

Ombudsman's Determination

Applicant	Mr W
Scheme	Harrods Group Pension Plan (the Plan)
Respondent	Aptia UK Limited (the Administrator)

Outcome

1. Mr W's complaint against Aptia is partly upheld. To put matters right, Aptia shall pay Mr W £500 for the distress and inconvenience its maladministration caused him.

Complaint summary

2. Mr W complained that Aptia reduced the amount of spouse's pension he was originally told he was entitled to and had agreed.
3. Mr W asked to receive the original higher spouse's pension.

Background information, including submissions from the parties

4. In January 2024, Mercer's pension administration business became Aptia. Mercer is referred to as Aptia in this Opinion.
5. Mr W is represented by New E Law (**the Representative**).
6. Mr W was married to Mrs W.
7. Mrs W was a member of the Plan, a defined benefit pension arrangement.
8. On 20 August 2018, Mrs W died.
9. On 18 January 2019, as Mrs W had died intestate, the High Court of Justice appointed Mr W as administrator of Mrs W's estate.
10. In early January 2023, Mr W's brother-in-law advised Mr W to telephone Aptia about Mrs W's death and potential spouse's pension from the Plan. Subsequently, Mr W sent a completed Beneficiaries' Data Form and Mrs W's death certificate to Aptia.

11. On 19 January 2023, Aptia wrote to Mr W and confirmed that a spouse's pension would be payable to him. It requested Mr W's birth and marriage certificates.
12. On 3 February 2023, Mr W sent his birth and marriage certificates to Aptia.
13. On 6 February 2023, Aptia returned the original certificates to Mr W.
14. During April 2023, Mr W wrote to Aptia on several occasions and asked why he had not yet received his spouse's pension. He was told that an external actuary was needed to calculate his pension.
15. On 2 June 2023, Aptia wrote to Mr W (**the First Letter**). It enclosed a spouse's pension statement and Discharge Form. It asked if he wanted to receive his pension as a trivial commutation lump sum. He could either receive a lump sum of £9,296.85, less income tax of £1,859.20, or a pension of £568.32 per annum.
16. The following statement was included in the spouse's pension statement:

"This statement is based on the information currently held by the administrator of the scheme and is produced for information only. It is not proof of entitlement and confers no right to benefits. All benefits must be calculated and paid only in accordance with the trust deed and rules of the scheme and the relevant legislation, and are therefore subject to review before payment."
17. On 16 June 2023, Mr W completed the Discharge Form and bank details and sent it to Aptia.
18. During July 2023, Mr W wrote to Aptia on several occasions. He asked for an update on when he would receive his pension, and the reason why an actuary was needed to calculate his benefits.
19. On 14 July 2023, Aptia wrote to Mr W (**the Second Letter**). It apologised and said there had been an error in the First Letter. Mr W's correct pension was either a lump sum of £5,370.76, less tax of £1,074.00, or a pension of £488.04 per annum.
20. On 25 July 2023, the Representative wrote to Aptia. It said that Aptia was estopped from denying liability and asked for Mr W to receive the pension stated in the First Letter.
21. On 15 August 2023, the Representative wrote to Aptia and asked for an update on the situation.
22. On the same day, Aptia wrote to the Representative. It apologised for the error and said that as Mr W was older than Mrs W, his trivial lump sum had changed.

23. The Representative has said that Aptia used an incorrect date of birth for Mrs W in the First Letter.
24. On 22 and 30 August 2023, the Representative wrote to Aptia with the following points:-
- The original amount in the First Letter was an agreement recognised by law as legally binding. A cause of action arose if the agreement was breached and the terms were enforceable against the party committing the breach.
 - Enforcement of contracts was a necessary part of any legally binding contract. Each party should expect to obtain the benefit of the deal agreed by the contract.
 - Mr W had a legal right to compensation for loss in damages.
25. On 9 November 2023, Mr W wrote to Aptia and submitted his complaint under the Plan's Internal Dispute Resolution Procedure (**IDRP**). Mr W said:-
- He had not been consulted about the change in pension and he believed he was due the original amount in the First Letter.
 - The situation had caused him considerable stress and had brought back memories of Mrs W's death from cancer.
26. On 20 November 2023, Aptia wrote to Mr W with the following points:-
- An incorrect date of birth had been used in the original calculation, which resulted in the pension in the First Letter being overstated.
 - It understood that the legal position was based on a well-established principle that an incorrect pension quotation did not create an entitlement to the incorrect amount.
 - The Plan's Trustee had a duty to ensure that all members received their correct entitlements under the Plan's rules and to ensure that all members were treated equally and fairly.
 - The Plan's Trustee had a legal obligation to only pay the correct benefits and take reasonable steps to put matters right. This was the general approach taken by the Courts and The Pensions Ombudsman (**TPO**).
 - It was not possible to pay him the original pension as he was not legally entitled to the amount.
 - It requested his confirmation to proceed with paying the pension set out in the Second Letter.

27. On 7 February 2024, Aptia wrote to Mr W and asked him to confirm when TPO had responded to his complaint.

Adjudicator's Opinion

28. Mr W's complaint was considered by one of our Adjudicators who concluded that there was maladministration. The Adjudicator's findings are summarised below:-

- Aptia had said that Mr W's pension stated in the First Letter was incorrect, so there was no dispute that a problem had occurred, and this amounted to maladministration.
- Mr W was only entitled to receive the benefits provided for him under the Plan's rules. That is, benefits based on correct information accurately reflecting the Plan's rules. Aptia could not pay the higher amount stated in the First Letter, as it was incorrect.
- Redress could only be provided to Mr W if it could be shown that financial loss or non-financial injustice had flowed from the incorrect information provided to him. Redress could not be provided on what could be considered a fair or reasonable outcome. While Mr W suffered a loss of expectation when he received the Second Letter, the Adjudicator did not see evidence that he had suffered financial loss.
- Aptia's actions had caused Mr W to suffer significant distress and inconvenience, and in recognition of this, Aptia should pay Mr W an award of £500.

29. The Representative did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. The Representative's comments are summarised below:-

- Aptia had failed to check that Mr W's benefits in the First Letter were correct before the contract had been agreed by both parties. Mr W should not be the wronged party. He had suffered financial loss of £3,926.09.
- It did not accept that the incorrect pension in the First Letter had not created an entitlement to the amount stated. It was an offer, which was accepted, and in law, formed a legally binding contract, so Mr W had a legal right to receive the stated amount.
- The Plan's Trustee did not ensure that Mr W had received his correct entitlement, so they had failed in their duty.

30. There were a number of actions available to a Court. Damages could be awarded to put Mr W back into the position he should have been in, had the terms of the contract been correctly followed.

31. I have considered the Representative's comments, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

32. Mr W complained that Aptia reduced the amount of spouse's pension he was originally told he was entitled to and had agreed.
33. I acknowledge the additional comments made by the Representative. However, I am only able to uphold complaints where the maladministration led to a direct financial loss or caused non-financial injustice or where a court could provide a remedy at law. A court may provide compensation where a legally binding agreement has been entered into or where an incorrect statement has been made if the conditions for compensation for negligent misstatement or for estoppel by representation are made out.
34. I find that the First Letter was not intended to create a legally binding agreement or that the required conditions for a legally binding agreement were present (such as some new value being provided by Mr W to Aptia) but was instead intended as a statement of his existing spouse's benefit entitlement. Furthermore, the note near the bottom of the incorrect spouse's pension statement confirms that the pension illustration was for information purposes and did not represent proof of entitlement. The note also says that the amount would be subject to review before being paid. As such, I find that the incorrect spouse's pension statement and Discharge Form enclosed with the First Letter, which Mr W accepted and signed, do not constitute a legally binding contract.
35. While the requirements for and effect of negligent misstatement and estoppel by representation differ, Mr W cannot succeed in a claim for negligent misstatement or estoppel unless he reasonably relied on the statement in taking some course of action and suffered a loss in consequence. I have not seen any evidence to suggest that after receiving the First Letter and the incorrect spouse's pension statement, Mr W made any financial decisions or commitments in reliance on this information, which subsequently resulted in him incurring a financial loss. Not receiving the incorrect amount stated in the First Letter is not a relevant loss for this purpose. As such, I find there is no basis for me to determine that compensation is payable or that Aptia should pay Mr W the benefits as stated in the First Letter.
36. However, I understand the anxiety that Mr W might have suffered since he was told about the error. I agree with the Adjudicator that Aptia's maladministration did cause Mr W to suffer non-financial injustice. So, Aptia shall pay Mr W £500 for the significant distress and inconvenience he suffered.
37. I partly uphold Mr W's complaint.

CAS-111806-F8J2

Directions

38. Within 21 days of the date of this Determination, Aptia shall pay £500 to Mr W for the distress and inconvenience caused to him.

Camila Barry

Deputy Pensions Ombudsman
6 February 2025