

Ombudsman's Determination

Applicant	Mr L
Scheme	Zurich Financial Services UK Pension Scheme "ZPen" (the Scheme)
Respondent	Zurich Financial Services UK Pension Trustee Limited (the Trustee)

Outcome

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

Complaint summary

2. Mr L is unhappy that the Trustee will not pay his pension benefits from his normal retirement date (**NRD**) in 2016. Further, he says it was not clear at the time that the option to be paid his benefits from NRD would not be available at a later date.

Background information, including submissions from the parties

3. Mr L was employed by the financial services firm, Zurich.
4. In September 1975, he joined the company's pension scheme, the Eagle Star Staff Pension Scheme, now part of ZPen. He left the company in October 2004 and became a deferred member of the Scheme.
5. On 14 July 2016, the Trustee sent a letter to Mr L which said:

"You reach normal retirement date (31 October 2016) soon and I enclose information about your retirement benefits and the information we need to put your benefits into payment.

Your retirement benefits payable from 1 November 2016

Annual lifetime pension	£20,986.32
-------------------------	------------

Annual temporary pension payable to state pension age	£435.24
---	---------

Maximum cash sum	£142,810.00
------------------	-------------

Taking a cash sum

If you want to take a cash sum, you have to select this at retirement, you cannot change your mind later.

You choose how much cash you want up to the maximum available. If you want to take a smaller cash sum, you can. If you choose to take no cash, your annual lifetime pension will be £28,471.08 a year.

We need some information before we put your benefits into payment...

This information must be with us no later than 31 October 2016, however, for payments to start from the next available pay day following retirement, we will need all the information by 30 September 2016."

6. In early August 2017, Mr L visited the Scheme's office in Cheltenham; he took identity documents along with him and requested a Cash Equivalent Transfer Value (**CETV**) valuation and a quotation for late retirement from August 2017. Mr L also requested that his benefits be backdated to 31 October 2016.
7. On 3 August 2017, the Trustee sent Mr L a letter saying:

"Thank you for bringing your identity documents.

I can confirm that we are able to honour your retirement claim at 31 October 2016 or you may prefer to accept the late retirement offer for a claim at 31 August 2017.

If you proceed with the backdated claim at 31 October 2016, your pension (after cash) will be due a proportionate pension increase on 1 July 2017 of 8/12ths of the declared rate of 3.5%. Your temporary pension increases on [sic] anniversary of retirement in line with the CPI increase due for the state pension.

...

Retirement options

Your retirement benefits payable from 1 November 2016

Annual lifetime pension	£20,986.32
Annual temporary pension payable to state pension age	£435.24
Maximum cash sum	£142,810.00

...

Your retirement benefits payable from 1 September 2017

Annual lifetime pension	£22,248.60
-------------------------	------------

Annual temporary pension payable to state pension age	£435.24
Maximum cash sum	£151,225.00

...

This information must be with [sic] by 31 August 2017 at the latest.”

8. On 4 January 2018, Mr L called the Zurich Pensions Team (**the Zurich team**) and asked for a CETV valuation for divorce purposes to be sent to him, and a late retirement quotation. He also asked about backdating his pension to October 2016. He was subsequently told that backdating was no longer an option.
9. On 24 January 2018, Mr L emailed the Zurich team requesting that its governance team reconsider their decision in regard to the backdating of his pension.
10. The Zurich team responded saying it was unable to offer backdating and that Mr L’s benefits must be paid at a date to be agreed in the future.
11. On 1 February 2018, Mr L ceased being in employment.
12. On 22 February 2018, Mr L asked if the matter could be passed to the Scheme Secretary to consider.
13. The Trustee responded under stage one of the Scheme’s Internal Dispute Resolution Procedure (**IDRP**) on 10 April 2018. It said:-
 - Section 165(3) of the Finance Act 2004 set out the difference between a “prospective” and “actual” right to take pension benefits. A member only becomes entitled to take benefits when they have an actual right to receive these, which arises when they are not required to fulfil any further conditions or take any further action.
 - In order for benefits to have been paid from 31 October 2016, the ZPen Customer Services Team required receipt of all the paperwork needed to start Mr L’s pension, before this date.
 - In terms of Mr L’s pension commencement lump sum (**PCLS**), paragraph 11 of the Finance Act 2007 amending paragraph 1(1) of schedule 29 of the Finance Act 2004, says that the lump sum must be paid within an 18-month period, starting six months before and ending 12 months after, when the member becomes entitled to it.
 - Regrettably, the ZPen Customer Services Team made an error when they offered Mr L the option to backdate his pension to 31 October 2016.
 - The legislation did not allow for the backdating of Mr L’s pension. Therefore, the complaint could not be upheld.

14. On 15 June 2018, Mr L replied with the following points:-

- He was never informed of the difference between a prospective and actual right or restrictions on his lump sum. If he had been informed, he would have acted differently to protect both his interests and his payments.
- He could not see that the Scheme had been disadvantaged by his actions insofar as the matter will cost it what it costs it. Any payment would be calculated on the money invested and the period this was for.

15. On 8 August 2018, the Trustee responded under stage two of the IDRP. It said:-

- A detailed review of the rules which governed Mr L's benefits had identified two different ways in which his pension should be calculated depending on whether he had ceased gainful employment.
- If a member was still in gainful employment, an actuarial uplift would apply for the period between NRD and the date benefits came into payment. If a member had ceased gainful employment, an actuarial uplift would apply between NRD to the date gainful employment ceased. The member would then be entitled to a lump sum arrears payment of the pension that should have come into payment at the date gainful employment ended.
- The backdating of Mr L's pension was unauthorised for Finance Act 2004 purposes. Mr L's pension could however be calculated at the date he ceased gainful employment, with a lump sum arrears of payment.
- It wished to offer Mr L £500 for its error in informing him that his pension could be backdated to his NRD.

16. Mr L referred his complaint to us. The Trustee's response in summary is:-

- Mr L has, to date, not provided all the documentation required in order to obtain an actual right to his pension. His benefits can only be paid and tested against the lifetime allowance at the date he submits his documentation.
- Mr L had confirmed that he ceased gainful employment on 1 February 2018. The Scheme's lawyer had advised that from the date Mr L's gainful employment ceased, the late retirement actuarial uplift would cease to apply and instead Mr L would be entitled to arrears of pension.
- Mr L had provided an Excel document to illustrate his loss with a pension starting at a later date compared with NRD. It had however been explained that if a pension starts later but at a higher amount, there will be a point when the cumulative income will surpass what it would have been had the pension started earlier with a lower amount.

Adjudicator's Opinion

17. Mr L'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:-

- Mr L wished his pension benefits to be paid from his NRD in 2016 as opposed to a current, later date. However, the legislation did not permit this so this part of his complaint could not be upheld.
- Mr L was also unhappy about the information given to him in 2016. He said that the letter issued to him with regard to putting his benefits into payment at NRD did not highlight the consequences of not taking action at this time.
- Although the specific implications of this were not set out, this did not amount to maladministration. The wording in the letter made it sufficiently clear that should Mr L want his benefits paid from 1 November 2016, he "must" provide the information outlined in the letter by 31 October 2016. It was up to Mr L to enquire regarding the consequences of not doing so. Further, there was no suggestion, in that correspondence, that backdating would be an option.
- As the 2016 letter did not amount to maladministration, it would not be appropriate to conclude that the purported loss Mr L had put forward flowed from the information provided.
- Also, while Mr L considered that he had suffered a loss due to his pension not being paid from 2016, this was not definable at this stage. It was possible that over time, there would be no loss.
- The error made in August 2017, when Mr L was told that his pension could be backdated, was not corrected until January 2018. This gave rise to a false expectation, but no actual loss under the Rules of the Scheme.
- The £500 offered by the Trustee to remedy this was in line with this Office's scale for non-financial injustice. A further award was not warranted.

18. The Trustee accepted the Adjudicator's Opinion. Mr L did not accept the Adjudicator's Opinion and made the following comments:-

- He was advised on 3 August 2017 that his pension could be backdated and, at that time, he had no reason to believe that was not the case. He also had no reason to believe that he would be prejudiced financially by not invoking it, be it backdated or otherwise, at the time.
- If he had been advised that his pension could not be backdated, he would have taken it immediately to avoid any prejudice to him financially. This was costing him £20,986.32 (or £28,471.08) per annum which was £59,461.24 (or £80,668.06) up to 1 August 2019 calculated at £1,748.86 (or £2,372.59) per month.

- He had been prejudiced financially by the mis-advice he was given, which he was entitled to rely upon.
 - It had been accepted that the Trustee made an error in its letter dated 3 August 2017, wherein it offered to backdate his pension. The fact that the law did not allow this should mean that it should find another (legal) way to compensate his financial loss.
19. The complaint has now been passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr L for completeness.

Ombudsman's decision

20. Mr L is aggrieved that he cannot backdate his benefits to his NRD and considers that he has been financially disadvantaged by this. However, the option to have his benefits paid from this date is no longer available.
21. In view of this, Mr L now feels that he was misadvised by the Trustee in 2016 when he was approaching his NRD. He says its letter did not make clear that he could only have his benefits put into payment on such a basis by applying for his benefits by the deadline stipulated. However, I cannot see that it misrepresented the facts. The language in this letter set out the information required and the deadline when the information must be provided. It was Mr L's assumption that this specific option would remain open to him after the given deadline. I do not find that the Trustee made an administrative error in the information provided at that point and accordingly I cannot make a finding for financial loss.
22. In August 2017, however, Mr L was misinformed by the Trustee; he was told that he could backdate his benefits. This stance was corrected by the Trustee a few months later. I agree that this misinformation would have given rise to an expectation which could not be realised, and that Mr L should be paid a non-financial injustice award in recognition of this. The Trustee has offered £500, which I consider appropriate in the circumstances; I would not have directed a higher award had such an offer not been made.
23. Mr L believes that having his benefits paid from a date after NRD is causing him financial loss and will continue to do so in the future; he has provided figures to this effect. At this stage, financial loss is not ascertainable and in any event, I do not consider that the Trustee acted inappropriately in this matter aside for the error identified in paragraph 22 above.

PO-26866

24. I do not uphold Mr L's complaint.

Anthony Arter

Pensions Ombudsman
4 September 2019