiving an overpayment of £12,073.85.
13. The Trustees apologised for the error and said:

"The Trustees have a legal duty to pay you the correct benefits which are calculated in accordance with the Scheme's trust deed and rules i.e. based on your second period of pensionable service only. The Trustees therefore propose to correct the level of pension you receive with effect from end of September 2018..."

As noted in the appendix providing the full breakdown the current amount in payment is £1,424.65pm but the correct amount should be £443.87 pm...

The Trustees are obliged to seek to recover the overpayments that have been made to you but in doing so must ensure that the means of repayment does not cause you any undue financial hardship...

The Trustees therefore propose that the full amount of the overpayment be repaid over no less than a 5 year period commencing from 1 January 2019..."

14. Following receipt of the 30 July 2018 letter, Mr D complained to the Trustees through the Scheme's Internal Dispute Resolution Procedure (**IDRP**). In summary Mr D said:
 - He took a while to respond because he was trying to sort out his financial circumstances.
 - He understood that he could only be paid benefits he is entitled to from the Scheme, and not what he was originally quoted. However, he found it "impossible" to repay the overpayment of £12,073.85, even over the repayment period the Trustees had suggested.
 - The incorrect calculation of his retirement benefits did not result from his error, so he should not have to repay it. He should be paid compensation for the financial and emotional distress the situation had caused him.
 - As the Quotation said the figures quoted were for illustration purposes and not guaranteed, he contacted the Scheme and was assured that any adjustments would be minimal.
 - Had he been provided with the correct figures he would not have considered early retirement and would have continued to work.
 - The Period 1 benefits transferred to Aviva in 2011 had been greatly reduced, as he had withdrawn a large sum for home improvements. He would not have done that had he known about the mistake with the calculation of his retirement benefits.
 - Due to the anxiety and stress this situation caused, he started taking anti-depressant medication prescribed by his GP.
15. Between 12 and 25 September 2018, there was further correspondence between the Trustees and Mr D concerning the reduction of his retirement benefits. During this period Mr D agreed for his retirement benefits to be reduced to the correct level from October 2018.
16. On 27 September 2018, Mr D provided further information to the Trustees, in support of his IDRP complaint.
17. On 10 December 2018, the Trustees responded to Mr D's IDRP complaint. In summary, they explained the background that led to the complaint; apologised for the

error and the distress and inconvenience caused; reiterated that the Trustees have a legal duty to pay him the benefits he is entitled to from the Scheme; and the Trustees are obliged seek recovery of the overpayments from Mr D. The Trustees explained what it considered in relation to Mr D's financial circumstances and said:

"The Trustees have considered the information that you have supplied and agree that you have demonstrated a change of position which would make it unjust for the Trustees to seek repayment from you. The Trustees have therefore decided both to waive the repayment of the overpayment and award you the sum of £1,000 in order to acknowledge the distress and inconvenience that this has caused you.

Your pension will continue to be paid at the level that it should be i.e. £443.87 per month with increases applied in accordance with the rules of the Scheme."

Summary of Mr D's position

18. Mr D said:

- He feels that the offer of £1,000 is "woefully inadequate". No one seems to have fully considered the amount of distress this situation has caused.
- Prior to receipt of the July 2018 letter from the Trustees, his sole income was the £1,400 monthly pension from the Scheme. His pension from the Scheme had been reduced to £443 per month. That was a "55-60% decrease in his expected income due to a clerical error from the [Scheme]."
- He was left in a position where he might have to consider selling his family home when his mortgage term is complete. This is because he has an interest only mortgage with an endowment.
- There is a prospective shortfall with his endowment. Prior to the reduction of his pension from the Scheme, he had a plan to cover the shortfall by using some of the benefits in the Aviva fund to supplement his retirement income.
- The reduction in his Scheme pension of £1,000 per month will have a "massive effect" on his life going forward.

Summary of the Trustees' position

19. The Trustees provided copies of correspondence between Mr D and the Scheme between 21 January 2011 and 10 December 2018 inclusive, explained the background that led to the complaint and said:-

- Notwithstanding the errors made, the Trustees have a legal duty to pay Mr D the correct benefits, which are calculated in accordance with the Scheme's trust deed and rules, based on Mr D's Period 2 benefits only.
- The Trustees explained why they did not consider Mr D should be paid the higher incorrect pension. This was mainly because the Trustees believed that it was not

reasonable for Mr D to have relied on the incorrect information in the Quotation, because the inclusion of his Period 1 benefits in the calculation, was a “large and noticeable mistake.”

- The Trustees are obliged to seek to recover overpayments that have been made if the means of recovery do not cause undue financial hardship.
- Having considered Mr D’s case thoroughly, the Trustees acknowledged the undue financial hardship the recovery of the overpayments would have caused to Mr D. So, the Trustees waived the entire overpayment.
- The Trustees accepted that Mr D had suffered distress and inconvenience. They noted the Ombudsman’s recent guidance on his approach to non-financial injustice and offered Mr D £1,000, in their IDRP decision. This was because the Trustees recognised that the distress and inconvenience Mr D had suffered was likely to be of a serious nature.
- The Trustees do not agree that the case involves a severe or exceptional level of distress and inconvenience. So, they do consider an additional sum for distress and inconvenience is payable.

Adjudicator’s Opinion

20. Mr D’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator’s findings are summarised below:-

- The Quotation included Period 1 benefits that had been transferred to Aviva in 2011. It also included incorrect service for Period 2 benefits.
- The Adjudicator acknowledged that, in the letter Mr D had sent to the Trustees, in response to the July 2018 letter, he had explained that following receipt of the Quotation, he had contacted the Scheme and was assured that any adjustment would be minimal.
- However, in the Adjudicator’s view, Mr D ought to have realised that the information in the Quotation was incorrect, so he should not have relied on it to apply for early retirement. This was because the Quotation included benefits that had previously been transferred to the Aviva fund.
- In the Adjudicator’s view, Mr D should have highlighted this error to the Scheme, following receipt of the Quotation. There was no evidence that he had done so.
- The Adjudicator appreciated that the reduction had had a major impact on Mr D’s financial circumstances. However, the Trustee could only pay him benefits he was entitled to from the Scheme. Mr D was not entitled to the benefits in the Quotation, so, in the Adjudicator’s opinion, the Trustees did nothing wrong in reducing his benefits and paying him what he was entitled from the Scheme.

- However, the Adjudicator appreciated that being informed that his benefits would be reduced so substantially, would have caused Mr D distress and inconvenience.
- The Ombudsman published guidance on awards for non-financial injustice, and an award of £1000 was what the Ombudsman would direct respondents to pay complainants that have experienced serious distress and inconvenience.
- In the Adjudicator's view, given that (i) Mr D ought to have known that the figures in the Quotation were incorrect, (ii) the Trustees have agreed to write off the overpayment and, (iii) the Trustees have offered Mr D £1,000 for the distress and inconvenience he has experienced, the Ombudsman would not direct the Trustees to make any additional award to Mr D. This was because the offer from the Trustees was more than reasonable in the circumstances.

21. Mr D did not accept the Adjudicator's Opinion and in response said:-

- He feels that the Adjudicator's assumption that he should have been aware of the overpayment is not in line with the statement made by the Trustees in the IDRP decision.
- In the IDRP decision the Trustees said: "On balance the Trustees accept that you were not aware of the errors and believed the amount paid to you to be correct".
- He does not believe that the £1,000 offered by the Trustees takes into consideration the effect that this has had on his mental and physical health. Prior to this incident his health was normal, and he was not on any prescribed medication for anything.
- Since the incident, he has been on long term anti-depressants (Citalopram 10mg) and also 2 different types of lifelong stress related hypertension medication (Ramipril 10 mg and Amlodipine 10 mg). His GP can also confirm this.

22. The Trustees provided the following additional comments:

- The Trustees had material doubts as to whether Mr D had been aware of the error but chose not to pursue this point on the basis that his pension would be reduced going forward, and with a view to reaching a quick and equitable settlement and wishing to minimise the distress caused to him.
- Therefore, the Trustees do not consider it would be inconsistent with the views reached by the Trustees for the Ombudsman to reach the view that Mr D was or should have been aware of the error. The Trustees think that would actually accord with the views reached by the Trustees.
- The Trustees have no knowledge of when Mr D's medical issues arose, and the background to them, to be able to comment further on this and the causes of them. The Trustees are sympathetic to Mr D's situation but feel they have taken all reasonable steps when dealing with this matter to try and minimise any

distress, and take an equitable approach bearing in mind their overriding duties to the Scheme as a whole.

23. As Mr D did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Mr D's further comments do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

24. Mr D did not accept the Adjudicator's Opinion because (i) he feels that the Adjudicator's assumption that he should have been aware of the overpayment was not in line with the statement made by the Trustees, and (ii) the compensation offered by the Trustees is insufficient for the distress and inconvenience he has suffered.
25. I have carefully considered the information that Mr D and the Trustees have provided in relation to this complaint. Having done so, I find that the offer of £1,000 that the Trustees have offered Mr D is reasonable in the circumstances.
26. I find that Mr D ought to have realised that the Quotation included benefits that he was no longer entitled to, as the Quotation was separated into two parts entitled 'service 1 benefits and service 2 benefits'. Mr D was aware that his service 1 benefits, referred to as Period 1 benefits above, had been transferred to Aviva as he had used some of the benefits in the Aviva fund to refurbish his home. Mr D ought to have made the Trustees aware of the error in the Quotation and not based his decision to retire early, on the figures in the Quotation.
27. Mr D has had the benefit of money to which he was not entitled. The Trustees have a legal obligation to recover the overpayments that Mr D received, but after considering Mr D's financial circumstances, the Trustees decided to write off the overpayment, which amounted to more than £12,000.
28. I find that the Trustees writing off the overpayment and offering Mr D £1,000 for the distress and inconvenience this situation has caused him, compensates Mr D for the distress and inconvenience he has experienced. I do not direct the Trustees to make any additional award to Mr D.
29. I do not uphold Mr D's complaint.

Anthony Arter

Pensions Ombudsman
11 January 2021