

Ombudsman's Determination

Applicant	Mr E
Scheme	Ford Pension Fund (the Scheme)
Respondents	Ford Pension Fund Trustees Limited (the Trustee), Mercer Limited (Mercer)

Outcome

1. I do not uphold Mr E's complaint and no further action is required by the Trustee and Mercer.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E has complained that he was misadvised about his pension options when he left employment with Ford Motor Company Limited (**Ford**) in March 1987.

Background information, including submissions from the parties

4. Mr E started work with Ford in January 1971. He joined the Scheme six months after his start date. He decided to leave Ford in March 1987; he had accumulated 15 years 8 months pensionable service.
5. When he left he says he was offered two options, to transfer his benefits to his new employer or transfer to an insurance company nominated by the administrator. Mercer was the administrator for the Scheme in 1987. Although on the termination form, the Trustee had given Mr E seven different options, one of which was to keep the pension preserved within the Scheme.
6. Mr E says that in 1987 due to significant pressure from Mercer, through persistent phone calls, he agreed to transfer his deferred Scheme benefits to a section 32 buy out policy.
7. In September 1990 he re-joined Ford and remained employed by Ford until he retired in June 2014. After he re-joined he made attempts to transfer the section 32 buy out policy into the Scheme but he was unable to do so. Mr E says the reason given was that the transfer value was insufficient to meet the GMP liability.

8. When he retired he realised that the section 32 buy out policy would only provide a GMP and no other additional benefits. This was contrary to what he was led to believe by Mercer when they arranged the transfer in 1987.
9. Mr E would like to transfer back into the Scheme and have his 15 years 8 months reinstated back into the Scheme.

Adjudicator's Opinion

10. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee and Mercer. The Adjudicator's findings are summarised briefly below:
 - Mercer fulfilled Mr E's instructions to transfer the Scheme benefits to a section 32 buy out policy.
 - The section 32 buy out policy did not produce the anticipated returns because of poor performance rather than maladministration by Mercer or the Trustee.
 - The section 32 buy out policy cannot be transferred back to the Scheme.
11. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I have considered the further representations made by Mr E, along with those made earlier by both parties but they do not change the outcome.

Ombudsman's decision

12. I do not uphold the complaint. I make no findings of fact on the subject matter of the dispute because I cannot award a remedy. I appreciate this outcome will be disappointing to Mr E. My reasons are as follows.
13. Mr E says that the Trustee and Mercer should have warned him against transferring out of the Scheme. He adds that he was pressurised by Mercer to transfer out of the Scheme to a section 32 buy out policy. He was not told that once he transferred to a section 32 buy out policy then he could not transfer back to the Scheme. He says that he was not given clear warnings that the with profits fund would not perform as expected and it was only after receiving his final bonuses he realised how badly it performed.
14. The claims made by Mr E could alternatively come before a court as an action for breach of contract or breach of trust, or in negligence. They are not claims of 'pure maladministration' which only the Ombudsman can determine. The claims concern acts or omissions which occurred in 1987, albeit Mr E only became fully aware of their impact later on. The Ombudsman accepted jurisdiction to investigate on that basis. In the course of investigation Mercers argued that the claims are statute barred, in the sense that if they were brought before a court the court would have no

power to award a remedy because the subject matter is too old. Mercer refer in particular to the overriding limit of fifteen years after the commission of an act or omission alleged to amount to negligence (section 14B Limitation Act 1980).

15. On issues such as these, I am bound by the decision of the court in *Arjo Wiggins Ltd v Ralph* [2009] 079 PBLR which held that in determining disputes of law, the Pensions Ombudsman cannot take a less restrictive approach to time limits than the courts would take. (This case was an appeal from Ombudsman decision 27888/1 of 31 March 2009 to which Mr E referred in his submissions). In the circumstances I cannot award any remedy even if I were to find Mr E's allegations proved; I have no power to award substantive relief to a complainant whose complaint would have been defeated by a limitation defence had it been brought by action in court, and in this case I am persuaded that it would have been.
16. Therefore, I do not uphold Mr E's complaint.

Karen Johnston

Deputy Pensions Ombudsman
10 June 2016