

## Ombudsman's Determination

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| <b>Applicant</b>     | Mr John Reynolds  |
| <b>Scheme</b>        | RAC (2003) Pension Scheme ( <b>the Scheme</b> )             |
| <b>Respondent(s)</b> | Aviva Staff Pension Trustee Limited ( <b>the Trustees</b> ) |

### Complaint Summary

Mr Reynolds has complained that the Trustees gave him incorrect information about his early retirement benefits which he relied upon to his detriment. He says that the compensation they have offered him for their errors and for having to pursue his complaint with them was insufficient.

### Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against the Trustees because Mr Reynolds had not relied on the incorrect information to his detriment. Also, the Trustees had offered him sufficient compensation for their admitted errors in providing him with incorrect statements and for their poor handling of his case.

## Detailed Determination

### Material facts

1. RAC Limited, Mr Reynolds' previous employer ceased to participate in the Scheme in 2011 when it was sold to the Carlyle Group and Mr Reynolds became a deferred member of the Scheme from this point.
2. RAC Limited offered Mr Reynolds voluntary redundancy in 2014 and he asked for benefit statements for both the defined benefit and defined contribution sections of the Scheme.
3. Mr Reynolds received a statement from the Scheme administrators on 13 May 2014 in connection with his defined benefits showing under option two that he was entitled to a tax free cash sum of £17,406.78 and a reduced pension of £ 2,611.02 p.a.
4. The Scheme administrators wrote to Mr Reynolds on 16 May 2014 providing a statement of his benefits and options under the defined contribution section of the Scheme. One of the options which was subsequently accepted by Mr Reynolds was a tax free cash sum of £33,825.87 plus a pension of £7,204.94 p.a.
5. Mr Reynolds decided to take voluntary redundancy from RAC Limited on 13 June 2014. He was 56 years old at the time of his decision.
6. The Scheme administrators wrote to Mr Reynolds on 16 June 2014 informing him that the defined benefit statement of 13 May 2014 was incorrect as it was calculated on an unreduced basis.
7. The Scheme administrators wrote to Mr Reynolds on 3 July 2014 to inform him that the option that he had selected under the defined contribution section of the Scheme was wrongly stated to him on 16 May 2014 and that it was not available to him.
8. Mr Reynolds' complaint was considered by the Trustee's under the Scheme's Internal Disputes Resolution Procedure, (**IDRP**).
9. The Trustees wrote to Mr Reynolds on 7 August 2014 saying,

"Having reviewed your complaint, the Trustee has decided to uphold this.

Dealing first with your defined pension benefits where you were quoted in error a lump sum of £17,406 with a pension of £2,611, whereas the correct benefits are a lump sum of £12,898 and a pension of £1,934. The Trustee had decided to pay you a pension of £2,611 per annum but to freeze the pension at this level, until such time as the correct pension of £1,934, together with future increases, exceeds this amount.

Regarding the lump sum, the Trustee has decided not to make any additional award in respect of this; however if you can demonstrate that you have

entered into immediate financial commitments which you can no longer meet, the Trustee will reconsider this.

Turning now to your money purchase benefits, the statement you received indicated that you could opt for a cash sum of £33,825 and a pension of £7,204. Due to an error in producing the statement, this was incorrect and if you were to opt for the cash sum of £33,825, the pension payable would have been £5,400. Having reviewed the statement, the Trustee concluded this was misleading and has decided to award both a pension of £7,204 as chosen by you, together with the cash lump sum of £33,825.

The Trustee also reviewed the way in which your complaint was handled by the administrator and notes the award of £200 for maladministration...”

10. The Trustees subsequently paid Mr Reynolds an increased tax free cash sum of £34,635.17 in addition to his pension in respect of his benefits under the defined contribution section of the Scheme. This they say was to reflect the fact that although he had no entitlement to the tax free cash, they took account of market movements in the period between the date of the quote and the date of payment.

#### **Summary of Mr Reynolds' position**

11. He accepted voluntary redundancy based on the figures contained in the letters of 13 and 16 May 2014 and he was subsequently informed by the Trustees on 16 June 2014 that the figures quoted were incorrect.
12. He gave up his £40,000 p.a job with RAC Limited based on the incorrect figures and he now has to work more hours for less money in his current job.
13. He suffered detriment from not receiving £4,500 in respect of the lump sum and from the loss of his £40,000 income from his job with RAC.
14. If he had stayed working for RAC Limited when he eventually came to take his benefits they would be paid to him over a shorter time period so the amount of his payments would be higher than the benefits he is currently receiving from the Scheme.
15. He intended to pay off his mortgage in full on reliance on the incorrectly quoted figures.
16. It was his intention to visit his family abroad based on the incorrect figures quoted.
17. He suffered additional distress from the time and expense of having to pursue his complaint with the Trustees, in having to live without income for two months and from the embarrassment of trying to find alternative employment.

#### **Summary of the Trustees' position**

18. Mr Reynolds was only entitled to benefits in accordance with the Scheme rules. They accept that they were at fault in the provision of incorrect benefit statements to Mr Reynolds but they have offered him adequate compensation for any loss that he may

have suffered as a result. Their offer exceeds his entitlement under the Scheme rules. The pension he is currently receiving in respect of his benefits under the defined benefit section of the scheme is £677 p.a more than his Scheme entitlement.

19. They decided to honour his selected option under the defined contribution section of the Scheme in full by agreeing to pay him the pension which he selected along with the lump sum to which he was not entitled to under the Scheme rules. They also offered him a payment of £200 for distress and inconvenience.
20. He has not provided any evidence to show that he has applied the tax free cash sum he received to pay off or reduce his mortgage.
21. He has argued that he intended to use the additional amount incorrectly quoted to visit his family abroad. However, he has not provided any evidence to suggest that he had incurred such costs.
22. He has a duty to himself to mitigate any losses he has suffered. He has confirmed that he obtained alternative employment. He is receiving a total pension of £9,815 p.a from the Scheme which he could not have received had he remained in employment with RAC Limited.

## **Conclusions**

23. The Trustees do not dispute that they gave Mr Reynolds incorrect statements about his Scheme benefits on 13 and 16 May 2014. The provision of incorrect information by the Trustees was maladministration by them. The normal approach where someone has suffered injustice as a result of maladministration is to try and put them in the position they would have been in, had the maladministration not occurred. In this case, there was maladministration so the next question to consider is whether that caused Mr Reynolds the injustice he alleges.
24. The Trustees' obligation is to pay what the Scheme rules require them to pay. So Mr Reynolds was only entitled to benefits in accordance with the Scheme rules. There is no evidence that shows the revised figures mentioned in the Trustees' letter to him of 7 August 2014 were incorrect.
25. I do not find that Mr Reynolds should be compensated for actual loss as he had not spent any money on reliance on the incorrect statements in question. I note that he says that he had intended to visit his family abroad, however he had not committed to that expenditure so he cannot reasonably claim for any financial loss in this regard. He also says that he planned to repay his mortgage on reliance on the incorrectly quoted figures. However, the mortgage payments were a long standing on-going financial commitment which started before Mr Reynolds received the incorrect statements in question. I therefore do not consider that he has any justifiable claim regarding his mortgage repayments. Further, I would add that spending money in advance of receiving payment of his benefits from the Scheme, even if there had been a

reasonable degree of confidence in its future payment, would be likely to have greatly weakened his detrimental reliance argument.

26. Mr Reynolds asserts that he would not have given up his £40,000 p.a. post with RAC Limited and taken voluntary redundancy had he known the correct position about his Scheme benefits from the outset. However, I find that it was more likely than not that he would have taken voluntary redundancy irrespective of receiving the incorrect information. This is because; he was already willing to accept a very significant reduction in his income on the assumption that the figures contained in the incorrect statements were right. The net difference between the correct and incorrect statements was a reduction in his overall Scheme pension of approx. £2,500. Although this amount was not insignificant, it was not substantially enough in my view for him to have altered his decision about taking voluntary redundancy. Consequently, I do not consider his claim for compensation because he was living without any income for two months was reasonable.
27. In any event, following the Trustees' provision of the incorrect statements on 13 and 16 May 2014 to Mr Reynolds he was subsequently made aware of the correct position regarding his defined benefits shortly afterwards on 16 June 2014 and his defined contributions benefits on 3 July 2014. He therefore had sufficient time to mitigate his loss. I note that he had found alternative employment and has received income for that work. Also, the Trustees have offered to freeze his pension from the defined benefit section of the Scheme benefits at the current amount, until such time as the correct benefit, together with future pension increases, exceeds the incorrect amount. Mr Reynolds argues that if he had stayed working for RAC Limited that when he eventually came to take his benefits they would be paid to him over a shorter time period so the amount of his payments would be higher than the benefits he is currently receiving from the Scheme. However, it is my view that the Trustees' offer as set out in their letter to him of 7 August 2014 was reasonable as it puts him in a better position than if the errors had not occurred.
28. Mr Reynolds suggests that he should receive approx. £4,500, being the difference between the correct and incorrectly quoted lump sum mentioned in Para 9. However, Mr Reynolds' benefits are governed by the Scheme rules. The fact that he had received incorrect statements from the Trustees does not confer on him the rights to those incorrectly stated benefits. Had Mr Reynolds acted to his detriment on the reliance on the incorrect statements he may have a justifiable claim for financial loss. However, for the reasons I have given above, I do not find that he has suffered any loss.
29. I turn to the matter of compensation for the distress and inconvenience Mr Reynolds has suffered as a result of the errors. He says that he should be compensated for the time and expense of having to pursue his complaint with the Trustees, in living with no money for two months and in the embarrassment of trying to find alternative employment. I note that Trustees have had indicated in their letter to him of 7 August 2014 that they would award him £200 compensation for the way in which they handled

his case. It is my view that the £200 being offered by Trustees is sufficient redress for the distress and inconvenience caused to Mr Reynolds for their admitted poor handling of his complaint, this is in line with I would normally award in other for similar cases.

30. There were instances of maladministration by the Trustees as highlighted above. He has had his expectations raised. However, I consider that the total compensation offered by Trustees to Mr Reynolds as set out in their letter to him of 7 August 2014 was reasonable redress for their failings in this case.

31. For the reasons I have given above, I do not uphold Mr Reynolds' complaint.

A handwritten signature in blue ink, appearing to read 'Jane Irvine', is positioned on the left side of the page. The signature is fluid and cursive, with the first name 'Jane' being more prominent than the last name 'Irvine'.

**Jane Irvine**

Deputy Pensions Ombudsman  
23 March 2015