

Ombudsman's Determination

Applicant	Mr S
Scheme	Vale Europe Pension Plan (the Plan)
Respondent	Barnett Waddingham (the Administrator)

Outcome

1. Mr S' complaint against the Administrator 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) the Administrator shall pay £500 to Mr S for the non-financial injustice he has experienced.

Complaint summary

2. Mr S' complaint is that he received an incorrect retirement illustration from the Administrator, which overstated his benefits. He says this led him to retire in May 2018, instead of at age 60 in October 2020, to his financial detriment.

Background information, including submissions from the parties

3. Extracts from The Vale Europe Pension Plan Supplemental Agreement of Trust and Rules 18 January 2007 (**the Plan Rules**):-

'Normal Minimum Pension Age

Before 6 April 2010 means age 50. From 6 April 2010 age 55 or, in respect of a Participant, such earlier age as satisfies the conditions in paragraphs 21 to 23 of Schedule 36 to the Finance Act 2004.'

'Preservation Date

Normal pension age as defined in section 180 of the Pension Schemes Act 1993 (for the avoidance of doubt, the preservation date of a member who joined the Scheme before 1 July 1994 is currently his 60th birthday whereas for a member who joined the Scheme on or after that date it is currently his 65th birthday).'

'7.2.1 Early Pension

If a member leaves service before normal pension date and any of the following conditions are met, he can, before a deferred pension has been granted, choose an immediate pension instead of the benefit in Rule 9 (Benefits on leaving pensionable service). The conditions referred to above are:

...

(b) If he joined the Scheme on or after 1 July 1994, he has attained age 60 and the Principal Employer has consented to his retirement before Normal Pension date.'

'7.2.3 Pre-retirement Supplement

If a member who has completed at least 10 years' pensionable service...becomes entitled to an early pension under rule 7.2.1 for reasons other than Total Incapacity, an immediate pension (the Pre-retirement Supplement) will be paid in addition to his early pension from the date of leaving pensionable service until he attains State Pension Age.'

'9.3 Alternative date for payment

9.3.1 Subject to the conditions in Rule 9.3.2, a member who is entitled to a deferred pension in rule 9.1 (Entitlement to Deferred Pension) may choose to have it paid from an alternative date. The member must make a choice before the pension is due to start. The alternative date may be:

- before preservation date but not before his normal minimum pension age, unless he is suffering from incapacity, or
- after preservation date. However, the alternative date will not be after his 75th birthday...'

'9.3.2 A member can choose by written notice to the Trustee to have his deferred pension paid from an alternative date only if:

- the Trustee agrees, and
- the alternative date is on or after the earlier of preservation date and the date he left service.'

4. On 1 October 2004, Mr S began pensionable service.
5. On 23 March 2018, Mr S called the Administrator; its note of the conversation is as follows:-

“He is being made redundant on medical grounds – he has been offered another role at Vale, but it is unsuitable. His leaving date is 23 April 2018 and he would like an early retirement quote (ERQ). He also requested a quotation at age 60.”

6. On 13 April 2018, the Administrator issued an illustration to Mr S for retirement on 23 April 2018 (**the April 2018 illustration**). The heading on this illustration stated:-

“This retirement is subject to the consent of the Trustees...Figures shown are for illustration purposes only and are not guaranteed.”
7. The illustration quoted a pension of £5,117 a year, which included a pre-retirement supplement of £1,147.50 annually. The Administrator has confirmed that this was incorrect.
8. At the same time the Administrator issued an illustration to Mr S for retirement at age 60 on 9 October 2020 (**the October 2020 illustration V1**).
9. This illustration quoted a pension of £5,760 a year, including a pre-retirement supplement. The Administrator has confirmed that this was also incorrect.
10. On 18 May 2018, Mr S resigned, his last day of service was 31 May 2018.
11. On 24 May 2018, Mr S called the Administrator to confirm that he was leaving employment on 31 May 2018 and asked to take early retirement. The Administrator informed him that it would contact Mr S’ employer to request his leaver notification, which was required before his retirement claim could be processed. The Administrator also mentioned that the early retirement application would be subject to trustee consent and it would send him an illustration with the necessary application forms.
12. On 7 June 2018, the Administrator emailed Mr S’ employer to chase his leaver notification. The employer confirmed that it was sent to Mr S for signing but he had not returned it.
13. On 28 June 2018, the Administrator received Mr S’ signed leaver notification. The available options under the heading “Type of withdrawal” were: leaving service; normal retirement; early retirement; disability retirement; and other. Mr S chose the option of ‘leaving service’ and stated the reason as ‘resigned’.
14. In July 2018, the Administrator issued an illustration for retirement on 1 August 2018 (**the August 2018 illustration**) to Mr S. This illustration quoted a pension of £4,066.88 annually that did not include the pre-retirement supplement.
15. Mr S was unhappy with the reduction in the retirement benefits quoted in the August 2018 illustration. On 26 July 2018, he raised a grievance through the Plan’s internal dispute resolution procedure (**IDRP**). His complaint in summary was that:-
 - He received the April 2018 illustration and left service based on the information that was provide.

- He would not have left service until age 60 if he had known the benefits would be as stated in the August 2018 illustration.
16. In October 2018, the Administrator issued a new illustration to Mr S for payment of his benefits at age 60 (**the October 2020 illustration V2**). The illustration quoted an annual pension of £4,738 and no pre-retirement supplement was included.
17. The Trustee responded to Mr S on 9 October 2018 and said, in summary that:-
- The Trustee has a duty to administer the Plan in accordance with the Plan Rules, which set out the benefits payable to members.
 - The Plan Rules state that a member who joined the Plan on or after 1 July 1994 may retire early from active status from age 60. However, a deferred member may retire before age 60 (provided they have reached age 55) if the Trustee permits this.
 - There are circumstances where the Plan Rules allow an additional pre-retirement supplement to be paid in addition to a member's annual pension. There are a number of requirements that must be satisfied before a member is eligible for a pre-retirement supplement. For any member who joined the Plan on or after 1 July 1994, the pre-retirement supplement is not payable if the member retires before age 60.
 - The April 2018 illustration incorrectly included a pre-retirement supplement. However, the August 2018 illustration reflects the correct calculation of Mr S' benefits in accordance with the Plan Rules.
 - When illustrations are issued, they are not intended to imply that the Trustee has made a legal commitment. The illustrations are meant to be an estimate of future entitlement and carry the wording 'Figures shown are for illustration purposes only and are not guaranteed.'
 - Mr S has not provided any evidence to support his claim that he left service, based on the April 2018 illustration.
 - For these reasons Mr S complaint was not upheld.
18. Mr E complained to this Office, saying:-
- "...I was considering early retirement with my HR manager when we asked [the Administrator] for my pension figures if I stayed on until I was 60 or finished in April 2018. As you can see in the two illustrations there was not a massive difference, and this is the reason I made a life changing decision to finish from a £50,000 a year employment. During this time, I was in verbal contact with [the Administrator] and at my finishing point I needed to fill some forms in to claim my pension. This is the point where I was confronted by a new set of figures, which were much lower. If I had been aware of that I would not have finished early..."

19. In response to Mr S' complaint, the Administrator referred to the Trustee's letter of 9 October 2018 and added that:-

- Mr S called the Administrator on 23 April 2018 to say that he would be leaving employment shortly and that he required an illustration.
- Therefore, Mr S could not have used the April 2018 illustration to make the decision to leave service; he had not received it at that time.

20. Mr S says:-

- He first contacted the Administrator on 23 March 2018 to enquire about the amount of pension he would receive if he left service in April 2018, compared to his benefits at age 60 in 2020. At that point he did not say that he was leaving in a few weeks, as he was still looking at his options.
- He received the April 2018 illustration around the middle of that month.
- He did not decide to leave service until May 2018.
- He does not know why the Administrator noted that he was leaving on medical grounds following his telephone call on 23 April 2018. He says this was incorrect.
- At the time he left service, he had no other pensions that were due to him. But, he has since started a new job.

Adjudicator's Opinion

21. Mr S' complaint was considered by one of our Adjudicators who concluded that the complaint against the Administrator should be partly upheld. The Adjudicator's findings are summarised below:-

- The April 2018 illustration overstated Mr S' benefits by including a pre-retirement supplement of £1,147.50 a year to which he is not entitled. However, the Trustee must act in accordance with the Plan Rules, meaning that generally, Mr S may only claim his rightful entitlement and so the Trustee, is not bound to pay the overstated amount.
- In April 2018, Mr S was aged 57 and still an active member. Except in special circumstances, there is no provision under the Plan Rules for active members to retire before the normal pension age of 65. Consequently, Mr S would not have qualified for the benefits quoted in the April 2018 illustration. The Plan Rules say that, subject to Trustee consent, deferred members may retire from age 55.
- The header on the April 2018 illustration said, "Figures shown are for illustration purposes only and are not guaranteed". Mr S ought to have been

aware of the possibility that the figures quoted were subject to change and could not be relied on.

- Mr S and the Administrator have provided conflicting reasons as to why Mr S left service, so the reason remains unclear. During a telephone conversation with this Office, Mr S said that he decided to leave service early under circumstances that he would like to remain confidential. The notes taken by the Administrator on 23 March 2018, state that Mr S was being made redundant on medical grounds. The leaver notification form signed by Mr S states that he left service due to resignation, despite providing the options of early and normal retirement. The Adjudicator was not satisfied that there was sufficient evidence to demonstrate that Mr S left his employment in sole reliance on the incorrect illustrations provided to him.
- There was insufficient evidence that Mr S would have made a different decision, based solely on the removal of the pre-retirement supplement of £1,147.50. Payment of his benefits was also subject to consent by the Trustee and, at the time he left his employment, there was no guarantee that the Trustee would consent to his claim for early retirement benefits.
- Mr S says that he only decided to leave service in May 2018, by which time he had received the April 2018 illustration. The Trustee argued that Mr S previously called the Administrator on 23 March 2018, to say that he would be leaving service shortly and to request illustrations of his pension benefit. Notes written at the time by the Administrator state that Mr S had a leaving date of 23 April 2018, and that he requested illustrations as at that date, and at age 60. In his email to this Office, dated 5 October 2018, Mr E also said he had been considering retirement in April 2018 and at age 60. This led the Adjudicator to reach the view that, although Mr S' decision to leave service was not solely based on the incorrect information, he would have taken it into account in his retirement planning.
- Under those circumstances, Mr S would have been disappointed when he realised that he would receive a lower amount than he was expecting. The illustration was not guaranteed, but a difference of over 20% would not have been considered to be within reasonable limits. Accordingly, Mr S would have experienced a significant loss of expectation.

22. Mr S did not accept the Adjudicator's Opinion but did not provide any further comments. The complaint was passed to me to consider.

Ombudsman's decision

23. I agree with the Adjudicator for the reasons already stated in the Opinion.

24. The Administrator may not pay greater benefits to Mr S than he is permitted to receive under the Plan Rules. Mr S may be entitled to redress from the Administrator,

if evidence showed his reliance on the incorrect April 2018 illustration, in making the decision to leave service.

25. Having reviewed Mr S' complaint, I find no evidence that he relied solely on the April 2018 illustration in his decision to resign from his employment.
26. For the reasons that the Adjudicator has stated in paragraph 21 above, I do find that Mr S would have been disappointed to discover that his benefits were less than he expected to receive, it is a significant difference. Accordingly, Mr S would have experienced a significant loss of expectation, and suffered distress and inconvenience for which he should receive an award.
27. I partly uphold Mr S' complaint and make the direction below.

Directions

28. Within 21 days of the date of this Determination, the Administrator shall pay £500 to Mr S for the non-financial injustice he has suffered which has caused him significant distress and inconvenience.

Anthony Arter

Pensions Ombudsman
19 December 2019