

Ombudsman's Determination

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| Applicant | Mr X |
| Scheme | Allied Domecq Pensions Fund (the Fund) |
| Respondents | Allied Domecq First Pension Trust Limited (the Trustee) Aon Hewitt (the Administrator) |

Outcome

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

Complaint summary

2. Mr X's complaint is that he was misinformed about the level of Surviving Partner's pension that would be payable from the Fund in the event that he pre-deceases his wife.

Background information, including submissions from the parties

3. On 23 December 2008, the previous Fund administrator wrote to Mr X stating that it was increasing the element of his pension which represents the Guaranteed Minimum Pension (**GMP**) accrued as a result of his contracted-out employment. It confirmed that from 22 January 2009, his total gross pension would increase from £17,527.20 to £18,465.48 a year.
4. On 22 January 2009, Mr X reached his GMP age (65).
5. On 3 October 2017, the Administrator wrote to Mr X confirming that, under the Fund Rules, in the event of his death a lump sum death grant of £1,590 would be payable "at the discretion" of the Trustee. It further confirmed that a Surviving Partner's pension equal to 57.5% of Mr X's pension, or £15,171.72 a year, would be payable, before any reduction for receiving a tax-free cash lump sum, and increased to date of death.
6. The Administrator further confirmed that the value of the full Surviving Partner's pension was £15,171.72 a year. This was calculated from Mr X's full pension at retirement of £14,273.13 a year, before reduction to £12,193.24 a year to account for the tax-free cash sum of £37,235.82 he had received. Had Mr X not taken tax-free

cash, his full pension would have increased to £26,385.60 a year and, as a result, the Surviving Partner's pension would have been £15,171.72, that is, 57.5% of the value of the unreduced pension.

7. On 1 November 2017, the Administrator wrote to Mr X and re-confirmed the Surviving Partner's pension value and how it was calculated.
8. On 18 November 2017, Mr X wrote to the Administrator saying he was concerned that the Surviving Partner's pension, of £15,171 a year, quoted on 3 October 2017, was "considerably less" than his own estimated calculation of £15,947 a year. He said that having calculated the Surviving Partner's pension according to the Fund Rules, he believed the Administrator had understated this by approximately £1,200 a year.
9. On 23 November 2017, the Administrator responded and said it had referred the matter to the Trustee for its further comments.
10. On 7 December 2017, the Administrator responded to Mr X, confirming that the last estimate it gave him, in October 2017, consisted of three elements:-
 - A pre-1988 GMP;
 - A post-1988 GMP; and
 - An excess over GMP.
11. The Administrator confirmed that the figure of £15,171.72 was correct, and that the Surviving Partner's pension was calculated as 57.5% of his pension at retirement, before reduction for tax-free cash, increased to date of death.
12. The Administrator also said that some figures it had previously provided to him, in July 2009, took into account a one-off adjustment to his pension of £938.28 a year when he reached GMP age in January 2009. He was notified of this in the previous Administrator's letter of December 2008. It further said that the adjustments were made:

"... to the pension of members who had retired early (before age 65) on reaching GMP age. However, these adjustments were not payable under the Fund Rules or prevailing legislation and should not have been made. These adjustments ceased in January 2011, following discovery of the issue by the Trustee, and have not been paid to pensioner members who reached GMP age after January 2011."
13. The Administrator further explained that members, like Mr X, who reached GMP age before 2011, have received a higher pension than they should have since age 65, known as a "step-up" (**the step-up**). However, the Trustee had agreed that it would not seek recovery of past overpayments; and, that members in receipt of this additional payment would continue to receive their pension at the current level, with annual increases applied as appropriate. However, the Trustees said this additional payment would not be reflected in the calculation of the Surviving Partner's pension.

14. On 20 December 2017, Mr X wrote to the Administrator stating that he had no record of the previous administrator's letter of December 2008 and did not understand why the one-off adjustment payment of £938.28 was not communicated to members who had taken early retirement.
15. On 23 January 2018, the Administrator responded to Mr X. It enclosed a copy of the former administrator's letter of 23 December 2008, showing the one-off step up of £938.28. The Administrator repeated its explanation of 7 December 2017, confirming that some members received the step-up in error. It noted that Mr X had benefited from the overpayment, which was over and above his entitlement to benefits under the Fund. However, the Trustee could not make overpayments in respect of future pensions, including Surviving Partner's pensions. It further said that the Trustees had decided not to recover past overpayments, nor reduce pensions in payment to the correct level.
16. Unhappy with the Administrator's response, Mr X asked on what basis the Trustee had decided to pay Surviving Partner's pensions, excluding the step-up.
17. On 5 February 2018, the Administrator responded to Mr X stating that the Fund Rules did not allow payment of the step-up, as members were only entitled to the benefits set out in the Fund Rules. Mr X had benefited from this overpayment to his pension and would continue to do so as long as his pension remained in payment.
18. On 1 May 2018, Mr X complained under the Fund's internal dispute resolution procedure (**IDRP**). He said there had been maladministration and negligence in relation to payment of the step-up.
19. On 23 May 2018, the Administrator responded under stage one of the IDRP, enclosing a copy of the Deed of Ratification and Augmentation dated 30 March 2017 (**the Deed**).
20. The Deed documented the key decisions taken by the principal employer and Trustee in relation to the step-up, and the background to those decisions. The IDRP decision-maker said "the deed is legally binding. In particular, the deed details that:
 - certain pensioners had received the GMP step-up;
 - certain dependant pensioners had received pensions based on the GMP step-up;
 - following investigation, the GMP step-up is not required under the Fund rules;
 - certain pensions had, therefore, been overpaid;
 - overpayments already made should not be recovered;
 - an augmentation should be made to allow pensions in payment to continue to be paid at the rate inclusive of GMP step-up; and
 - this augmentation should not be included in the calculation of any Partner's Pensions."

21. The Administrator noted that the Fund Rules did not actually provide for payment of the step-up, being silent on the matter. Therefore, the Trustee could not direct Mr X to a specific part of the Fund Rules in order to support this assertion. It said that there had been no maladministration or negligence by the Trustee in this regard. Nor was there any need for further investigation, as members had benefited from the Trustee's decision not to seek recovery of overpayments originating in the step-up.
22. On 27 July 2018, Mr X appealed.
23. On 11 October 2018, the Trustee responded under stage two of the IDR. It said that there was no legal basis for paying the step-up, whether under the Fund Rules or overriding legislation. As it stood, Mr X had benefited from continued payment of the step-up in respect of his own pension. The decision-maker was of the opinion that it would have caused unnecessary confusion to write to members who had received overpayments; instead, it decided simply to rectify the position for pensions coming into payment. However, in recognition of the inconvenience Mr X had experienced as a result of this matter, it offered him £500.

Adjudicator's Opinion

24. Mr X's complaint was considered by one of our Adjudicators, who concluded that no further action was required by Trustee or the Administrator. The Adjudicator's findings are summarised briefly below: -
 - Fund members did not have an entitlement to the step-up under the Fund Rules or legislation. However, whilst members in receipt of the step-up would continue to receive a pension including the step-up, it would not be reflected in the calculation of any Surviving's Partner's pension.
 - The Trustee's offer not to recover the overpayment from Mr X meant that he had benefited from this augmentation to his pension and would continue to do so. If the Ombudsman were to put Mr X back in the position he would have been had the error not occurred, he would be required to repay any overpayment and his pension would be corrected to remove the step-up. Accordingly, the remedy put in place by the Trustee was more beneficial to Mr X than the remedy the Ombudsman would likely recommend in the circumstances. Therefore, the Adjudicator did not think any further award was permitted.
 - The Surviving Partner's pension was a benefit which would only be paid to Mr X's wife in the event (a) that he pre-deceased her and (b) they were still married at that time. Therefore, there was only a potential loss as the benefit might never be paid. In any case, the Trustee's decision to exclude the step-up from calculation of the Surviving Partner's pension did not amount to maladministration. Therefore, the Adjudicator did not recommend redress in respect of any difference between the Trustee's calculation of the potential Surviving Partner's pension, and Mr X's own calculation.

- The Trustee had offered Mr X £500, as a goodwill gesture, for any inconvenience he may have suffered as a result of raising his complaint through the IDRP. In the Adjudicator's view, the Ombudsman would not recommend a higher award.

25. Mr X did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr X 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 X for completeness.

Ombudsman's decision

26. Mr X has said there was no indication, when he retired, that any step-up payment element would be deducted in calculating the Surviving Partner. Nor was it mentioned in the administrator's letter of 23 December 2008. However, the Trustee has confirmed that it did not inform members of the step-up error due to the confusion it might have caused; instead, it decided just to rectify the position for pensions coming into payment.
27. Members are only entitled to the benefits set out in the Fund Rules therefore I find that the Trustee was correct in not making overpayments in respect of the Surviving Partner's pension. Further, the Deed, sent to Mr X on 23 May 2018 is a legally binding document and confirms that any augmentation will not be included in the calculation of any Surviving Partner's pensions.
28. The Trustee's decision not to seek recovery of the overpayment, in circumstances where it would have been entitled to do so, means Mr X is in a better position overall. He is not required to repay the past overpayment and moreover he will benefit from continued payment of the step-up. Accordingly, I agree with the Adjudicator in that the Trustee's remedy is greater than the award I would have recommended.
29. I will only make an award for non-financial injustice where there has been maladministration which has caused significant distress and inconvenience. I do not find that Trustee's decision to exclude the step-up from calculation of the Surviving Partner's Pension amounts to maladministration. Accordingly, I make no direction to remedy any non-financial injustice Mr X has suffered. If Mr X wishes to accept the Trustee's offer of £500, he should contact it directly.
30. Therefore, I do not uphold Mr X's complaint.

Karen Johnston

Deputy Pensions Ombudsman
27 November 2019