

Ombudsman's Determination

Applicant	Mr E
Schemes	BAE Systems Executive Pension Scheme (the Executive Scheme) and BAE Systems 2000 Pension Plan (the 2000 Plan)
Respondent	BAE Systems Executive Pension Fund Trustees Limited (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 supplied him with incorrect annual deferred benefit statements between 2015 and 2017, for the Executive Scheme and the 2000 Plan (**the Schemes**), showing considerably overstated estimates of the total pension payable from age 62. He says that he relied upon these statements to his financial detriment by leaving employment early with QinetiQ, in August 2017.

Background information, including submissions from the parties

3. Mr E's date of birth is 27 December 1959.
4. Mr E joined the 2000 Plan on 26 March 1990 and the Executive Scheme on 29 November 1999. Whilst an active member of the Executive Scheme, he continued to contribute to and accrue benefits in the 2000 Plan.
5. The Executive Scheme and the 2000 Plan have Normal Retirement Ages (**NRAs**) of 62 and 65 respectively.
6. Mr E became a deferred member of both schemes on 31 December 2007.
7. Mr E received annual deferred benefit statements from the Trustee. The ones issued in 2008 and up to 2014, were correct, but those sent out between 2015 and 2017, contained errors caused by flawed data being used in the calculation of his benefits.
8. The total deferred pension shown on the statements issued in the following years were:

<u>Year</u>	<u>Total Pension (per annum)</u>
2014	£55,882 pa
2015	£72,113 pa
2016	£73,330 pa
2017	£74,599 pa

9. The statements included the following provisos:

- the pension figures were estimates only, calculated using Mr E's details as shown, and not guaranteed in any way;
- Mr E should carefully check the details to ensure that they were correct;
- the statement was an illustration and not a certificate of entitlement;
- the benefits were subject to the Trust Deed and Rules of the Schemes and HMRC Regulations;
- Mr E should keep the statement for future reference;
- Mr E's actual pension could be different from the figure shown on the statement and depended on factors such as his retirement age and actuarial factors applicable at retirement; and
- the statement was designed to aid Mr E's retirement planning but before making any major decisions, he should consider taking independent financial advice.

10. In March 2017, Mr E met with his Independent Financial Adviser (**IFA**) who carried out a full review of his existing pension and investment arrangements. Mr E provided his IFA with copies of the erroneous deferred benefit statements which he received between 2015 and 2017 for this purpose.

11. Following the meeting, the IFA prepared an investment strategy report on 27 March 2017, for Mr E, relevant paragraphs of which have been reproduced in the Appendix.

12. The IFA noted in his report:

- he had determined that Mr E would need an additional income of £7,000 per annum from July 2017 until December 2021 when he would start receiving the pension available from the Schemes;
- the figure of £7,000 per annum was based upon Mr E's recent expenditure history and "the future pension benefit" which Mr E was expecting to receive from the Schemes on attaining age 62; and
- he had used the information which Mr E supplied to recommend suitable investments that could provide him with this income from his existing capital.

13. Mr E accepted the recommendations made by the IFA, and in August 2017, resigned from QinetiQ.

14. In February 2018, Mr E requested details of the deferred pension and cash equivalent transfer value (**CETV**) available to him from the Schemes.
15. On 1 March 2018, the Trustee sent him a Benefit Information Pack (**the Pack**) providing details of the benefits available to him from the Schemes assuming he retired on 1 January 2022.
16. The Pack included a "Benefit Options Summary" (**the Summary**) which showed that he would be entitled to a pension of £65,881.08 per annum from this date.
17. The notes included in the Summary said that:

"The Schemes have different NRAs. 62 in the Executive Scheme and 65 in the 2000 Plan. Your retirement pension has been calculated according to the Rules of each Scheme.

As a member of the Executive Scheme you are entitled to a pension based on a target pension percentage at your Executive Scheme Normal Retirement Date (**NRD**).

The Executive Scheme will provide the difference between your pension built up in the 2000 Scheme and your target pension.

In your circumstances the pension provided by the 2000 Plan is higher than the target pension under the Executive Scheme and it has therefore been agreed that the higher 2000 Plan pension only will be payable".
18. The Summary also showed that the NRDs of the Executive Scheme and 2000 Plan were 1 January 2022 and 1 January 2025 respectively.
19. In April 2018, Mr E asked Equiniti, the administrator of the Schemes, why the pension amount shown on the Summary was nearly £9,000 less than the estimated figure shown on the 2017 deferred benefit statement.
20. Equiniti replied that the figure shown on the Summary for his pension of £65,881.08 per annum was correct, and that it had made errors when calculating the corresponding figures shown on the deferred benefit statements for 2015 to 2017. Equiniti apologised to Mr E for the errors and offered him a goodwill compensation payment of £1,000, in recognition of the distress and inconvenience which he has experienced.
21. Mr E rejected the offer made but his complaint was not upheld by the Trustee at both stages of the Schemes' Internal Dispute Resolution Procedure (**IDRP**).

Mr E's position

22. He accepts that the lower pension figure of £65,881.08 per annum has been calculated correctly in accordance with the Trust Deed and Rules of the Schemes.
23. He made a wrong decision leaving full time employment in August 2017, with a basic salary of £150,000 per annum, plus other benefits, by relying on the incorrect overstated pension figures shown on the deferred benefit statements for 2015 to 2017. This decision will have a significant adverse financial impact on him in retirement because his expected annual pension from 62 will be lower by almost £9,000 per annum.
24. He has only kept the deferred benefit statements for 2015 to 2017. He does not retain statements or letters concerning the Schemes for more than three years unless legally required, or he was requested to do so.
25. He did not take the decision to stop working lightly and only did so after seeking a full review of his financial situation with his IFA in March 2017. The IFA used the figures shown on the deferred benefit statements for 2015 to 2017 to calculate his "income sources over the next 25 years". It is reasonable to expect that the information shown on these statements would have been adequate for this purpose. As he did not need to draw his pension from the Schemes until age 62, his IFA did not deem it necessary to obtain at the time, a formal retirement quotation for him from the Trustee.
26. If the errors had been brought to his attention by the Trustee earlier, he would have deferred his retirement for 18 to 24 months. Assuming his pension will be paid for 20 years, he could be financially worse off by almost £180,000. By postponing retirement, he could have tried to mitigate this significant reduction in his future pension income.
27. His request for a CETV quotation in February 2018, was not related to his decision to leave QinetiQ in August 2017, and retire at age 62. The purpose was to investigate whether transferring his pension rights in the Schemes might prove to be a better option for him in later years. He requested a retirement quotation solely to find out how much larger the CETV would be when compared to his pension.
28. The calculation of his retirement pension is complicated and there is no reason why he should be expected to have identified the mistakes made. He does not have "a team of specialists" helping him with pension calculations.
29. If he had not asked for a CETV quotation, the errors might not have been discovered until shortly before his proposed retirement at age 62.
30. The Trustee accepts that Equiniti has made a series of errors calculating his pension over the years. Its apology and a derisory goodwill compensation payment of £1,000 are inadequate to put matters right for him.

31. Mr E says:

“As a senior HR director, I have overseen many large payrolls for several originations. In this capacity one of my governance responsibilities was to 'sign off' the monthly payroll and before I could do this I had to satisfy myself and the finance functions that any 'month on month' and 'year on year' significant increases for any employee on the payroll could be justified/explained...I would have expected BAE Systems pensions (and its partners) to have the same level of checks before issuing important information to its members - clearly this isn't the case! The fact that the mistakes and maladministration continued for several years demonstrates that the governance (and audit) processes are well below what would normally be expected...

The £1000 offered by BAE Systems seems a very small penalty given the repeated/systemic mistakes and lack of basic controls the pension scheme seems to have...”

The Trustee’s position

- 32. It is unfortunate that Mr E did not retain the correct annual deferred benefit statements which he received. If Mr E had done so, he should reasonably have noticed that the figures shown on the statements issued in 2015 to 2017 had been incorrectly overstated.
- 33. Mr E says that, in theory, he could have found a job “with a commensurate executive level salary” to the one which he left but has not been able to do so. He has, however, not provided any evidence that he has tried looking for one such as details of (a) the roles which he has applied for, (b) the interviews which he has attended, and (c) any employment offers made.
- 34. It accepts that it could be difficult for Mr E to find another role with comparable salary and benefits but there is no reason why he could not have tried finding alternative employment on a lower salary in order to partially mitigate his perceived financial loss.
- 35. It is not willing to reimburse the IFA’s fees which Mr E has paid for financial advice.
- 36. Its goodwill compensation award of £1,000 for distress and inconvenience is equitable and still open to Mr E in order to settle his complaint on an amicable basis.

The Pensions Ombudsman’s position on the provision of incorrect information

- 37. The basic principle for negligent misstatement (in the absence of any additional legal claim) is that a scheme is not bound to follow incorrect information, e.g. retirement quotes, transfer values or early retirement. A member is only entitled to receive the benefits provided for under the scheme rules, that is, those based on correct information accurately reflecting the scheme rules.

38. Broadly, the Ombudsman will provide redress if it can be shown that financial loss or non-financial injustice has flowed from incorrect information given. For example, the member may have taken a decision in the expectation of receiving the higher benefits which they would not otherwise have done, such as retiring early. The Ombudsman will also consider whether it is more likely than not that a member relied on the incorrect information to their detriment and that it was reasonable for them to do so. An example of this is where the member had already decided to take early retirement before receiving the incorrect information. In this case it is unlikely that any claim for financial loss would be upheld on that basis alone.
39. Set out in paragraphs 36 and 37 above are the Ombudsman's views, very generally, on the application of, negligent misstatement. It is for guidance only; each case will turn on its own facts.

Adjudicator's Opinion

40. 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.
41. There was no dispute that the Trustee sent Mr E, via Equiniti, incorrect deferred benefit statements for 2015 to 2017. Mr E should have been given the correct figures and the failure to do so was clearly maladministration on the part of the Trustee.
42. Where mistakes occur, my role is, so far as possible, to put Mr E back in the position that he would have been in but for the maladministration.
43. This finding, however, by itself, is not enough to enable me to fully uphold Mr E's complaint, because, I will also need to be satisfied that Mr E incurred an actual financial loss as a direct consequence of that maladministration.
44. Although Mr E received incorrect details of the benefits available to him from the Schemes, it did not confer on him a right to these benefits quoted by mistake. If he had acted to his financial detriment based on the reasonable belief that the figures were correct, then he may be compensated for the harm.
45. The Trustee can be expected to have realised that Mr E was likely to take a decision based on the information it provided. That Mr E sought a full review of his financial situation with his IFA in March 2017, led the Adjudicator to conclude that he was looking at several options before accepting the recommendation made by his IFA.
46. According to his IFA, his recommendations to Mr E had been partly based on the incorrect deferred benefit statements provided by the Trustee. The IFA said that the additional income figure of £7,000 per annum, which he had determined Mr E would need after leaving QinetiQ until reaching age 62, was based upon Mr E's recent expenditure history and "the future pension benefit", which Mr E was expecting to receive from the Schemes.

47. If the IFA had been provided with the correct lower figures for Mr E's pension on the deferred benefit statements, his recommendations would most likely have been different. The Adjudicator was prepared to accept, on the balance of probabilities, that Mr E might have acted differently and not decided to resign in August 2017, if he had received correct deferred benefit statements for 2015 to 2017, and the IFA's financial advice which took account of them.
48. Mr E contended that he would have continued working for another 18 to 24 months, if the errors had been brought to his attention before he made his decision to leave QinetiQ. In this case, the loss that Mr E could claim was loss in the income and other benefits that he would have received had he remained in employment from August 2017, until such time as he would have retired.
49. Mr E contended he could be financially worse off by almost £180,000 over 20 years but that was not a real loss to him. That sum was the additional pension he expected but was not entitled to. But if Mr E suspected that he might have suffered a loss, he had a responsibility to take reasonable steps to mitigate his loss by attempting to return himself as near as possible to the position he would have been in, that is, working and earning some additional recompense.
50. There was no evidence that Mr E had attempted to seek any form of employment to make up the shortfall in his salary and his benefits. In the Adjudicator's opinion, this could have represented a choice on Mr E's part to buy leisure time. The Adjudicator appreciated that it was a choice Mr E would have preferred not to have had to make and that it was a choice made in the context of him having already resigned from his position.
51. Furthermore, it was regrettable that Mr E decided only to retain the deferred benefit statements for 2015 to 2017 showing incorrect higher pension benefits available to him from the Schemes, which he gave to his IFA in order to assess his financial circumstances. If Mr E had also retained the correct ones, as recommended in the notes on the statements, it was reasonable to expect that he would have noticed the error on receipt of the first incorrect statement in 2015, and brought it to the attention of the Trustee. The Adjudicator accepted Mr E's view that the pension calculations were complex but comparing figures shown on consecutive annual statements was not a difficult thing to do. If Mr E had done so, the error would have been detected much earlier and he would not then be in the unfortunate situation which he now finds himself.
52. In the Adjudicator's opinion, Mr E had suffered a loss of expectation and not a financial loss. Whilst the Adjudicator did not consider that Mr E has suffered any actual financial loss, it was clear that he had suffered serious distress and inconvenience because of the maladministration identified and the award of £1,000 offered by the Trustee in recognition of this, was equitable.
53. 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 main points made by Mr E.

Ombudsman's decision

54. Whilst there is no dispute that there has been maladministration on the part of the Trustee, the starting point is that Mr E is only entitled to the benefits provided by the rules of the Schemes. Exceptionally, in cases where incorrect information has been given redress will be provided, if it can be shown that financial loss or non-financial injustice has flowed from reliance on that incorrect information. For example, the member may have taken a decision in reliance on the accuracy of the information, which they would not otherwise have taken. However, they must be able to prove both that they relied on the accuracy of the information provided and that it was reasonable to do so.
55. I have considered carefully whether it was reasonable for Mr E to have accepted the figures shown on the deferred benefit statements for 2015 to 2017, as correct, and have concluded it was not, for essentially the same reasons given by the Adjudicator.
56. Although, I do not consider that Mr E had suffered any actual financial loss, it is clear to me that he has suffered serious distress and inconvenience because of the maladministration identified. I note that the Trustee has offered Mr E an award of £1,000 in recognition of this. I consider this amount to be equitable and in line with what I would have directed the Trustee to pay him. If Mr E is now prepared to accept this payment, he should contact the Trustee.
57. I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
19 April 2020