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

Applicant	Mr Peter Townley
Scheme	Black & Decker 1995 Pension Scheme (**the Scheme**)
Respondent(s)	Black & Decker Pension Trustee Limited (**the Trustees**)

Subject

Mr Townley would like the Trustees to honour the pension statement issued to him in 2006, by Capita, as he took decisions based on the statement, which cannot be reversed.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should be upheld against the Trustees because the incorrect statement raised Mr Townley's expectations and as a result he has suffered distress and inconvenience.

DETAILED DETERMINATION

Material Facts

1. Mr Townley joined the Scheme, a defined benefit pension scheme, on 1 February 1972 and left on 2 March 1990 at which point he became entitled to deferred benefits from the Scheme. . His normal retirement date (**NRD**) was 24 June 2012.

2. Mr Townley's deferred benefit at the date of leaving was, £8,468.64 per annum, of which, £1,398.80 was the annual GMP element, and £7,069.84 excess of GMP per annum.

3. Mr Townley said that he had been planning his retirement with his financial adviser. He had investments (PEPS and ISA) and pension plans with NPI and Canada Life. He was planning to have an annual retirement income, from all sources, including the Scheme benefits, of £39,500 at his NRD. He says the purpose of his retirement planning was to provide for his son, who suffers from cerebral palsy, when he retired.

4. In 2006 Mr Townley agreed for his son to rent a bungalow from a housing association, so that he could live independently with a full time carer. The bungalow had yet to be built by the housing association and the building work was meant to start early 2006 (to be completed by September 2008).

5. Once the bungalow was constructed and Mr Townley's son moved in - he had to live in the bungalow for 12 months, in order to be awarded guaranteed residency status. Mr Townley wanted to renovate the bungalow so that his son had better living conditions, after guaranteed residency status was awarded. In 2006, Mr Townley started to plan for the cost of renovation and the implications this may have to his retirement plans. He asked his financial adviser to consider whether Mr Townley could afford to carry out the renovations.

6. In May 2006, the Scheme's administrator, Capita, provided a projection of his retirement benefits to Mr Townley's financial adviser. Capita projected Mr Townley's total annual pension on NRD to be £17,300.45.

7. In January 2007 the financial adviser reported back to Mr Townley. The report provided the following breakdown of projected returns on NRD, assuming investments were made into the ISAs/PEPs and a 5 year bond from 2007 to 2009:

- Pension from Black & Decker – £17,300 per annum,
- State pension - £7,811 per annum,
- Pension plans (Canada Life and NPI) - £6,000 per annum,
- 5% withdrawal from ISAs/PEPs (assumed value of £265,000)- £13,250 per annum,
- In total, the income on NRD was £39,445 per annum.

8. The financial adviser on his report, concluded that:

> "Based on the above information you should therefore be able over a period to progressively save adequate sums from your income to fund the building work for your son without putting at risk your retirement income objectives…"

9. Mr Townley says that after his son received guaranteed residency status, he decided to spend £20,000 in renovating the bungalow. The renovation work completed in 2011.

10. On 27 January 2012, Capita contacted Mr Townley with a retirement quote. Capita quoted a full pension (without tax free cash lump sum) of £12,717.99 per annum. Capita sent a further statement on 13 March 2012, which stated the same amount.

11. Mr Townley contacted Capita on 26 March 2012, asking them to explain why the pension quoted in the recent statement was different to the one quoted in 2006. He added that as the Scheme was a defined benefit scheme the difference should not be significant.

12. Capita explained on 2 April 2012, that an error had occurred in the calculation of his pension benefit in 2006. Capita should have re-valued the non-GMP element, which accrued after 1 January 1985. Whereas Capita had re-valued the entire non-GMP service. This resulted in a higher pension being quoted in 2006.

13. Mr Townley complained to Capita on 25 April 2012. He said that he had been planning his retirement and in 2006, asked for a statement. The purpose of doing so was to establish if he had secured sufficient retirement income, but as he

reached NRD, he was facing a shortfall in income of £4,582.46 per annum. Mr Townley said that Capita should have informed him much earlier that they had incorrectly calculated his pension benefits in 2006.

14. Capita replied to the complaint on 31 May 2012. They said that the retirement figures quoted in 2012 were correct, whereas in 2006 the figures were incorrect. Capita said that they regretted the reduction in the retirement figures, they reminded Mr Townley that the statement of 2006, did have the following caveat:

> "Please note that benefits quoted so far in advance of a retirement date can only be viewed as an estimate of final benefits and the figures are in no way guaranteed. As assumed rate of increase of 2% per annum has been applied to benefits in excess of GMP from the current date to normal retirement age
>
> The Benefit figures quoted in this letter may be altered if subsequent information comes to light. These figures in no way bind either the trustees or the administrator to honour the figures shown. In particular, please note that as an administrator of the Black & Decker 1995 Pension Scheme, we only have authority to communicate details of members' standard entitlements under the Scheme. We have no authority or power to commit the trustees of the Scheme or the employer providing the benefits or options in excess of such standard entitlements."

15. On 12 June 2012, Mr Townley expressed his intention to escalate the complaint. In the meantime, Mr Townley took his retirement benefits from the Scheme. His Scheme pension of £12,717.99 was paid from his NRD.

16. After receiving his retirement benefits, Mr Townley escalated his complaint on 3 July 2012, setting out his loss. Mr Townley said that while Capita acknowledged their mistake, the mistake had affected his retirement planning. When he found out that the error had been made, it was three months before his NRD, and there was insufficient time to mitigate his losses. As a result of not being told by Capita, his total retirement income, taking into account all his investment returns and other pension plans, was £36,247 per annum. A shortfall of £3,021, which if he had known in 2006, he would have taken advantage of the annual ISA allowances from 2006 to 2012, to invest more. He would like Capita to make good the annual shortfall throughout his retirement.

17. Capita investigated the matter, and on 31 August 2012 concluded that the loss Mr Townley was alleging was of a speculative nature and could not be proved.

18. Mr Townley wrote to the Trustees on 5 September 2012. The Trustees replied on 24 October 2012, advising Mr Townley that they would consider the matter via the Scheme's internal dispute resolution (**IDR**) procedure. The Trustees said that while the incorrect benefit statement does not compel them to pay a higher pension, they did ask Mr Townley to supply details of his expenditure after he received the benefit statement in 2006.

19. Mr Townley sent a copy of the financial adviser's report , which stated that had he known that the statement was incorrect in 2006/07, he would have suggested Mr Townley invest a further £55,680 into ISAs from 2007 to NRD. Mr Townley also sent copies of his investment portfolio, to the Trustees. He reiterated his argument that in 2006, based on the statement received from Capita, he was informed that he had reached his target retirement income. Therefore, he could use money to make adaptions to his son's bungalow and home improvements.

20. The Secretary to the Trustee completed the IDR procedure stage 1 and wrote to Mr Townley on 12 December 2012. In his decision, the Secretary said that the correct benefits, in line with Scheme rules are being paid. The Trustees considered the loss Mr Townley may have suffered in reliance of the statement received in 2006. The Trustees considered whether it was reasonable for Mr Townley to have relied on the statement. While the statement said, "estimate", the figures supplied were "vastly out of proportion", therefore the Trustees agreed that it was reasonable for Mr Townley to have relied on the statement given in 2006.

21. The Secretary then considered, whether the money spent in reliance of the statement would have been spent in any event. The Secretary said that it was understandable that Mr Townley wanted to provide for his son. As the bungalow was the best option available for his son, and the associated renovations would have been carried out to make the bungalow comfortable for him. In saying this, the Secretary accepted that Mr Townley may have spent more money than he would have had the correct statement been issued in 2006.

22. The Secretary in recognition of the extra expenditure offered Mr Townley £5,000 in compensation. Mr Townley did not accept the compensation offered.

23. Mr Townley wrote to the Trustees on 11 February 2013, asking them to consider the matter under stage 2 of the IDR procedure. He said that he had been planning his retirement for 20 years. He does not regret improving the bungalow for his son, but had he been given an accurate statement, he would have saved more money by spreading the cost of the renovation over a period of time. This would have allowed him to apply for a grant from social services for the work needed to the bungalow.

24. The Trustees considered the matter and wrote to Mr Townley on 17 June 2013. They reiterated the points made by the Secretary regarding the benefits statement being an estimate only. The Trustees added in relation to the expenditure incurred that, while social services may have assisted Mr Townley, from what he has said, the Trustees concluded that it would have been his intention to have always funded the improvements to the bungalow regardless of what the statement in 2006 said. The Trustees added that the difference between the total projected retirement income and the actual retirement income was only 8%. The Trustees considered this a small shortfall.

25. Further the Trustees said that Mr Townley has not shown clearly how he would have put money aside totalling £55,680, had he known there was a shortfall to his projected retirement income. In addition they said that he has not shown how he spent the money he could have saved.

26. Mr Townley in July 2013, asked the Pensions Advisory Service (**TPAS**) to investigate his complaint. TPAS explored whether it should be Capita who should have paid any losses to Mr Townley, rather than the Trustees. Further, TPAS asked Mr Townley to provide evidence to support his claims that he could have put money aside had the correct information been provided in 2006 and still maintained his standard of living.

27. Capita in response to TPAS provided a breakdown of how they calculated the 2006 statement and how they calculated his retirement benefits. Capita said that they did not send further statements, as Mr Townley was a deferred member and there was no need to send annual statements. Capita said they realised that they made the error when they calculated his retirement benefits in 2012.

28. Mr Townley said to TPAS that while on two previous occasions he obtained 100% grants from social services, because of the time it takes, he decided to spend the money on the bungalow. Mr Townley sent TPAS a report and spreadsheet completed by him, setting out his investment history since 1994. The key points from the investment history are:

- Mr Townley had an investment programme to invest in pensions and life insurance;
- from 1994 to 2004, investment into his insurances, savings (ISA/PEPS) and pensions were on average £20,000 per year;
- from 2004 with a family business in trouble, he did not invest in anything other than life insurances. (He did receive this money back with interest later);
- after 2006 he invested £66,000 in a 5 year bond, which was to mature on or around his NRD. Mr Townley invested £7,000 into an ISA for the tax year 2006/07 and a further £7,000 into an ISA for the tax year 2007/08; and
- he did not invest any further amounts until 2012, when he invested £11,280 into his and his wife's ISAs. He invested a further £11,280 in his own ISA in 2013.

Summary of Mr Townley's position

29. Mr Townley said:

- The statement from Capita assured Mr Townley that his retirement objectives had been achieved. Therefore there was no need to invest further.
- The opportunity to rent the bungalow from a housing association was too good to miss. It was local and allowed his son to live independently with a full time carer. While the bungalow was ideal, the interior needed to be brought to the standard required for wheelchair use.
- He could have applied for a social services grant, but a decision from social services could have taken 18 months. Mr Townley has based this on his previous experience, when he made a bedroom in his own home

accessible for his son. The application process took 18 months to approve. When his son was awarded guaranteed residency by the housing association, he contacted the local council. They said that as funding for non-critical work was reduced, there was no guarantee funding would be available. As a result of this conversation with his local council, Mr Townley decided to spend his own money on the renovation work needed which totalled £21,420 in all the work needed.

- As he did not need to invest further into his retirement plans, he had money free to pay and renovate his son's bungalow. The renovation took 12 months to complete and it was done in its entirety rather than piecemeal. After this was completed, he carried out renovations into his own home.
- As he believed he no longer had to pay into his investments, he decided to spend the money he had free on the following,
  - a new bathroom and kitchen for his home totalling £14,600,
  - Mr Townley's wife took her father on an extended family holiday to Canada costing £5,200, and
  - paying off the residual amount of £14,452 left on the endowment mortgage.
- He adds that how he spent his money, after he paid tax is not the issue; the issue here is that Capita misled him to believe that he had reached his projected retirement income. As a result of this misinformation, he spent money, which otherwise would have been saved.
- He met his financial adviser annually to discuss the progress of his investments. Mr Townley says that he and his financial adviser kept a close eye on the Scheme benefits. Capita did not send him warnings that the 2006 pension valuation would not be achieved on retirement. Had Capita given him accurate pension figures in 2006, he would not have invested less into his retirement plans, and he would have considered each of his expenditures after 2006 in line with his retirement plans.
- He does not say that he requested regular annual statements from the Scheme. Mr Townley says that while the 2006 statement differed from

the final retirement benefits, but the 2006 statement was in line with the 1997 statement he received. So he says that he did not have reason to question the validity of the 2006 statement.

- He says he monitored the annual reports from the Trustees for signs of anything that may impact the health and stability of his pension. Based on the content of the annual reports he reviewed his pension with his financial adviser. The annual reports from the Trustees did not raise doubt that the valuation of the 2006 statement produced by Capita because it was in line with his assessment of the overall Scheme funding.

- The error by Capita has resulted in Mr Townley having to make cut backs in his lifestyle post retirement because he is not receiving the retirement income he had planned for.

Summary of the Trustees' position

30. The Trustees have said:

- That they accept that the provision of incorrect information in 2006, by Capita was maladministration. The Trustees considered whether Mr Townley relied on the incorrect information to his detriment.

- The 1997 and 2012 statements were both correct. While the final figure differed, this was due to the fact that the 1997 statement assumed an annual revaluation of 5%, which at that time was considered a reasonable assumption.

- The Trustees add that the Scheme's funding position would have had no bearing on Mr Townley's benefits. Monitoring the Scheme's health should not have been a substitute for asking for benefit statements.

- The Trustees have paid Mr Townley the correct pension based on the Scheme rules, which has not been disputed by Mr Townley.

- The financial adviser provided a statement to the Trustees, in order to assist their investigation. In this statement, the financial adviser confirmed that in 2012, the retirement income from all sources was £36,247, which was only £3,198 less than what Mr Townley had been aiming for. (The reduction was due to the lower pension from the Scheme and total actual savings within ISAs of £245,100, drawing 5% meant £12,225 per annum income).

- Mr Townley claimed that he would not have spent £20,000 on the bungalow and would have been able to save £55,680 (his total outlay) from 2006 to 2012 had he been given correct information.
- The Trustees say that they accept that Mr Townley spent money on the bungalow, but disagree that it was done in reliance of the incorrect statement. Mr Townley would have had to spend money on the bungalow as it was ultimately his plan to ensure his son was looked after. So while Mr Townley can claim he relied on the incorrect statement, he cannot show that spending on the renovations was to his detriment.
- Mr Townley has said that if Capita supplied the correct information, he would have saved a further £55,680 in to his retirement planning. The Trustees say that besides from the expenditure in relation to the bungalow, Mr Townley has not shown how he spent monies totalling £55,680 since 2006.

Conclusions

31. It is perfectly understandable that Mr Townley would want to provide for his son and make his living conditions as comfortable as possible. Further I do not doubt Mr Townley when he says that he was making long term retirement plans, so to ensure he had a decent standard of living for his family.

32. Capita gave Mr Townley's financial adviser in 2006, incorrect pension figures. The error made by Capita was that they re-valued the whole non-GMP element, which Capita should only have re-valued the element accrued from 1 January 1985. The error by Capita was maladministration. There is no dispute that this is the case. However the provision of incorrect information does not of itself entitle Mr Townley to the incorrect amount. He must be able to provide that he made financial decisions or commitments in reliance on the incorrect information.

The shortfall

33. Mr Townley says that had the correct pension figures been supplied in 2006, he would have had time to make up the shortfall in his projected retirement

income. The shortfall is based on the retirement income projected by his financial adviser in 2007 of £39,445 against actual retirement income (from all sources) of £36,247. The shortfall is £3,198 per year.

34. Mr Townley says that he held regular annual review meetings with his financial adviser and relied on the annual reports from the Trustees to monitor the health of the Scheme. There is no reference to further statements requested from Capita after 2006. I am surprised that his financial adviser did not ask for annual pension statements from Capita but rather relied on annual reports from the Trustees. While the reports would have given an indication of the Scheme's health, they did not give individual projections showing the progress of Mr Townley's benefits.

35. Mr Townley relies on the 1997 statement and says that the 2006 statement was in line with the 1997 one. However as the 1997 statement was projecting potential retirement benefits for a retirement date that was 16 years away, it used an assumed revaluation of 5% per annum. Revaluation levels have dropped since 1997 because Retail Price Indexes have not been near 5%. This explains that the 1997 statement while in line with the 2006 statement was based on assumptions that did not materialise. It follows then that Mr Townley should not have relied on 1997 statement but kept on asking for regular statements to assess whether the assumptions used had changed the level of retirement benefits projected.

36. If Mr Townley and his financial adviser were reviewing the progress of his investments to ensure he met the target retirement income, then it is reasonable to say that annual statements should have been requested from Capita. By having regular statements, Mr Townley would have been able to adjust his retirement plans accordingly.

37. Mr Townley may make the argument that as he was a deferred member of a defined benefit scheme, he should have been confident that the pension figure given by Capita in 2006 should hold. I disagree, it is prudent to ask for statements, as Mr Townley says he was actively monitoring and planning his retirement, he should have done so with accurate figures. It seems that Mr Townley and his financial adviser made the assumption that his Scheme benefits would not change based on the Trustee's annual reports.

38. In the absence of regular benefit statements to monitor the investments annually, I am not persuaded that Mr Townley missed the opportunity to mitigate the shortfall. Had Capita consistently from 2006 to 2011 sent incorrect benefit statements, then Mr Townley's argument would have held weight.

39. In any event, the Trustees were not privy to his target retirement income. Even if they were, they were not bound by it. They must strictly pay the pension from the Scheme, which a member is entitled to. There is no doubt that the Scheme pension is correct.

40. I do not think that the statement in 2006 should have been relied on for a period of five years by Mr Townley and his financial adviser. Especially as Mr Townley says he was actively planning and monitoring his investments it ought to have been imperative he did so with up-to-date figures. Therefore I do not agree with Mr Townley, that the Trustees should pay the shortfall.

Detrimental reliance

41. Mr Townley's argument is that had he been given correct pension figures in 2006, he would not have incurred the expenditure he did, but rather invested a further £55,680 into his ISAs to bridge the shortfall.

42. The principle expenditure Mr Townley made was the renovation to the bungalow for his son. Mr Townley says that he would not have carried it out in its entirety but would have done it piecemeal, had he known the accurate pension figures in 2006.

43. It is my view that Mr Townley would have completed the renovation work to the bungalow regardless of what the pension statement from Capita had said. Mr Townley did not apply for a grant with social services, something he could have done. Instead he chose after a telephone conversation with the local council to pay for the renovations himself.

44. The bungalow was not a property, which Mr Townley owned and any monies he spent would never be recoverable. The bungalow belonged to the local housing association and ultimately they will reap any benefit in the increased equity, as a result of the renovations.

45. Even had Mr Townley applied for a grant and been declined by the local council, then in my view it is more likely than not, that he would have carried out the renovation to the bungalow at his own cost in any event .

46. As he has said he wished to make the bungalow comfortable for his son and such requirement would override other factors including his target retirement income.

47. Mr Townley says that as he thought he had reached his target retirement income in 2006/07, he carried out improvements to his own home. Home improvements, such as a new bathroom and kitchen, are often carried out because they need to be done. I do not agree that the home improvements undertaken by Mr Townley were as a direct result of the incorrect benefit figures from Capita but in any event Mr Townley will have benefitted from the renovations.

48. Further Mr Townley says he paid for his wife and her father to go on an extended holiday to Canada. There is nothing provided by Mr Townley to say that he and his wife held back on such a holiday and it was only made possible once the incorrect pension figures from Capita raised his expectations that he had money free. It was most likely a holiday, which would have been undertaken regardless of the information supplied by Capita.

49. Mr Townley paid off his mortgage, which was a debt that had to be repaid. The incorrect statement may have accelerated Mr Townley's aspirations to repay the mortgage, but repaying his mortgage cannot be something, which is considered as detrimental.

50. It is, however fair to say that Mr Townley, had he known the correct pension figure in 2006, may not have lent money to the family business. However, saying this he did receive the money back with interest, so he has not lost out by lending to the family business.

51. Mr Townley says that he would have invested £55,680 into his investments rather than carry out the expenditure he did. But in all likelihood he would not have been able to invest the whole £55,680 into his ISAs. As £21,420 of this sum was spent on the bungalow, therefore the possibility of having a shortfall would have still remained. But I as I said above, had Mr Townley and his financial adviser asked for regular statements, he would have then been able to manage his

retirement income based on accurate figures and reached decisions as to whether to refurbish the kitchen or go on holiday or to repay the mortgage. The fact that statements were not requested regularly, Mr Townley reached decisions to spend money based upon out dated projections.

Loss of expectation

52. It is clear that when Mr Townley received the incorrect statement from Capita that it raised his expectations. He believed that he had achieved his targeted retirement income. Mr Townley in my view has suffered a loss of expectation rather than any tangible loss.

53. In these situations I typically direct compensation for the distress and inconvenience suffered. I will direct the Trustees to pay Mr Townley £350 as compensation for the distress and inconvenience he has suffered when he discovered his pension would be less than what he had expected.

Directions

54. Within 21 days of the Determination, the Trustees are to pay Mr Townley £350 for the distress and inconvenience he has suffered.

Jane Irvine
Deputy Pensions Ombudsman

2 February 2015