Ombudsman's Determination

Applicant	Mr Y
Scheme	DHL Group Retirement Plan (**the Plan**)
Respondents	DHL Trustees Limited (**the Trustee**)

Outcome

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

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y has complained that the Trustee of the Plan did not give sufficient information about a change to the early retirement factors. This has upset his retirement plans and he has lost the opportunity to take remedial steps to counteract the changes and for which he feels he should be compensated.

Background information, including submissions from the parties

4. Mr Y says that when he joined the Plan he was given a brochure that showed that the early retirement reduction factor for retirement before the age of 60 was 2% a year. In 2007 the company announced some changes to the Plan from 1 January 2008 and an announcement was sent to members. The changes included amendments to the early retirement provisions and reduction factors. The announcement said that the early retirement reduction factor would now be based on the period between the date of retirement and age 65 for pensionable service from 1 January 2008. The early retirement pension would therefore be based on two calculations; one for the pensionable service period up to 31 December 2007 and a separate calculation for pensionable service from 1 January 2008.

5. The announcement stated that the early retirement reduction factors are reviewed from time to time and following a request from the company these had been reviewed and:

> " … in future reductions in pension will be based on factors that are cost neutral to the scheme. This will mean changes to the factors that are currently in use. The changes will be phased in and will be made on 1

January 2008, 1 July 2008 and 1 January 2009. The new factors will apply to your total pension, but split as outlined in the Early Retirement section above."

6. Mr Y says the announcement in 2007 mainly focused on the effect on contributions changes from I January 2008. He found the reference to 'cost neutral' factors to be misleading as he did not know what the value of the 2% early retirement factors were and what the impact of the changes would have on him. The statement did not provide enough information to reach a meaningful conclusion.

7. He communicated with the Pension Department on numerous occasions to try and ascertain what the early retirement factors were. In December 2011 he was advised that the 2% early retirement factors would apply for service before 1 January 2008. It was not until November 2014 that he received confirmation that the 2% early retirement factors would not apply to service before 1 January 2008. Mr Y then took action to mitigate the effects of the change to the early retirement factors by sacrificing his annual bonus in 2015.

8. Mr Y also says that the new early retirement factors were communicated to members over a certain age but not to all members. As the 2% early retirement factor was a known and published figure the Trustee should have stated that the early retirement factors were changing and provided details of the new factors. He does not understand the reasoning for not providing this information to all members as it is key to planning their retirement income.

9. Mr Y has argued that the lack of a clear description of what the new factors would be has changed his retirement planning and for which he should be compensated. He has suggested that he should be compensated for the loss of tax relief and compound investment return on the bonuses he would otherwise have sacrificed over those seven years between 2007 and 2014.

10. The Trustee does not agree that the information contained within the 2007 announcement was misleading. It explained that the current factors represented a cost to the Plan and that the new factors would be cost neutral. It would have been reasonable to expect members to know that the factors would change to a less generous rate. The factors were not known at the time that the 2007 announcement was issued and were to be phased in. Members over the age of 50 were notified of the factors as they were more likely to be affected by the change. Younger members such as Mr Y, who was 41 at the time of the change, would have a longer period to mitigate the effects.

11. The Trustee also says that Mr Y did not request any information about the early retirement factors until 2011 and at that time some wrong information was given. The Trustee accepts that the correct information was not given until 2014, and for which Mr Y has been offered £500 in compensation.

Adjudicator's Opinion

12. Mr Y'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 briefly below:

- The Trustee complied with the statutory consultation procedures in respect of the proposed changes and the announcement was clear that the change in the early retirement factors would be on less generous terms and would not be as good as before. The members' booklet also made it clear that the factors were subject to change.

- The Trustee said that the new actual early retirement factors were not spelled out as they were still to be determined and were being phased in. Those over the age of 50 were expected to be most immediately affected and were sent early retirement statements. Mr Y was not sent a statement as he was aged 41 at the time. This was not an unreasonable approach.

- There were and are no guarantees that the early retirement factors would not be reviewed then or in future. Indeed it is possible that the early retirement factors will worsen, from Mr Y's perspective, as life expectancy increases. Mr Y has taken action to mitigate the changes to the early retirement factors and it is possible that he may make up some or all of his perceived shortfall. It would be inequitable to attempt to quantify a perceived loss as opposed to an actual loss.

- Mr Y had an expectation that the pension he would receive on early retirement would be higher, based partly on the information in the booklet. But the reduction factors quoted in the booklet were not guaranteed and clearly stated that they were subject to change. Mr Y has therefore suffered a loss of expectation and not an actual loss.

13. Mr Y does not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y has provided his further comments many of which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr Y for completeness.

Ombudsman's decision

14. Mr Y says he simply cannot accept that such vague statements in relation to clear and published information regarding his largest single financial investment is acceptable. He compares this to a loan with clearly documented early repayment fees and cannot see why it would be acceptable for these to be changed to a non-disclosed figure using a statement like 'cost neutral to the scheme' and then finding

out that they did disclose the correct early repayment fees to people that had nearly finished paying off their loan.

15. The statement ‘cost neutral to the scheme’ does not disclose what the change is or the magnitude of the change being made and he had absolutely no way of establishing this from the information provided to him. He feels he lost out because of the poor communication and this was compounded by the wrong information provided to him in following communications.

16. He had clearly planned to retire early and made repeated attempts to establish the cost impact of doing this. Despite writing to the pensions department on a reasonably regular basis he found that he had based his financial planning on incorrect information and he could not have done any more to obtain the correct information.

17. I can understand Mr Y’s frustration that the early retirement factors have changed but he is comparing his right to a pension with a contract for a loan. The two are not the same as the terms for a contract cannot be changed without the agreement of the parties.

18. Mr Y has a right to a pension payable at age 65 but the terms applicable at early retirement are not fixed in advance. The early retirement factors are subject to review and this was clearly pointed out in the booklet he received. The new factors after the 2007 announcement are also unlikely to be the ones applicable at Mr Y’s early retirement. Therefore nothing turned on having the details of the new early retirement factors.

19. Mr Y says that the 2007 announcement did not disclose the magnitude of the change. But given the overall financial position at the time it was clear that it was a statement that the new factors would be less generous than before. Mr Y did not need to know what the new factors were and all he could do would be to consider increasing his pension savings to make up for the change. There is no magic formula to precisely calculate the savings required to make up for the change in the early retirement factors. It depends on a number of variables including the amount saved, the investment return achieved and tax legislation applicable both during the investment period and at retirement. Therefore although Mr Y has suffered a loss of expectation he has not actually suffered a real financial loss.

20. Therefore, I do not uphold Mr Y’s complaint.

Anthony Arter

Pensions Ombudsman
24 June 2016