PO-3885

Ombudsman's Determination

Applicant	Dr Richard Baldwin
Scheme	Invensys Pension Scheme (**IPS**)
Respondent	Invensys Pension Trustee Limited (the **Trustee**)

Complaint Summary

Dr Baldwin has complained that he was provided with incorrect information and that he relied on the misinformation when deciding to retire. Had he known his actual pension entitlement was lower than stated, he would have continued to work and would not have triggered his pension until August 2013.

He says that his claim is for negligence and negligent misrepresentation.

He is seeking compensation for loss of income, loss of pension entitlement and for the distress and inconvenience caused by the maladministration in this matter.

Summary of the Ombudsman's Determination and reasons

The complaint should be upheld against the Trustee to the extent that Dr Baldwin is compensated for his distress and inconvenience. The complaint is not upheld to the full extent because:

- Although Dr Baldwin received a number of incorrect benefit statements he did not rely on them to his detriment and he has not changed his position.
- It is more likely that Dr Baldwin's decision to retire when he did was driven by his employment situation, and not the specific amount of pension that he had accrued, up to that point. In other words, I believe that Dr Baldwin would still have retired in 2010, even if he had been aware of his correct entitlement.

Detailed Determination

Employment / Scheme History

1. Dr Baldwin's date of birth is 30 May 1944. He was employed by APV until 31 May 1993. During his employment he accrued 10 years of service within the APV Pension Scheme and the APV Executive Pension Plan.

2. In March 1998, the APV Pension Scheme (including the APV Executive Pension Scheme) merged with Siebe Pension Scheme. As part of the merger, a new section of the Siebe Pension Scheme was created for former APV employees (with the intention that all preserved benefits would be calculated on the same basis as under the APV Pension Scheme).

3. In April 2000, IPS was formed by the merger of the Siebe Pension Scheme and the BTR Group Pension Scheme. The benefits for former APV members are now held under IPS, but are still governed by the provisions of the APV Pension Scheme.

Material facts

4. On 8 October 1993, the Group Pension Manager of APV issued Dr Baldwin with a "Combined Statement of Preserved Benefits" regarding his benefits within the APV Pension Scheme and the APV Executive Pension Scheme. At normal retirement age (62) it was estimated that Dr Baldwin's combined gross pension entitlement would be £66,256.72 per annum. The statement also said that, in deferment, the portion of Dr Baldwin's pension in excess of GMP would be revalued in line with inflation to a maximum of 5%.

5. On 3 July 2002, an IPS Pensions Manager (the **Pensions Manager**) wrote to Dr Baldwin with an estimate of benefits. At normal retirement age Dr Baldwin's gross annual pension was estimated to be £72,840.31.

6. On 11 October 2004, the Pensions Manager issued Dr Baldwin with the following estimates:

Retirement date	01/01/2005	30/05/2006
Gross Pension	£62,336.74	£72,840.31
Reduced Pension	£51,089.13	£59,182.75
Cash	£140,257.67	£163,890.70

7. In advance of his normal retirement date in May 2006, Dr Baldwin requested an up to date retirement estimate. Due to his executive entitlement having been recorded incorrectly, Dr Baldwin's received several erroneous estimates (which he knew to be

erroneous at the time). Then, on 7 June 2006, Dr Baldwin was told that as of 30 May 2006, he was entitled to a gross annual pension of £72,840.31 or a reduced pension of £46,822.20 per annum with a lump sum of £312,217.36.

8. Under IPS rules late retirement is only permissible with the Trustee’s consent. On 17 October 2006, the Pensions Manager wrote to Dr Baldwin’s Financial Advisor to confirm that the Trustee’s consent had been given. The letter also said that the Scheme actuary would be undertaking a review of commutation factors.

9. On 7 January 2007, Dr Baldwin wrote to the Pensions Manager. He said “I am not in a position at the moment where I need to trigger my pension…” He also asked about how his pension may increase, should he choose late retirement. He understood that this would be subject to calculation by the IPS actuary but he wanted to get a better idea as he was “anxious to ensure that I am not left any worse off by deferring.”

10. On 12 January 2007, the Pensions Manager wrote to Dr Baldwin enclosing a table of the late retirement factors that were in use at that time, and which he described as being “…subject to change without prior notice.”

11. On 10 November 2008, Dr Baldwin wrote to the Pensions Manager. He said “Since this earlier correspondence, I have been fortunate enough to have part-time employment, which has covered my immediate living costs and has therefore allowed me to continue to defer drawing my pension.” Of the late retirement factors he said “I can understand that both sets of Tables are subject to change by the Trustees of the scheme at any time…”

12. On 3 December 2008, the Pensions Manager issued Dr Baldwin with the following estimates:

Retirement Age	65	66
Gross Pension	£101,612.00	£113,558.00
Reduced Pension	£69,613.00	£76,741.00
Cash	£465,982.00	£511,753.00

The Pensions Manager also commented that the late retirement factors applied to Dr Baldwin’s pension would be the ones in force at the time of his retirement.

13. Dr Baldwin wrote to the Pensions Manager on 8 May 2010, saying:

> “I am soon to retire from two of my principal remunerative activities, and therefore will wish to trigger my pension during the next few months. I should

be grateful if you would reconfirm the information that you provided to me in your letter of 3 December 2008…"

14. On 21 May 2010, the Pensions Manager provided an updated estimate for retirement on 31 August 2010:

Gross Pension	£116,908.70
Reduced Pension	£78,795.00
Cash	£525,196.32

15. On 12 October 2010, Dr Baldwin said "Following my letter to you on 8 May 2010 and your response of 21 May, I have now retired from my two principal remunerative activities and wish to trigger my Invensys pension, with the first payment to be made on 30 November 2010."

16. On 22 October 2010, the Pensions Manager wrote to Dr Baldwin to inform him that he was entitled to an annual pension of £119,093.91, or a tax-free lump sum of £534,053.41 and a smaller pension of £80,083.43.

17. Dr Baldwin retired, as planned, on 30 November 2010, having opted to take the maximum tax free lump sum with a reduced pension.

18. On 23 February 2012, Punter Southall told Dr Baldwin that his entitlement had been reviewed as part of their duties as IPS's new administrators (appointed from 1 November 2011), and that his benefits had been calculated incorrectly. They said that:

    i. The principal inaccuracy in the pension calculation (there were other less significant inaccuracies) was that since leaving employment, benefits in excess of Guaranteed Minimum Pension (**GMP**) had been annually uplifted by 5% compound, whereas the uplift should have been line with RPI, to a maximum of 5%.

    ii. As a result of the errors Dr Baldwin's lump sum had been overpaid by £138,112.41, and his monthly pension had been overpaid by £17,196.69;

    iii. Dr Baldwin's correct benefits were an annual pension £59,391.35, which had increased to £62,133.36 from April 2011, and a lump sum of £395,941.

    iv. Dr Baldwin's monthly pension entitlement would be reduced from the next payment date and they were obliged to seek recovery of the £155,309.10 overpayment.

v. It was also identified that Dr Baldwin could be liable to pay a Lifetime Allowance Charge to HMRC because his tax free cash payment had exceeded £450,000.

19. In October 2012, Dr Baldwin repaid £138,112.41 – the total value of tax free cash overpaid, but he did not repay the remaining £17,169.69 because he disagreed with the way it had been calculated.

20. On 15 January 2013, a representative from IPS wrote to Dr Baldwin with a proposal for a full and final settlement. The Trustee offered to pay him £15,000 to cover costs incurred and any potential additional tax liability arising from a lifetime allowance charge; and in return the Trustee requested that Dr Baldwin repay the remaining £17,169.69 overpayment. Dr Baldwin did not accept the proposal and so the Trustee started to reclaim the remaining overpayment from his monthly pension payments, with the intention that the overpayment would be repaid over a four year period.

Summary of Dr Baldwin's position

21. The nature of his complaint is not that of a defence against the Trustees right to recover the overpayment; he is not seeking more than he is entitled from IPS. His complaint is that maladministration has caused him substantial financial loss for which he seeks compensation.

22. His financial loss surrounds the fact that he was deprived of the opportunity to make a fully informed decision as to when to trigger his pension entitlements and when to resign from a number of remunerative executive and non-executive positions.

23. In the years leading up to his retirement he was provided with a number of benefit statements. He placed reliance on these documents when deciding to claim his benefits from IPS, in November 2010. The volume of correspondence from 2002 to 2010, showed his retirement planning and the importance he placed on the benefit statements.

24. However, he considers that he might be entitled to the higher benefits by reason of estoppel by representation because misleading statements were made to him over a number of years, upon which he relied to his detriment.

25. Had he known his true entitlement, he would not have left his paid employment, or triggered his IPS pension when he did. He would have continued to work until such time as his deferred pension grew to the level quoted to him in October 2010 (gross pension of £119,093.91 per annum). On this basis, Dr Baldwin calculates that he would have worked until August 2013.

26. As he was beyond the normal retirement date, late retirement factors were obviously an important part of his retirement planning. Just because the factors were potentially subject to change does not mean that he did not rely on them. He

delayed triggering his IPS pension because of the IPS' generous late retirement and commutation factors.

27. His average salary for the final three years of full-time employment with Alfred McAlpine (1997 to 2000) was £233,009 per annum. His average salary from his portfolio of activities for the three years prior to triggering his IPS pension was £170,473 per annum. Against this background, he and his wife decided to target an aggregate pension income of £100,000 per annum after tax (around £150,000 before tax), with the maximum lump sum allowance. His IPS pension was to form the majority of their targeted pension amount, and so the (incorrect) statements he received from 2002 onward were a source of reassurance to him.

28. He has provided a copy of Marsh Financial Confidential Financial Questionnaire from 25 March 2002, which shows that he was targeting an income of £100,000 per annum.

29. He has also provided copies of his own excel worksheets, which he used for planning purposes. The examples provided are from April 2009, June 2010, and December 2010, and depict the value of his benefits from various pension pots. These documents demonstrate the progressive tracking that he undertook of his overall pension position:

    - The final note on each page identifies the total gross figure that would be required to generate an overall pension of £100,000
    - The version dated 30 April 2009, shows a gross pension figure (before tax and lump sum) as at May 2009 of £160,945, of which his IPS pension would contribute £101,612
    - The version dated 1 June 2010, shows gross pension entitlements as at May 2010 and November 2010 of £176,294 and £182,922 per annum of which his IPS pension would contribute £113,558 and £120,186 per annum respectively
    - The version dated 9 December 2010, from immediately after he triggered his IPS pension, shows a gross pension figure of £181,978 per annum, of which his IPS pension would contribute £119,094 per annum.

30. He decided to retire from remunerative directorships with Geoffrey Osborne Limited and PfS in mid 2010 (before his pension commenced) because he relied on the statements he had already received (the latest one in May 2010); and also because it is common practise for senior office-holders to provide good notice about any change in circumstances in order to facilitate organisational forward planning.

31. He was originally supposed to step down from his position with Geoffrey Osborne in July 2011, but based on his expected income from IPS, he agreed to retire sooner. Had he known the true position, he would have continued working until July 2011.

32. In January 2012 he was re-appointed by PfS, this time as Chairman; his remit was to oversee PfS during its planned liquidation in the summer of 2012. He was two months into his appointment when he was notified that his benefits were to be reduced. At this point he had made it clear to everyone that he was winding down to retirement and there was very little time left before liquidation

33. Had he known that his pension would be lower, before he retired in 2010, he could have positioned himself in the market for other positions. He was still eminently employable in 2010 - as at November 2010 (in addition to his position at PfS) he was an advisory board member at Salford University Centre for Research and Innovation, a Visiting Professor at University of Salford and Chairman of Health and Care Infrastructure Research and Innovation Centre (the last two positions ended in November 2013).

34. His employment has been at board level since 1987 but, in February 2012 (when he was notified of the overpayment), he was less employable. It takes considerable time to acquire a position as a senior director and the roles are intended to last for three to nine years. In reality, having begun to extricate himself from the market, he had minimal prospect of securing a board appointment for the period between mid-2012 and August 2013, especially as he was 68 years old.

35. He has provided various letters to the Pensions Ombudsman's Service from former colleagues and business associate, which support:

    - his intention to retire when his pension reached a certain level,
    - his employability at the time of his retirement 2010; and
    - his view of the difficulty of securing a suitable position from 2012 to 2013.

36. He has a good standard of living but, as a result of IPS' maladministration, not as good as he was expecting. The maladministration has had and will continue to have, a significant impact on his standard of living. His pension is £20,693.63 pa lower than it would have been had he deferred his pension from November 2010 until August 2013 and he has lost the income he would have earned, had he carried on working until August 2013.

37. He has a defined contribution pension in connection with employment with Alfred McAlpine Plc, worth approximately £361,942. He will have to trigger this pension soon because the reduced income from the Scheme (and a pension from BAE systems) is not covering his living costs.

38. Dr Baldwin seeks damages for loss of earnings from employment and loss of pension entitlement, as follows (Dr Baldwin has supplied full calculations, for brevity only a summary is provided here):

    i. loss of earnings of £386,048.67 (gross)

ii. less pension paid from December 2010 to August 2013 - £203,748 (gross)(excluding tax free cash and sum recovered against the overpayment from on-going monthly pension payments)

iii. plus loss of pension benefits from August 2013 onwards, due to the fact that he would not otherwise have retired until his gross pension reached £119,899.86 per annum - £1,161,258.60 (gross) (this figure is inflated to allow for possible tax liability of 45% but Dr Baldwin reserves to right to revise this figure due to uncertainty over tax liability).

iv. Total - £1,343,559.27

39. He does not consider that the £15,000 offered to him is reasonable given the extent of his losses.

40. Although he repaid £138,112.41 overpayment of his tax free cash, this was without prejudice to his entitlement to compensation. The gross overpayment from monthly pension payments was £28,748.09 and the Trustee calculated that he should repay a net overpayment of £17,196.69 on the basis of a marginal tax rate of 40%. But he was paying a marginal top rate of tax of 50% and he therefore calculates this part of the overpayment should be £15,206.38.

41. In response to the issue of my Preliminary Decision, Dr Baldwin has asserted that his complaint is one of negligence and negligent misrepresentation. I have therefore considered this position in my conclusions which follow.

Summary of the Trustee's position

42. The Trustee accepts that Dr Baldwin received a misstatement of his benefits in 2010 and that incorrect benefits were paid to him at that time.

43. They have apologised for the error and offered Dr Baldwin £15,000 for his costs expenses, losses and inconvenience.

44. Dr Baldwin has provided no independent evidence to support his claim that:

- it was his intention only to retire from employment and draw his pension benefits when those benefits reached £119,093.91 per annum; and

- that if he had received the correct statement of his benefits in 2010 he would have remained in employment and deferred receipt of his pension until his pension entitlement reached £119,093.91.

45. In Dr Baldwin's 8 May 2010, letter to the Trustee's administration office he said "I am soon to retire from two of my principal remunerative activities, and therefore will wish to trigger my pension in the next few months."

46. In Dr Baldwin's 12 October 2010, letter he said "Following my letter to you on 8 May 2010, and your response of 21 May, I have now retired from my two principal remunerative activities and wish to trigger my Invensys pension…"

47. The letters of 8 May and 12 October 2010, pre-date the receipt by Dr Baldwin of the statement that his benefit entitlement would be £119,093.91 per annum from November 2010. This clearly suggests that he had already decided to retire before he received the final incorrect statement of benefit.

48. In the extensive correspondence between Dr Baldwin and the Scheme's administrators at no time does Dr Baldwin make reference to a targeted level of pension determining the date at which he intended to retire.

49. In Dr Baldwin's letter of 7 January 2007, he said "I am not in a situation where I need at this moment to trigger my pension."

50. In Dr Baldwin's letter of 10 November 2008, he said "Since this earlier correspondence, I have been fortunate enough to have a part-time employment, which has covered my immediate living costs and has therefore allowed me to continue to defer drawing my pension."

51. The above statements made by Dr Baldwin on 7 January 2007, and 10 November 2008, strongly suggest that his decision to retire was driven by his employment position rather than the reverse. He did not wish to target a particular level of pension, rather, he chose to draw his pension when he ceased employment.

52. Although Dr Baldwin made numerous enquiries about his options, his stated concern throughout was that he should not be penalised as a consequence of deferring his retirement, rather that he should take advantage of "generous late retirement factors." Also in the letter of 7 January 2007, Dr Baldwin said "I am anxious that I am not left any worse off by deferring."

53. It was made clear to Dr Baldwin (within their letters of 12 January 2007 and 3 December 2008) that the Late Retirement Factors provided to him were not guaranteed, were subject to change at any time without notice, and that the change would apply to the totality of the benefits deferred.

54. In view of the information supplied to Dr Baldwin they find it difficult to accept his assertion that "One of the key reasons for delaying triggering of my IPS pension was that IPS offered generous late retirement factors."

55. Dr Baldwin has yet to draw his pension from Fred McAlpine plc. Had the amount of his pension been the driving force behind his decision to retire, it is hard to understand why he did not also draw this pension entitlement in 2010, or even in 2012, when he learned of the error in his benefit statement.

56. If Dr Baldwin was targeting a specified level of pension before retiring it would be natural for him to have regard for the totality of his pension rights from all sources rather than just his pension from the Scheme.

57. Dr Baldwin has not supplied any evidence that he changed his position in direct reliance of the misstatement of benefits provided to him, or that he sought additional employment to mitigate his reduced income.

58. While they accept that some level of compensation for distress and inconvenience is properly due to him, the Trustee considers that the amounts claimed by Dr Baldwin are disproportionate and unreasonable.

Conclusions

59. Generally speaking, even when a member has been provided with misinformation, he / she is only entitled to their correct entitlement from the scheme in question. However, where misinformation has been provided (and it was reasonable for the member to have relied on that information) my service seeks to place members back into the position they would have been in, had they never received the misinformation. In considering this, I must assess to what degree the member relied on the information i.e. what is the financial loss, and how might they have acted differently, if they had been aware of the true situation.

60. Dr Baldwin says that had he known his true entitlement from IPS, he would have carried on working and would not have claimed his pension until August 2013, when he calculates it would have reached around £119,000 per annum (in line with the estimate he received in October 2010). As he retired in November 2012, Dr Baldwin says he has lost out on the income he would have received from employment, and the higher pension payments he would have received, if he had been able to defer his pension for a few months longer.

61. In contrast the Trustee say that although Dr Baldwin received misinformation, his decision to claim his pension was driven by his employment situation, rather than it being because his pension had reached a certain level. They also say there is no financial loss because Dr Baldwin has not changed his position.

62. Having taken into account both Dr Baldwin's and the Trustee's position, I have considered whether :

    i. Dr Baldwin's retirement planning was adversely affected by reliance upon the incorrect statements he received over the years; or

    ii. it is more likely that Dr Baldwin left employment because of the amount of pension he thought due to him, or if the timing of his pension application was based on a desire to cease full-time employment at that time; and

iii. the provision of the misinformation might have caused Dr Baldwin a financial loss, for which he should receive compensation.

63. It is clear that since at least 2002, Dr Baldwin kept a close eye on his prospective entitlement because he requested a number of pension estimates (and kept his own spreadsheet); but that does not necessarily mean he relied on them to his detriment.

64. Dr Baldwin decided to retire in 2009 / 2010 and so the earlier pension estimates he received did not play a part in his eventual decision to retire. Had the earlier pension estimates he received contained more accurate (lower) pension figures, it is likely that he would have acted in the same way towards his IPS benefits and left them deferred within the IPS until at least 2010.

65. Although Dr Baldwin has said, had he known, he would have carried on working until 2013, he has not suggested he would have made different decisions in relation to his other pension arrangements and finances in general.

66. I accept that Dr Baldwin wanted to retire on an income of around £100,000 per annum; this is indicated by the financial questionnaire he completed for Marsh Financial Service in 2002. However, at the time the form was completed, £100,000 per annum may have been an aspirational or approximate figure; because Dr Baldwin could not have known how much his IPS' administrators would calculate that his pension would be worth. He had yet to receive the estimate of 3 July 2002 - the previous estimate from 1993 having said he was entitled to a pension of £66,256.72 per annum. Plus the Trustee had yet to grant permission for late retirement, or supply him with late retirement factors.

67. I am more persuaded by the Trustee's argument that Dr Baldwin's decision to retire was predicated by his employment situation and not the reverse. Dr Baldwin's letters of 8 May 2010, and 12 October 2010, show that he that he was respectively, planning to leave employment and had left employment, before his final entitlement was confirmed by the IPS' administrators. I realise that Dr Baldwin may have made his own calculations based on the late retirement factors, but it would have been unreasonable of him to have relied on them without official confirmation. Especially as, for all he knew, the late retirement factors may have changed since he received them in 2007. As a matter of fact, the late retirement factors did not change in the relevant period, but they could have. Dr Baldwin says he factored the fact that late retirement factors could change into his retirement planning. But this was not possible as they could have fluctuated significantly, or not at all, so he could never have known what effect they might have on his pension in the future. The fact that the late retirement factors did not change is just a reflection of what happened - they could have done (to his detriment or advantage) and Dr Baldwin was aware of this. So it was not possible for him to take future late retirement factors into account when considering his retirement planning.

68. Overall, I take the view that Dr Baldwin had reached the point where he wanted to reduce his working hours in order to wind down to complete retirement; and the reduction in working hours necessitated him to claim his IPS pension. I'm sure Dr Baldwin had a reasonable idea of a rough amount of pension income he required from IPS but he was not concerned that it should be precisely £119,094 gross. This amount was not even confirmed to him until after he had given up his two principal employments. Therefore, I consider that, on the balance of probabilities, Dr Baldwin would have retired at the same point had he been given the correct information.

69. Dr Baldwin makes the point that he has established the necessary elements for a claim in negligent misrepresentation.

70. Generally, an action for any form of "misrepresentation" is between contracting parties (as opposed to negligent misstatement, which requires no contractual link). An action for negligent misrepresentation is based on s.2(1) Misrepresentation Act 1967. However, I do not think negligent misrepresentation under the Misrepresentation Act 1967 is relevant here as the events complained of do not constitute a contractual relationship formed between the Trustee and Dr Baldwin (and the erroneous statements were not an inducement to enter into such), nor is there a pre-existing contractual relationship between them.

71. Accordingly, my view is that what is actually (potentially) relevant is negligent misstatement.

72. Negligence/negligent misstatement is a tort. To bring a successful claim in tort, it is necessary for Dr Baldwin to prove that he has suffered loss that was caused by the Trustee's breach of duty. Causation encompasses two legal principles; factual causation and remoteness (or legal causation).

    - Factual causation - This is referred to as the "but for" test. I have to consider whether, but for the trustee's actions, Dr Baldwin would have suffered loss (Cork v Kirby Maclean LTB [1952] 2 All ER 402).

    - Remoteness or legal causation - If factual causation is established, it is necessary to establish that the trustee's breach was legally the cause of the loss. Dr Baldwin would only be able to recover loss that is within the scope of the trustee's duty and I consider was reasonably foreseeable (The Wagon Mound [1966] AC 388).

73. As I have explained in Paragraph 67, my view is that Dr Baldwin would have retired at the same point had he received the correct information. So even if it could be established that a duty was owed and that a breach occurred, the Trustee's breach could not be said to have caused Dr Baldwin to suffer loss - he would have acted in the same way had the information been correct. Therefore, factual causation has not been established.

74. Dr Baldwin has said that he believes he might be entitled to receive the higher (incorrect) benefits, by virtue of estoppel by representation. For estoppel by representation to apply the following requirements need to be satisfied:

    i. there has been a clear promise or a representation on which it was reasonably foreseeable that the person to whom it was made would rely;

    ii. the party claiming estoppel acted in good faith and relied on the representation;

    iii. as a result he/she acted to his/her detriment; and

    iv. the party who made the representation or promise is now pursuing a claim that is inconsistent with the representation or promise.

    Dr Baldwin was provided with a number of clear representations, which he could not have known were incorrect, and on which he reasonably relied. However, the key point here is that Dr Baldwin has not acted to his detriment, because, had the incorrect information not been supplied to him, it is my view that it is likely he would have retired at the same point anyway.

75. As I consider that the timing of Dr Baldwin's retirement would not have changed, it is inappropriate for me to consider compensation from lost earned income.

76. Dr Baldwin initially accepted retirement on £80,083.43 per annum from IPS (after commutation). If I were to direct that Dr Baldwin should receive an award for financial loss, the amount would be restricted to the difference between the income he initially retired on and the amount he is now receiving from IPS. But that would only be if Dr Baldwin had "changed his position" as a result of the additional income thought due to him.

77. Change of position is where the member relied on the information to their detriment i.e. financially speaking, they are in a worse position than they would have been, had they been provided with correct information in the first place. This occurs in situations where the member has outlaid expenditure or made financial decisions, in reliance on the additional funds thought due to them. However, in this circumstance members have a duty to mitigate their circumstances by, for example, reversing the expenditure (where possible) or finding alternative employment.

78. Whilst Dr Baldwin's position in terms of his retirement income and lump sum is not as favourable as he thought it would be, I do not consider that he has changed his position. I do not believe he is in any debt and he has the means to mitigate his circumstances e.g. he could trigger his Alfred McAlpine pension. He has also not sought to find alternative employment. For the reasons Dr Baldwin has explained, I accept that it may have been difficult for him to have obtained a suitable position at board level, but it does not appear that his financial circumstances have forced him to attempt to find another board level appointment, or any other type of employment.

79. Dr Baldwin is of the view that he has suffered a financial loss but in reality he was never entitled to the higher pension award he was initially given. He has suffered a loss of expectation rather than actual financial loss. Had Dr Baldwin been provided with the correct information from the outset, his expectations would have been different.

80. I do not think Dr Baldwin would have made different decisions, had he been provided with the correct information, so I do not direct the Trustee to provide compensation in respect of financial loss. However, Dr Baldwin was supplied with inaccurate statements of benefit and this was maladministration.

81. To remedy maladministration my aim is to put the wronged person in the position they would have been in had the maladministration not occurred. In this case I have found that had Dr Baldwin been in receipt of the correct information at the relevant time he would have taken the action he took anyway. As a result the maladministration has not caused him financial injustice.

82. However, as provided for below, Dr Baldwin should be compensated for this maladministration because it caused him to suffer unnecessary distress and inconvenience.

83. In deciding the amount of compensation I should award, I took into consideration the number incorrect statements Dr Baldwin received, and the duration over which they were issued, as these were an aggravating factors.

84. The Trustee offered Dr Baldwin £15,000 in compensation. This amount wasn't calculated on a precise basis, it was offered as a lump sum to cover all possible "…costs, potential tax and other matters", which, for the most part, the Trustee did not quantify. I do not award compensation for financial loss in this way. My awards of this kind are based on actual quantifiable loss. Hence, I do not direct that Dr Baldwin should receive £15,000.

85. However, with regard to the potential tax aspect of the £15,000 compensation, I note that:

    - when Dr Baldwin repaid £138,112.41 of the overpayment, his tax free cash fell below the £450,000 threshold, so that the HMRC additional tax charge no longer applied; and

    - the Trustee acknowledged £1,963.31 worth of tax (being the difference between £17,169.69 and £15,206.38) as a loss that could be satisfied as part of the compensation.

86. I have no doubt that Dr Baldwin would have been liable for the top rate of tax, and that he may have adjusted his annual tax payment to take account that IPS' tax deduction was only 40%. The overpayment is calculated net of tax and, therefore, should be calculated net of the amount of tax Dr Baldwin was actually paying.

Directions

87. Within 28 days of the date of this determination the Trustee shall:

- Pay Dr Baldwin £1,000 in respect of the significant distress and inconvenience caused to him.

- Recalculate the remaining overpayment net of his marginal rate of tax and communicate this amount to Dr Baldwin.

- Consult Dr Baldwin as to how he wishes to repay the remaining overpayment.

Anthony Arter

Pensions Ombudsman
30 March 2016