

## Ombudsman's Determination

Applicant	Mr S
Scheme	Ernst & Young Retirement Benefits Plan ( <b>the Plan</b> )
Respondent	E&Y Trustees Limited ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

2. Mr S complains that the Annual Benefit Statements (**ABS**) provided to him by the Trustee led him to believe his entitlement would be considerably greater than it is. Mr S feels that the shortfall has made a significant difference to his income in retirement and that he should be compensated.

## Background information, including submissions from the parties

3. On 1 December 1983, Mr S joined the Plan.
4. On 30 May 1988, Mr S stopped contributing to the Plan and retained an entitlement to a deferred pension.
5. On 23 October 2002, Mercer, the Plan's Administrator, sent Mr S a Cash Equivalent Transfer Value (**CETV**) calculated as at 19 September 2002. The CETV also provided information in relation to a Pension Sharing Order (**PSO**) of Mr S' Plan entitlement.
6. On 7 August 2008, the Trustee sent Mr S his ABS as at 1 October 2007. It stated Mr S was entitled to a revalued pension of £4,850.00 a year.
7. In February 2014, Willis Towers Watson (**WTW**) became the Plan Administrator.
8. In August 2014, WTW sent Mr S his 2013 ABS. It stated Mr S was entitled to a revalued pension of £15,945.40 a year.
9. In August 2015, WTW sent Mr S his 2014 ABS. It stated Mr S was entitled to a revalued pension of £16,437.22 a year.

10. In May 2017, Mr S requested a CETV from WTW. WTW ascertained that tranches of Mr S' Plan entitlement were incorrectly recorded on its administration system and rectified the incorrect data. WTW provided the CETV but did not communicate information about its other actions to Mr S.
11. In August 2017, Mr S received a retirement quote (**the Quote**) calculated as at his Normal Retirement Date (**NRD**) in November 2017. It stated he was entitled to a pension of £13,784.52 a year. The Quote was calculated in accordance with the Trust Deed and Rules.
12. On 6 October 2017, Mr S complained to the Trustee under the Plan's Internal Dispute Resolution Procedure (**IDRP**). Mr S said he had based all of his retirement planning on the entitlement stated in his overstated ABS'. Mr S said he was very concerned to be informed his Plan entitlement was 16% less than he expected. Mr S also said the Trustee should agree to pay him the higher pension figure or £100,000 as compensation to account for the difference he expected in the CETV.
13. On 22 January 2018, Mr S transferred £372,866 out of the Plan.
14. On 28 February 2018, the Trustee responded to Mr S' complaint. The Trustee said that tranches of Mr S' entitlement were incorrectly recorded by the previous Administrator and revalued incorrectly in successive ABS'. The Trustee said that the error was only discovered by WTW when a detailed review of his record was conducted in May 2017. The Trustee also said Mr S' entitlement could only be calculated in accordance with the Trust Deed & Rules. It offered Mr S £1,000 in acknowledgement of the serious distress and inconvenience he had experienced.
15. On 6 June 2018, Mr S asked the Trustee to consider his complaint under Stage 2 of the IDRP. Mr S accepted his entitlement could only be calculated in accordance with the Rules. However, he argued that he had relied upon the ABS' in his retirement planning. Mr S considered that he was £100,000 worse off as a result and queried if his PSO had been calculated correctly in 2002.
16. On 13 December 2018, the Trustee provided its Stage 2 IDRP response which is summarised below:-
  - ABS' were estimates, rolled forward from previous years. ABS' were caveated to reflect that they could not be relied upon in retirement planning and were not guaranteed statements of entitlement.
  - Members were encouraged to get formal quotes, which were calculated from first principles and could be relied upon. The calculations made by WTW in 2019 were accurate and Mr S' entitlement could only be calculated in accordance with the Rules.
  - Mr S' PSO had been correctly settled in 2002.

## Adjudicator's Opinion

17. Mr 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 S argues that the Trustee should honour the incorrect, higher Plan entitlement stated on the ABS' because it had provided him with incorrect information on more than one occasion.
- The Adjudicator appreciated that Mr S was disappointed to learn the correct position. However, the ABS' contain appropriate warnings that the figures were estimated and could not reasonably be relied upon. The ABS calculated as at 1 October 2014 stated that:

"All benefits, including transfer values, must be calculated and paid only in accordance with the Trust Deed and Rules...The information in this statement is not individual financial advice and must not be used as the only basis on which you take any decision regarding your future pension arrangements or any other financial commitment".

- The Adjudicator appreciated that Mr S is not an expert on pensions. However, Mr S should have requested a quote from the Trustee well in advance of retirement and learnt the correct position much sooner than he did.
  - Mr S argues that he might have prepared differently for retirement if he had known the correct position. However, the Adjudicator had seen no evidence as to how Mr S would have changed his retirement plans. Mr S waited until NRD to request payment of his Plan entitlement and, on the balance of probabilities, he would likely have retired then even if he was aware of his correct entitlement.
  - The Trustee agreed that it had misinformed Mr S and offered him £1,000 in acknowledgement of the serious distress and inconvenience he suffered. The award is appropriate and in line with guidance issued by the Pensions Ombudsman. It is highly unlikely this award would be increased by an Ombudsman if the complaint were to be formally determined.
18. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S 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 S for completeness.

## Ombudsman's decision

19. Mr S says that he would likely have made different financial decisions if his ABS' had not been negligently mis-stated. Mr S considers that he is now worse off by around £100,000. I appreciate that Mr S was disappointed to learn that his Plan entitlement

was less than he had anticipated. However, Mr S is not 'worse off' because he is not entitled to receive the over-stated Plan entitlement. Consequently, I find that Mr S has not sustained a financial loss. Mr S' pension must be calculated in accordance with the Trust Deed and Rules.

20. Mr S has said that he would likely have curbed his discretionary spending on "holidays, entertaining and eating out" if he had known the correct position. However, he acknowledges that this is a general observation made with hindsight. Mr N has not argued that he would have decided against specific purchases or suffered a change of position.
21. Mr S has supplied a copy of his 2007 ABS in support of his comments. Mr S says that he decided that he could afford to cease working in the summer of 2008, after reviewing the 2007 ABS and his financial situation generally. The 2007 ABS stated that Mr S was entitled to a pension of £4,850 a year. The pension quoted is markedly different from subsequently overstated ABS' in 2014 and 2015. I would have expected Mr S to have queried his Plan entitlement tripling within 6 years, particularly as he says he considered the 2007 ABS in his retirement planning. Consequently, Mr S should reasonably have learnt the correct position much sooner than he did.
22. Mr S considers that the significance of the caveat included in the ABS' was not clear. He argues that Ernst & Young and WTW are global companies and their communications should be reliable. I agree with Adjudicator's view that the Trustee supplied adequate warnings in the ABS'. Mistakes do sometimes occur in pensions administration. The Trustee has adequately acknowledged Mr S' serious distress and inconvenience by offering him an award of £1,000. I agree with the Adjudicator's view that the award offered by the Trustee is appropriate based on the facts and the Trustee will not need to take any further action. If Mr S would like to accept the Trustee's offer, then he should contact the Trustee.
23. I do not uphold Mr S' complaint.

**Anthony Arter**

Pensions Ombudsman  
12 August 2019