

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

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| Applicant | Captain N |
| Scheme | Merchant Navy Officers Pension Fund (MNOPF) |
| Respondent | MNOPF Trustees Ltd |

Subject

Captain N complains that MNOPF Trustees Ltd (**the Trustees**) supplied him with an incorrect early retirement quotation in October 2011 showing considerably overstated benefits as at 6 April 2013 which he relied upon to his financial detriment.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should be partly upheld against the Trustees because Captain N was provided with an incorrect early retirement quotation in October 2011. But Captain N has been able to put himself in a position at least as good as the position he would have been in had he received correct information.

Although the maladministration identified has not, in my view, caused Captain N any injustice in the form of actual financial loss, it is clear that he has suffered distress and inconvenience as a result for which he should be suitably compensated.

DETAILED DETERMINATION

Material Facts

1. Captain N's date of birth is 24 November 1955.
2. He joined the MNOPF, which has a normal retirement age (**NRA**) of 61, in April 1980 and became a deferred member of the MNOPF on 31 December 2004.
3. MNPA Ltd, the administrators of the MNOPF, sent to Captain N on behalf of the Trustees in February 2005, details of the estimated deferred pension available to him at NRA, i.e. £23,209 pa. It transpired however that MNPA Ltd had failed to include in their calculations the additional benefits available to him from his two pension transfers into the MNOPF. They rectified their error and provided Captain N with a new benefit statement in April 2005 showing a larger pension of £25,278 pa available at NRA.
4. MNPA Ltd recorded Captain N's transferred in benefits incorrectly in two separate areas of their computerised file for him. This resulted in MNPA Ltd sending early retirement quotations to Captain N in February 2008, March 2010 and October 2011 showing considerably overstated estimates of the benefits available to him from the MNOPF (caused by the double counting of the transferred in benefits).
5. This error was identified and corrected by MNPA Ltd in February 2013. MNPA Ltd recalculated the correct lower benefits available to Captain N assuming an early retirement date of 6 April 2013 (having originally overstated them back in October 2011). A summary of the early retirement figures which MNPA Ltd sent Captain N over the years is shown in the table below.

| Date of Quotation | Early Retirement Date | Estimated Full Pension (pa) | Estimated Tax Free Cash Lump Sum | Estimated Residual Pension (pa) |
|-------------------|-----------------------|-----------------------------|----------------------------------|---------------------------------|
| 19 February 2008 | 24 November 2011 | £28,519 | £126,976 | £19,046 |
| 3 March 2010 | 24 November 2010 | £25,007 | £107,807 | £16,171 |

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|---------------------|--------------|---------|----------|---------|
| 4 October 2011 | 6 April 2013 | £31,662 | £138,092 | £20,714 |
| 15 February 2013 | 6 April 2013 | £28,744 | £125,579 | £18,837 |

6. All of the statements included the following caveats:
- the figures shown were estimates only and could change by the time he retired;
 - if there was any significant change, a further statement would be sent to him nearer to his retirement date; and
 - all of the benefits shown on the statement were calculated in accordance with the Trust Deed and Rules of the MNOFF.
7. Captain N was unhappy that MNPA Ltd only informed him on 15 February 2013 (i.e. less than two months away from his planned early retirement date of 6 April 2013) that they had made a mistake in calculating the benefits available to him in the MNOFF.
8. In his letter of 21 February to MNPA Ltd, Captain N said that:
- he could not afford to retire in April 2013 with a full pension of around £3,000 pa lower than what he was expecting;
 - his main reason for wishing to retire early was to spend more time with his wife who was in poor health;
 - the annual statement of benefits as at 31 March 2012 which he received from them showed a pension at his Normal Retirement Date (**NRD**) on 24 November 2016 of £33,949 pa and as this had been increasing on average by around £1,000 each year, he estimated that he would probably receive a full pension at NRD of £37,000 to £38,000 pa;
 - a pension of £31,622 pa for retiring three years early did not therefore seem incorrect or unreasonable to him; and
 - he had handed in his notice to his employer and needed immediate action to resolve this situation in order to avoid being left in a position of no work or pension

9. The Trustees did not uphold Captain N's complaint at both stages of the MNOPF Internal Dispute Resolution Procedure (**IDRP**) in May and June 2013. The reasons which they gave for their decision were essentially as follows:
 - an administration error cannot give rise to a higher incorrect benefit entitlement in the MNOPF;
 - where there is a mistake, it must be rectified to ensure that the correct benefits are paid out at all times; and
 - they would be in breach of their duty to all MNOPF members if they paid benefits to him at a level other than as calculated in accordance with the MNOPF Trust Deed and Rules
10. In recognition of the distress and inconvenience which they caused Captain N by their mistakes, MNPA Ltd offered him a goodwill compensation payment in full and final settlement of his complaint of £250 at Stage One which was increased to £500 at Stage Two IDRP by the Trustees. Captain N declined both payments which he deemed inadequate for the serious mistake made by MNPA Ltd.
11. Captain N returned to work for his employer until October 2013 and decided to receive the early retirement benefits available to him from his 58th birthday, 24 November 2013, i.e. a full pension of £30,228 pa or a tax free lump sum of £131,646 plus a residual pension of £19,747 pa.

Summary of Captain N's position

12. He obtained estimates of the MNOPF retirement benefits available to him at ages 54, 55 and 57 because he wished to retire at the earliest opportunity with a pension which would allowed him a reasonable standard of living in retirement.
13. As a consequence of the mistake made in October 2011 by MNPA Ltd calculating the early retirement benefits available to him from the MNOPF as at 6 April 2013, he was forced into changing his retirement plans.
14. When he informed his employer, BP, of the error made by MNPA Ltd, they allowed him to remain as Captain of his ship (a position which he had held for eight years) until it was returned to her Norwegian owners in October 2013.
15. He was consequently without remuneration in November 2013 until his pension commenced on 24 November.

16. In 2012, he was off work for four months with stress. The mistakes made by MNPA Ltd have added greatly to the stress which he has suffered.
17. He does not feel that he can cope with the additional stress of starting a new career in the deep sea fleet where the contract duration could be double the length of his expired contract.
18. MNPA Ltd also incorrectly overstated the retirement benefits available to him on the annual statements which they sent him between 2005 and 2013. They have had ample time to rectify this error before actually doing so in February 2013.
19. Captain N says that:

“The additional time I worked did reduce the deficit but still leaves me a lot worse off.
I also had one month with no income or pension.”

Summary of the Trustees’ position

20. Overstatement of the benefits shown on the annual statements sent to Captain N between 2005 and 2012 was caused by the same administrative error, i.e. the double counting of his transferred in benefits. These statements however contained a proviso that if Captain N was considering taking his retirement benefits within the next 12 months, he should contact MNPA Ltd for a quotation and details of his options. They also said that the figures shown were for illustration purposes only and based on the information available at the present time.
21. The annual statements illustrated the estimated pension available to Captain N at his NRD and included pension revaluation up to the statement date.
22. It would not have been possible for Captain N to determine the amount of his early retirement pension from these statements. As such they would not expect him to have relied upon these statements to ascertain whether the early retirement figures supplied were reasonable or correct.
23. Any amount paid in excess of his actual benefit entitlement is deemed to be an unauthorised payment under the terms of the Finance Act 2004 and would be subject to penal rates of taxation levied on both MNOPF and Captain N.

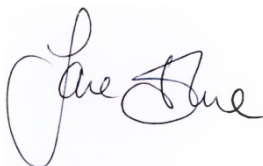
Conclusions

24. There is no dispute that the Trustees (via their appointed administrators, MNPA Ltd) issued Captain N with several incorrect benefit statements/quotations over the years and in particular, the early retirement quotation sent in October 2011. He should have been given the correct figures and the failure to do so is clearly maladministration on the part of the Trustees.
25. Although Captain N received incorrect details of the benefits available as at 6 April 2013, it does not confer on him a right to the benefits erroneously quoted. However, if he acted to his detriment based on the reasonable belief that the figures were correct, then he may be compensated for the harm.
26. The Trustees however can be expected to have realised that Captain N was likely to take a decision based on the information they provided. That Captain N had asked for a benefit quotation with a different early retirement date on three separate occasions leads me to conclude that he was looking to retire at the most opportune time and consequently chose an early retirement date on the basis of the information which the Trustees provided.
27. I am therefore satisfied that had Captain N not received the flawed information in October 2011 he would not have planned for early retirement in April 2013.
28. Captain N cannot however claim for a loss that he could have mitigated though, whether he in fact did so or not. In this case the loss that he can claim is the income and other benefits that he would have received had he remained in employment from 6 April 2013 until such time as he would have retired.
29. In fact, Captain N was able return to work for his employer from April 2013 until October 2013 in his same role when his ship was returned to its Norwegian owners when his existing contract was terminated. He was therefore able to mitigate his lost earnings during this period.
30. When his contract expired, Captain N says that he did not want to start a new career in the deep sea fleet. He contends that he would not have been able to cope with the additional stress which he would have to endure by doing so. That is completely understandable. But, if it was his choice not 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 – then to the extent that he could have mitigated, he cannot claim that he has suffered a loss as a result of the incorrect quotation.

31. In effect his decision not to seek any form of employment after October 2013 to make up the shortfall between the misquoted and correct amount represents a choice on his part to buy leisure time. I appreciate it is a choice he would have preferred not to have had to make and that it is a choice made in the context of him having already had his contract ended.
32. Captain N is receiving the benefits to which he was entitled under the Trust Deed and Rules of the MNOFF. In that sense he had not suffered any financial loss although he may be receiving less than he had expected. Loss of expectation is not however the same as loss of entitlement.
33. In any event, it is quite possible on Captain N's evidence as to his health that he would not have stayed in employment after the date of his actual retirement of 24 November 2013.
34. I am therefore not persuaded that Captain N's decision to retire in November 2013 would have been different had the Trustees not supplied him with an incorrect early retirement quotation in October 2011.
35. However, the discovery that his pension was to be significantly less than he expected, when it was too late for him to adjust his plans, will have caused Captain N significant distress. The Trustees have already offered him a compensation payment of £500 as a gesture of goodwill which he has declined. I do not regard it as sufficient and make an improved award of £750 for the distress and disappointment.

Directions

36. Within 28 days of the date of this Determination, the Trustees shall pay Captain N £750 in recognition of the distress and inconvenience caused to him.



Jane Irvine
Deputy Pensions Ombudsman

28 November 2014