

Ombudsman's Determination

Applicant	Mr G
Scheme	Innogy Group of the Electricity Supply Pension Scheme (the Scheme)
Respondent	The Group Trustees of the Innogy Group of the Electricity Supply Pension Scheme (Innogy)

Outcome

1. I do not uphold Mr G's complaint and no further action is required by Innogy.

Complaint summary

2. Mr G complained that he was given incorrect information about the pension he was due to receive upon his retirement. He said he should receive the higher figure that he had previously been quoted.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mr G was a member of the defined benefits pension scheme of Innogy Group, which transferred to the RWE Group of the Electricity Supply Pension Scheme (**ESPS**). He was a member between 4 September 1989 and 31 March 2000. His retirement age under the Scheme was 63, which he reached in April 2019. He also transferred in benefits, which provided him with a service credit of three years and 115 days. He had total service of 13 years and 324 days, which was rounded up to 14 years.
5. In April 2017, Mr G received a retirement benefits statement from Innogy which said he would receive an annual pension of £17,301.68. The retirement benefits statement included the following:

“Please note that whilst every effort is made to ensure that figures in this statement are accurate, they are for information only. If any of the benefits are incorrectly shown, this does not mean that you are entitled to these benefits, as the statement is not binding on the Trustees. Your actual benefits will be

worked out when they are due, based on the Scheme Rules and the laws in force at the time you take your benefits.”

6. On 5 October 2018, Mr G received a retirement benefits statement from Innogy that said he would receive an annual pension of £17,976.48. The retirement benefits statement included the following:

“The benefits shown on the statement are based on current information held on our records and the law in force at the date your pension benefits are worked out. If any of this information changes between now and your date of retirement, or if you have any benefits from any other pension provider, the figures on the enclosed statement may change.”
7. On 4 April 2019, Mr G received a letter from the new administrators of the Scheme, Willis Towers Watson (**WTW**). The letter said his annual pension would be £17,298.84.
8. Mr G complained to Innogy about the difference in the figures he was given, and, on 13 May 2020, it responded to him under stage one of the Scheme’s two-stage Internal Dispute Resolution Procedure (**IDRP**). It said the pension payable to him as explained in WTW’s letter was his entitlement under the Scheme Rules. Innogy said the estimated pension stated on the retirement benefits statement was for information purposes only and Innogy, as the Scheme Trustees, has a legal obligation to pay the benefits to which he is entitled under the Scheme Rules.
9. Mr G was not happy with the response and asked for his complaint to be considered under stage two of the IDRP.
10. On 24 September 2020, Innogy wrote to Mr G under stage two of the IDRP. It said the reason for the difference between the October 2018 retirement benefits statement and the actual annual pension due was because of a discrepancy in the Guaranteed Minimum Pension (**GMP**) records held by HMRC. Having identified the discrepancy, it said it was obliged to correct the benefits to ensure Mr G received the benefits to which he was entitled.

Adjudicator’s Opinion

11. Mr G’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Innogy. The Adjudicator’s findings are summarised below:-
 - Neither the retirement statement that Mr G received in 2017 or in 2018, stated the benefits quoted were guaranteed. The 2017 statement made it clear that Mr G’s final benefits would be calculated when they became due and the 2018 statement stated the figures may change. As there has been no relevant representation, there has not been any negligent misstatement by Innogy.

- The reason for the difference between the October 2018 retirement benefits statement and the actual pension due, was because of a discrepancy in the GMP records held for Mr G. This was part of the verification process and an action expected of any scheme trustee to take, especially where it is reliant on third party information to complete its calculations. Innogy took reasonable steps to ensure the accuracy of its calculations when Mr G came to retire.
- Innogy was not in possession of the information necessary to provide a correct statement, as the GMP records were found to be incorrect. The use of incorrect information is maladministration however Innogy is not bound to follow the incorrect information and Mr G is only entitled to receive the benefits provided for under the Scheme Rules.
- Whilst the provision of misinformation does amount to maladministration, Mr G had not suffered a financial loss nor had non-financial injustice flowed from the incorrect information given to him.
- No evidence had been provided by Mr G that he made financial commitments in reliance on the misinformation that he would not otherwise have taken had he received the correct information. Innogy is not obligated to pay the higher amount.
- For the October 2018 statement to constitute a contract between Mr G and Innogy, he must be able to show that at least the basic necessary elements of a contract exist. That is offer, acceptance, consideration and the intention to enter into legal relations. Given the caveat in the statement that the benefits might change it would seem unlikely that all the necessary elements of a contract could be considered present and, in any event, a contract based on misinformation is unlikely to be effective.

12. Mr G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr G provided his further comments which do not change the outcome. In summary, he said:-

- It is hard for him to prove he has suffered a financial loss.
- Innogy is obliged to honour benefit statements except to the extent that revisions are justified by any caveats to those statements.
- The caveats did not provide justification for reducing the figures.
- Innogy was in possession of the correct information at the time of determining his pension but did not use it.
- Innogy was not reliant on HMRC to correctly finalise the figures for his pension. It was in possession of the necessary information to do this itself.
- There has been a relevant misrepresentation and therefore a finding of negligent misstatement.

- There have been numerous precedents where The Pensions Ombudsman has found erroneous statements on the part of Schemes to constitute negligent misstatement.
- Customers should be able to rely on information provided. The reliance that one is entitled to place on a benefits statement is linked to the decisions one is expected to take on the basis of it.
- The October 2018 statement contains all the necessary elements to constitute a contract.
- Non-financial injustice has been suffered, as nine days before his pension came into payment, he was sent a letter that said his pension would be around £1,270 per annum below what he was expecting. He has spent hundreds of hours in trying to resolve the matter.

Ombudsman's decision

13. I have taken account of the additional arguments Mr G has made but I do not consider that he reasonably relied on the benefit statements and fundamentally changed his financial position to his detriment.
14. The provision of misinformation amounts to maladministration. However, I would only direct redress if it can be shown that financial loss has flowed from the incorrect information given, which Mr G has reasonably relied upon.
15. I have not seen any evidence from Mr G of how he might have made up any perceived shortfall in his retirement income. Nor have I seen any evidence of how this would be financed, especially as Mr G said he was using his savings as income between 2013 and 2019. I have also not seen any evidence that Mr G made financial commitments in reliance on the misinformation that he would not have otherwise taken had he received the correct information. I cannot therefore accept that a potential financial loss has occurred.
16. Innogy is not obliged to honour the information contained in the benefits statements. While the use of incorrect information is maladministration, Mr G is only entitled to receive the correct benefits under the Scheme Rules.
17. Mr G has said Innogy was in possession of the correct information at the time of determining his pension. However, the GMP records were found to be incorrect, an error Innogy has said was most likely caused in a manual update by the previous administrators. So, irrespective of whether or not Innogy was in possession of the correct information, as part of the verification process Innogy corrected the benefits to ensure Mr G received the benefits that he was entitled to under the Scheme Rules.
18. Mr G believes there has been a relevant misrepresentation and therefore a finding of negligent misstatement. However, as the retirement statements were not a clear and unequivocal representation, there was no relevant misrepresentation. But even if

there were, for such a claim to be successful, Mr G must show that he relied on the misrepresentation and that this reliance caused him a loss. I have not seen any evidence that Mr G either, relied on the information contained in the retirement statements, or that he has suffered a financial loss.

19. Mr G has said there have been numerous precedents where the Pensions Ombudsman has found erroneous statements on the part of Schemes to constitute negligent misstatement. That may be the case but the fact remains that each complaint is considered on its own merits and in Mr G's case I have seen no evidence of negligent misstatement.
20. Mr G believes the October 2018 statement contains all the necessary elements to constitute a contract between him and Innogy and that this gives him an enforceable right to the higher benefit. For this to apply, the basic necessary elements of a contract must exist, that is acceptance, consideration and the intention to enter into legal relations. The letter accompanying the statement clearly explained that the estimates would be based on information held at that time, and that final figures could change. This alone does not support a view that a clear and unambiguous offer had been made but even were some of the necessary elements of a contract considered present a contract based on misinformation is unlikely to be effective.
21. Mr G said he has suffered non-financial injustice, due to the short time between receiving the final, correct figures, and his retirement date. He said that he has spent a significant amount of time trying to resolve the issue.
22. I accept Mr G may have been distressed at learning he was to receive a lower pension than he initially expected, however, I am not persuaded this warrants an award in this regard. Innogy has explained the reasons for the discrepancy, it also responded to Mr G's requests for his complaint to be investigated within reasonable timeframes. While Mr G may have spent time in pursuing the complaint, it would not be appropriate to direct an award against Innogy for this, as there were no unreasonable delays on its part.
23. I do not uphold Mr G's complaint.

Anthony Arter

Pensions Ombudsman
8 September 2022