

Ombudsman's Determination

Applicant	Mr N
Scheme	Stanley Black & Decker UK Pension Plan (the Scheme)
Respondents	Capita Trustees of the Black and Decker UK Pension Scheme (the Trustees)

Outcome

1. I do not uphold Mr N's complaint against the Trustees or Capita and no further action is required.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. In summary, Mr N's complaint is:-
 - Capita, at the time the administrator of the Scheme, provided incorrect information as to when he would be able to access his pension without reduction.
 - Based on that information, he resigned from employment in anticipation that his full pension would come into payment at age 60.

Background information, including submissions from the parties

4. On 3 August 2012, having reached age 55, Mr N requested an early retirement quotation from Capita.
5. On 10 August 2012, Capita provided Mr N with an estimate of his benefits.
6. On 12 September 2012, having received the estimate, Mr N raised a series of questions with Capita, including asking when he would be able to access his pension without reduction, and requesting a copy of the Scheme handbook.
7. On 14 September 2012, in response to Mr N's enquiries, Capita informed him that he could take early retirement without reduction from age 60. It also confirmed that a copy of the Scheme handbook had been posted to him.

PO-20002

8. On 17 September 2012, Mr N acknowledged that the Scheme handbook was being sent to him, saying “hopefully I’ll have fewer questions for you now!” Mr N has confirmed the document was received.
9. On 31 December 2015, Mr N resigned from his employment in China and moved to Canada, where his family is based.
10. In April 2017, Mr N contacted Mercer, the Scheme’s new administrator, and requested a new pension quote for retirement on his 60th birthday.
11. On 13 April 2017, Mercer acknowledged Mr N’s request, saying:-

“I can confirm that we are currently in the process of producing a retirement quotation based on your 60th birthday which will follow in due course. Please note that unfortunately as the future revaluation of your pension is unknown, we are unable to provide a projection of retirement benefits for your 65th birthday.”
12. On 2 May 2017, the retirement quote was issued to Mr N. The pension was subject to a 27% early retirement reduction.
13. On receipt of the quote, Mr N raised a number of queries including why the early retirement factor applied to his pension. He highlighted that he had been told by Capita that he could retire without reduction at age 60.
14. In June 2017, Mr N accepted the retirement quote and returned the necessary documents.
15. On 3 July 2017, Mr N’s benefits were put into payment.
16. Mr N subsequently raised a complaint against Capita and the Trustees.
17. On 6 March 2018, Capita responded. It acknowledged that incorrect information had been given to Mr N, but argued that all the other documentation he had received contained the correct information and therefore it did not agree that any significant detriment had been caused to his financial planning. It offered Mr N £500 for the distress and inconvenience caused.
18. In responding to the complaint, the Trustees argued that they were only paying benefits in accordance with Mr N’s entitlement under the Scheme Rules. Mr N was not entitled to an unreduced pension at age 60. Therefore, the Trustees could not agree to his request. Additionally, the Trustees considered that Mr N ought to have obtained an up-to-date quotation prior to resigning, and he has not proved that he has suffered a financial loss due to relying on a misrepresentation.
19. Having referred the matter to this Office, Mr N provided the Adjudicator with arguments outlining his change of position due to the incorrect information. He highlighted that he has had to return to work on a seasonal basis, and has had to downsize his property.

Adjudicator's Opinion

20. Mr N's complaint was considered by one of our Adjudicators, who concluded that further action was required by Capita. The Adjudicator's findings are summarised briefly below: -

- There was no dispute that incorrect information had been provided. The dispute centred on whether Mr N had suffered a financial loss as a result.
- The Adjudicator reviewed the circumstances under the tests for negligent misstatement and estoppel.
- A false statement had been made, in that Mr N was unequivocally informed that he would be able to retire at age 60 without a reduction in benefits.
- The statement was made by Capita, which, as the administrator of the Scheme, had a duty of care to ensure information provided to Mr N was correct, and it could be expected that Mr N would rely upon that information.
- The Adjudicator considered that the incorrect information could not have been provided by someone exercising reasonable care, as this was a basic fact of the Scheme that could have been easily checked.
- However, whilst the circumstances met the above criteria for negligent misstatement, they did not meet the requirement that the incorrect representation must have been reasonably relied upon by the applicant.
- Shortly after the provision of the incorrect information, Mr N received a copy of the up-to-date version of the Scheme handbook. This correctly outlined that if a member took benefits before Normal Retirement Age, age 65, they would be reduced.
- In addition, between receipt of the incorrect information and his decision to resign, three years had passed. In these circumstances, the Adjudicator was of the view that it was reasonable for Mr N to have reviewed the up-to-date Scheme handbook and/or contacted the Scheme for further clarification that he could retire at age 60 without reduction. It was unreasonable not to seek further reassurance despite having received incompatible information in the meantime.
- On that basis, the Adjudicator was of the opinion that Mr N could not succeed in a claim of negligent misstatement or estoppel by representation.
- The Adjudicator also said, it appeared that in 2017 Mr N had requested a quote at age 60 and 65, suggesting that he was unsure when he intended to retire. However, in response, Mr N demonstrated that this had been at the administrator's suggestion, rather than on his request. The Adjudicator conceded that this was not indicative of uncertainty on Mr N's part.
- The Adjudicator agreed that the error was maladministration, and was initially of the view that Capita's offer of £500 for the distress and inconvenience caused, was an

appropriate resolution. However, on reviewing the case again, the Adjudicator noted the long-term implications of the incorrect information. Whilst he was not satisfied that the arguments for negligent misstatement or estoppel could be sustained, he did think that the maladministration had caused a serious loss of expectation which warranted a higher level of distress and inconvenience. The Adjudicator recommended Capita pay Mr N £1,000 in respect of this.

21. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. Capita has not commented on the Adjudicator's recommended distress and inconvenience award of £1,000. I agree with the Adjudicator's Opinion except for the level of distress and inconvenience award suggested by him, as Capita recognised its maladministration and had offered the level of award that I had recommended at the time he was to be paid to complainants where the maladministration had been significant.

Ombudsman's decision

22. Mr N has explained that on receipt of the Scheme handbook, he filed it away, without reason to use it because he had already received a clear answer to his question from Capita. It therefore remained reasonable for him to have relied upon Capita's information.
23. Whilst I accept Mr N may not have consulted the Scheme handbook after receiving it, the fact remains that he was subsequently provided with the correct information prior to his decision to resign. Given that three years passed between the incorrect information being provided and the point at which Mr N actually resigned, I believe that it was reasonable for him to have sought further reassurance of his entitlement by contacting the Scheme or reviewing the Scheme handbook. This is particularly the case as Mr N was making such a significant decision in resigning with the intention of retiring.
24. Mr N has made the counter argument that three years is not a long time in the context of pensions, and as a defined benefit scheme he would not have expected his benefits to have changed in the meantime. I have considered this carefully; however I still find that it was reasonable for him to have ensured that the position remained the same, particularly as he was expecting to rely on this income from age 60, and again I cannot ignore the fact that he received the correct information in the meantime.
25. I do not find that there has been a financial loss arising from negligent misstatement. Nor do I find that the Trustees can be estopped from paying the correct level of benefits.
26. There was undoubtedly maladministration on the part of Capita, and although I do not find that Mr N has suffered a financial loss as a result of the maladministration, Mr N will have suffered a loss of expectation. The Adjudicator has recommended £1,000 in the context of guidance recently issued by this Office, however that guidance was not

PO-20002

available to Capita when it made the Offer to Mr N at the beginning of 2018, and I consider that the £500 offered is an appropriate award in these circumstances. Mr N should contact Capita if he should wish to accept its offer

27. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
9 November 2018