

Ombudsman's Determination

Applicant	Mr E
Scheme	Uniq Pension Scheme (the Scheme)
Respondent	Trustee of the Uniq Pension Scheme (the Trustee)

Outcome

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

Complaint Summary

2. Mr E complains that:-
 - the Trustee miscalculated his pension.
 - Although it has paid him the underpaid amount, it has refused to pay him late payment interest.
 - There are also tax implications as a result of the late payment.

Background information, including submissions from the parties

3. In May 2005, Mr E requested payment of his Scheme entitlement.
4. In March 2009, the Scheme Actuary estimated the Scheme's deficit to be £430 million.
5. In March 2011, the Scheme entered a Pension Protection Fund (**PPF**) assessment period and commenced winding up. Following negotiations with the Scheme's sponsoring employer, the Trustee determined that it could fund pensions at or above the level of PPF compensation through an annuity contract with Rothesay Life. However, its assets were not sufficient to fund Scheme benefits in full. Consequently, the Trustee was obliged to share the Scheme's remaining assets between the members in accordance with legislation. In August 2012, the Scheme came out of PPF assessment.
6. In late 2016, the Trustee conducted a Scheme data reconciliation exercise in preparation for the wind-up. The Trustee learnt that it had miscalculated Mr E's Scheme entitlement in 2005 and had significantly underpaid him for the previous 12 years.

7. In February 2017, the Trustee issued Mr T with a final benefit statement of his Scheme entitlement as at the PPF assessment date of 24 March 2011. This included Mr E's share of the Scheme's excess assets.
8. In May 2017, the Trustee paid Mr E a lump sum of pension arrears of £35,845.25 covering the period between May 2005 and April 2017. Mr E's pension was increased to the correct level with effect from 1 June 2017 to £4,006.80 a year.
9. On 8 December 2017, the Trustee sent Mr E a breakdown of the arrears lump sum into the amounts that should have been paid in each tax year between 2005/6 and 2017/18.
10. In February 2018, Mr E emailed the Trustee arguing that it should pay interest on the arrears lump sum in view of the significant underpayment of his pension over 12 years.
11. On 1 March 2018, the Trustee responded stating that Mr E's final Scheme entitlement could not be finalised until 2017 due to the data reconciliation exercise and finalisation of its assets. The Trustee also said that all of the Scheme's remaining assets were used to fund pensions for members and paying interest, if it were due, would deplete the money available to fund pensions for members.
12. On 4 December 2018, after further exchanges of correspondence, Mr E raised a complaint under the Scheme's internal dispute resolution procedure (**IDRP**) and said that:-
 - The Trustee should pay him interest on the arrears lump sum.
 - He should also be further compensated for the additional Canadian income tax that he would be liable for due to receiving several years' worth of a pension in a single tax year.
13. On 4 March 2019, the Trustee provided its IDRP response and did not uphold Mr T's complaint stating that:-
 - Mr E's lump sum could not have been paid any sooner due to only finalising the uplift on Mr E's final pension in 2017.
 - The payment of interest would reduce the assets available to fund the pensions of other members.
 - As Mr E's pension was underpaid over several tax years, he could likely mitigate part of his tax liability on the lump sum by discussing the matter with HMRC. As there was a tax treaty between the UK and Canada, Mr E could also explore mitigating any tax he was liable for with Canadian tax authorities in the same way.
14. In his complaint to this Office, Mr E said that he had sustained a financial loss of £6,312.12 in Canadian income tax he was required to pay on the arrears lump sum. Mr E said that he could mitigate part of his loss through applying retrospective tax deductions to his Canadian tax returns. However, under Canadian tax rules, he could

not retrospectively apply deductions to the pension amounts he should have received between 2005 and 2010.

Adjudicator's Opinion

15. Mr E'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 Adjudicator appreciated the reasons why Mr E disagreed with the Trustee's decision not to pay interest on his pension arrears or to compensate him for any additional tax liability. Mr E considered this approach to be inequitable.
 - Any further payments that the Trustee made to Mr E out of the Scheme's remaining assets would adversely affect the pension entitlements of other members. The Scheme's remaining assets were allocated to fund pension uplifts above PPF compensation levels for all members.
 - The Adjudicator had considerable sympathy with Mr E's position. However, the Ombudsman's normal position is not to make directions in cases where those directions would be to the detriment of other Scheme members.
 - In view of the detriment an award could cause to other members' pensions, an Ombudsman would likely not direct a remedy in the circumstances.
16. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E 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 E for completeness.

Ombudsman's decision

17. Mr E maintains that he has sustained a financial loss resulting from the tax liability that has arisen from the payment of the arrears of pension. He also says that the Trustee should pay interest on the late payment of his pension.
18. Mr E has not provided evidence that a particular tax liability has been incurred as consequence of the late payment, so I am unable to find that he has incurred an actual financial loss for which he is still due compensation.
19. Mr E argues that the Trustee's ability to compensate him if his complaint were to be upheld should not be relevant in the consideration of its merits.
20. I appreciate that Mr E considers his claim to be small compared to the Scheme's remaining assets I have sympathy with the position in which Mr E finds himself and I will always consider awarding interest for late payment of benefit. However, I cannot disregard that the Scheme's deficit is significant enough that the Trustee cannot fund members' full entitlements from its remaining assets. The circumstances in which Mr

E's underpayment falls to be redressed presented the Trustee with difficult choices about how to distribute the limited assets which were available. I am also bound to consider those circumstances when deciding whether to exercise my discretionary power to award interest.

21. The Trustee has informed the Ombudsman that from a population of broadly 20,000 members, several thousand were found to have been underpaid once all benefits had been corrected where required. Of the underpaid population, over 360 members were underpaid for a similar period to Mr E, with the rest underpaid for longer or shorter periods. Members whose pension was underpaid received compensation for that underpayment, but as a consequence of the funding position of the Scheme and in line with the Trustee's decision, no interest was paid to any of the underpaid members. Over the course of the scheme wind-up the Trustee discussed and agreed with its professional advisors how to carry out and deal with the correction of benefits, under and overpayments of benefits, the allocation of assets amongst members and true-up for the buy-out of members' benefits, as well as many other issues. Having taken advice from its professional advisors, the Trustee decided it would not be appropriate to award interest in respect of the compensation for underpayments. The Trustee's legal advisors confirmed in their opinion that the policy decision not to pay interest was a reasonable decision to take.
22. In these circumstances, I do not agree that the Trustee's decision not to award Mr E interest on his arrears lump sum or compensate him for any tax liability arising from that lump sum was unreasonable. For the same reasons I do not consider it would be appropriate for me to award interest on the late payment.
23. I do not uphold Mr E's complaint.

Karen Johnston

Deputy Pensions Ombudsman
4 June 2020