

## Ombudsman's Determination

Applicant	Mr T
Scheme	Electronic Data Systems 1994 Scheme <b>(the Scheme)</b>
Respondents	DXC Technology <b>(the Employer)</b> JLT Benefit Solutions Ltd t/a Mercer

## Outcome

1. Mr T's complaint against the Employer and Mercer is partly upheld. To put matters right for the part that is upheld, Mercer shall award Mr T £500 for the significant distress and inconvenience that he has suffered as a result of the maladministration.

## Complaint summary

2. Mr T has complained about the information that was provided as part of an Employer initiated Pension Increase Exchange (**PIE**) exercise.
3. Mr T has said that it was not made clear to him that there would be different increases to his pre and post 5 April 1988 Guaranteed Minimum Pension (**GMP**). This meant that his decision to take the PIE pension was based on incorrect information.

## Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge there were other exchanges of information between all the parties.
5. Mr T was a deferred member of the Scheme which was a defined benefit arrangement set up by the Employer.
6. In November 2016, the Employer sent a letter to Mr T with a personalised statement and an information booklet. Together they provided details of a PIE option (**the Offer**). The documentation said, in summary:-
  - Mr T's pension at that time, increased each year with the next increase due on 1 April 2017.

- The Employer was offering him the opportunity to exchange future increases on part of his pension for an immediate, higher pension but with lower increases in the future.
- The Scheme records showed that Mr T had an annual pension of £24,605.
- If he accepted the Offer, he would receive a pension of £30,026 from 31 March 2017. This would be his PIE pension.
- If he decided not to take the Offer, his pension would not be changed, and it would increase in the future in the same way it had previously.

7. The personalised statement also contained the following information:-

- Mr T had an increasing pension of £5,104 that could not be exchanged.
- Mr T had an increasing pension of £19,501 that could be exchanged.
- Different parts of the pension had different increases each year.
- The increasing pension that could be exchanged included £5,118 of GMP:  

“This may receive increases of up to 3% a year from age 65. Your GMP would not be affected if you take up the PIE option.”

8. If Mr T chose to take the PIE pension the following concepts were relevant:-

- ‘Crossover age’ – if Mr T chose to take up the PIE pension, he would receive a higher pension at first than his current pension. However, increases to his PIE pension would be lower in the future. The age when his current pension would be equal to the PIE pension would depend on the level of future pension increases.
- ‘Break-even age’ – over time the amount of pension Mr T would receive if he kept his current increasing pension would catch up with the total PIE pension. The age at which this happened was the ‘break-even’ age.
- Mr T’s personal crossover and break-even ages for different levels of price inflation, based on his current age of 64, were:-

<b>RPI inflation</b>	<b>Crossover age</b>	<b>Break-even age</b>
1% a year	93	Over 100
3% a year	74	83
5% a year	70	75

9. The Scheme administrator was Equiniti. However, the Offer signposted Mr T to JLT Benefits Solutions which subsequently became part of Mercer:

**“Help with your decision.**

If you want to take up the offer, or for more information, please contact JLT Benefits Solutions....”

10. In December 2016, Mr T registered his interest in the PIE pension.
11. On 1 January 2017, Mercer sent a letter to Mr T to acknowledge that he had registered to receive advice and guidance from Mercer. It provided a questionnaire for Mr T to complete. The questionnaire included a question that asked how inclined the recipient was to accept the offer at that stage. Mr T responded that he would almost certainly accept.
12. On 24 January 2017, Mr T had a telephone advice appointment (the **Advice appointment**) with Mercer. In the Advice appointment, Mercer pointed out to Mr T that part of his pension was made up of GMP which could receive increases of up to 3%. Mr T asked for clarification that after the PIE exercise he would still have around £10,000 of pension that was subject to increase (this was made up of £5,104 that was not part of the PIE exercise and all the GMP). He was told by Mercer that yes, all the GMP could receive increases of up to 3%. Mercer also stated that 45% of Mr T’s total household income would remain fixed and not subject to any further increases.
13. After the Advice appointment, Mercer sent an advice report to Mr T. This recommended that he accept the PIE pension and provided a decision form.
14. On 29 January 2017, Mr T completed the decision form and confirmed that he wanted to accept the PIE pension.
15. On 31 March 2017, the PIE pension was put into payment.
16. In November 2018, Mr T emailed Equiniti to query his pension increase as he did not think it had been calculated correctly.
17. On 21 November 2018, Equiniti sent an email to Mr T and confirmed that his GMP was £5,118.36 per annum which was split into pre-5 April 1988 (**pre 88 GMP**) and post 5 April 1988 GMP (**post 88 GMP**). The email set out that Mr T had pre 88 GMP of £2,778.88 and post 88 GMP £2,339.48. The pre 88 GMP did not receive any increases.
18. The same day, Mr T emailed Equiniti and said that the pension increase he had received highlighted that he had been supplied with incorrect information in the Offer. The information he had received did not differentiate between pre and post 88 GMP and led him to believe that he would receive an increase of up to 3% on £5,118.
19. On 28 November 2018, Equiniti responded by email and confirmed that the GMP amount had been calculated correctly. It apologised that incorrect information had been supplied previously.
20. On 28 November 2018, Mr T emailed Equiniti to raise a complaint. He said, in summary:-

- The Offer did not explain that he had different categories of GMP and that annual increases would only be applied to the post 88 GMP. The logical assumption from the information provided was that the increase applied to all his GMP.
- The advice he received from Mercer did not identify this issue and the calculations it provided assumed that all the GMP, which was £5,118, would receive increases.

21. On 7 May 2019, the Trustee of the Scheme (**the Trustee**) sent a letter to Mr T which said, in summary:-

- The wording in the letter from the Employer stated that “Your pension with increases that can be exchanged includes £5,118 of GMP. This may receive increases of up to 3% a year from age 65”.
- In Mr T’s case, over half of the GMP was accrued before 5 April 1988 and was not eligible for increases.
- The PIE exercise was run by the Employer and so the Trustee did not have any responsibility for the information that had been provided. However, it had asked the Employer to comment on Mr T’s complaint.

22. The Employer’s response was that it did not accept that any of its communication was misleading, for the following reasons:-

- The statement made in the Offer did not imply that the whole of the GMP would increase or even could be increased, simply that it “may.”
- In any event, the Offer did not impact on the increases that Mr T would receive on the GMP. It was not clear that more information could or would have had a bearing on his decision-making process.
- The supporting documentation, such as the break-even and crossover ages, did allow for Mr T’s GMP to come into payment at age 65. It also reflected the expected future increases to his GMP, which included no increases on the pre 88 GMP).

23. On 16 May 2019, Mr T sent a letter to the Trustee and asked that his complaint was considered further. In addition to his previous complaint points he said, in summary:-

- The Employer’s response acknowledged that there was no reference to the different types of GMP within the Offer.
- The Employer also stated that the supporting information on the break-even and crossover ages reflected that GMP increases would not be applied to pre 88 GMP. This was incorrect as when he applied the anticipated average 3% increase per year his crossover age was 72 and the break-even age was 81. Age 74 was only correct if the full GMP of £5,118 was increased.

- In a telephone conversation with Mercer regarding the Offer, and in the document summarising his personal circumstances, it was stated that if he accepted the PIE pension the amount of his income that would remain level would be about 45%. This calculation was based on the expectation of the full GMP of £5,118 receiving increases. If the post 88 GMP of £2,339 was used the amount of income that would remain level would be around 50%.
- The loss to him, calculated to his anticipated life expectancy of age 87 as used by Mercer, was in excess of £23,000.

24. On the same date, Mr T sent a letter to Mercer. He said in summary:-

- The Offer did not accurately reflect his future income.
- Mercer failed to explain that increases would only be paid on his post 88 GMP of £2,339, and not on the whole GMP amount of £5,118.
- The Offer also included a calculation of the crossover and break-even ages assuming 3% inflation. These were at age 74 and age 83, respectively. If only post 88 GMP was used, then the relevant ages would be age 72 and age 81, respectively.
- The documentation summarising his personal circumstances stated that if he accepted the PIE pension the amount of his income which would remain level would be around 45%. If £2,339 was used, then the amount of income that would remain level would be around 50%.

25. On 15 July 2019, the Trustee sent a letter to Mr T and said that it did not provide any of the communications which were at the heart of the complaint, and it believed it was appropriate for the Employer to respond.

26. On 18 July 2019, Mercer sent a letter to Mr T and said, in summary:-

- Mr T completed Mercer's fact find document on 13 January 2017 and in this he confirmed that he was "highly likely" to accept the Offer. This was before the Advice appointment.
- Following his telephone call on 24 January 2017 and the subsequent guidance report, Mr T accepted the Offer.
- During the telephone call, Mr T confirmed that he wished to receive the benefits of exchanging the future increases as it would be better to have the higher income when he was younger and more active.
- It was after this confirmation that Mercer mentioned the increases to the pre 88 GMP. Mr T then confirmed that this was not something he was aware of, but it made the Offer even more attractive.

- Mercer was not responsible for the information contained in the Offer so could not comment on it. However, the information provided during the Advice appointment was incomplete.
- Mercer had reviewed the correct position regarding the GMP, and it would not have altered the positive recommendation to take the Offer.
- It was difficult to say exactly what impact changes in information would have had on the outcome for Mr T, but it considered that the most likely outcome was that Mr T would have taken the same action and accepted the Offer.

27. On 6 August 2019, the Employer sent a letter to Mr T responding to his complaint. It said, in summary:-

- It provided calculations showing that Mr T's crossover and break-even ages were unaffected by whether there was an increase to all or part of Mr T's GMP. This was because any change in GMP would be reflected in both the PIE pension and Mr T's original pension.
- The description of GMP within the Offer was clearly a simplification regarding the operation of GMP. Mr T was correct to say that the different increases applied to GMP built up before and after 1988 were not drawn out. However, GMP rules were complex and given the nature of the communication, it was of the view that a degree of simplification was appropriate.
- In its view, the simplified text in the Offer was not inaccurate. While there was a reference to increases that "may" be up to 3% on GMP, it did not think this would be automatically interpreted by most readers as suggesting that the full GMP would receive guaranteed increases in line with the lower of consumer price inflation and 3%.
- It was not clear that further information about GMP increases could or should have had a material bearing on the PIE decision.

## **Adjudicator's Opinion**

28. Mr T's complaint was considered by one of our Adjudicators who concluded that there was maladministration on the part of Mercer. The Adjudicator's findings are summarised below:-

- The information provided in the Offer regarding Mr T's GMP indicated that there "may" be increases of up to 3% on the GMP. This information was correct as it did not specify the actual amount of the increase and it indicated that any increase could be less than 3%. While Mr T was not given incorrect information the two categories of GMP were not explained. From the information provided there was no reason for Mr T to consider that any potential increase only applied to a proportion of the GMP.

- Mr T had said that the crossover and break-even ages he was provided with in the Offer were based on calculations that assumed that all his GMP would increase. The Employer had confirmed that this was not the case and the crossover and break-even information provided in the Offer was correct.
- In the Adjudicator's opinion, Mr T was given clear information regarding what he would receive if he took the PIE pension and how this compared to the pension he would have continued to receive if he did not accept the Offer. This information, together with the crossover and break-even ages, was appropriate to enable Mr T to make a decision. In the Adjudicator's view, the information regarding the split in GMP was not a crucial factor in Mr T's decision to accept the PIE pension.
- Mr T was only entitled to the pension benefits that were payable under the Rules of the Scheme. The fact that the information he was provided with regarding his GMP lacked clarity, did not entitle him to receive any increase on his pre 88 GMP. In the Adjudicator's view, Mr T has not suffered a financial loss and he is receiving the correct amount of GMP. The Adjudicator did not uphold this part of Mr T's complaint.
- The Adjudicator considered the complaint against Mercer in its capacity as administrator as it sent out the information regarding the Offer and also handled the process of the PIE exercise on behalf of the Employer. Mercer also provided information within the Advice appointment. The Adjudicator considered the provision of information in the Advice appointment but not the actual advice itself, as that fell outside the scope of this complaint.
- The Adjudicator listened to the recording of the Advice appointment and Mr T was told that he did have a GMP element as part of his overall pension that may increase by 3%. However, Mercer did not explain this GMP was split into pre 88 and post 88 GMP and that the pre 88 GMP would not increase. Also, when Mr T asked a specific question regarding the possible GMP increases he was told that the whole amount could increase. In the Adjudicator's opinion, this provision of incorrect information by Mercer was maladministration.
- The failure to provide full information about the GMP also meant that Mercer understated the proportion of Mr T's income that would stay fixed. Mercer had subsequently checked if the split in GMP would have made a difference to the recommendation that it made to take the PIE offer and had confirmed that it would not. It was the Adjudicator's opinion that Mr T had enough information about how the PIE pension would work and that the incorrect information from Mercer did not impact his decision to accept the Offer. However, Mr T did suffer a loss of expectation that all his GMP could increase by up to 3%.
- In the Adjudicator's view the maladministration identified above would have caused Mr T significant distress and inconvenience. So, Mercer should award him £500 in recognition of this.

29. Mercer accepted the Adjudicator's Opinion, but Mr T did not and the complaint was passed to me to consider. Mr T provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr T below:-

- It was clearly in the Employer's interest for him to accept the Offer and he believed they inflated the benefits to make it appear more attractive.
- He considered that the details of the Offer formed part of a contract. The fact that he would have accepted the Offer if the correct GMP had been quoted does not entitle the employer to renege on the offer/contract.
- He noted the Employer's argument that the offer stated that the increase in the GMP "may receive" increases of up to 3%. He believed the reasonable interpretation of this wording referred to the annual rate of inflation, obviously if the rate of inflation was 0% then no increase would be applicable, he could not imagine any reasonable mind thinking that this referred to the whim of the company to decide to how much of the GMP to apply an increase. It is also worth noting that Mercer believed that the higher amount quoted would attract increases.
- He also noted that the Employer referred to the "Break Even Age" and "Crossover Age" being unaffected by the incorrect GMP figure. These points are forecasts and he was aware that variance from a forecast was not grounds for appeal. However, the statement of the amount of GMP which would attract increases was not a forecast but supposedly a statement of fact.
- In his view the original negligent misstatement was made by the Employer and not Mercer, who acted upon details supplied by the Employer.

### **Ombudsman's decision**

30. Mr T contends that the Employer is at fault and has made a negligent misstatement regarding the potential increases to his GMP. I have reviewed the Offer and the information provided regarding his GMP was that:-

- It may receive increases of up to 3% a year from age 65.
- It was not affected if Mr T took up the PIE option.

31. It is clear from the information that the GMP does not change whether or not the PIE option is taken and while the position regarding the possible increases to GMP has been simplified it is not incorrect. At no time is it specified that Mr T would receive a particular increase in his GMP. I note that Mr T has said that the Offer should be considered a binding contract with his Employer, but this would not change the outcome. The lack of differentiation between the two types of GMP does not mean that Mr T should now receive a benefit that he is not entitled to. Mr T is entitled to an increase of up to 3% on his GMP and that is what he is now receiving.



32. Mr T has said that a reasonable interpretation of the information was that any increase was subject to inflation and that would account for the variation, not that it was at the Employers choice to decide how much the GMP could increase. Although Mr T is correct that inflation has a part in deciding what the increase will be, how this is applied to the GMP is governed by the Scheme Rules.
33. Mr T has two types of GMP: pre 88 GMP and post 88 GMP. The pre 88 GMP does not receive any increases and the post 88 GMP will receive increases in line with the lower of consumer price inflation and 3%. I cannot agree that the lack of differentiation between the two types of GMP meant that the Employer inflated Mr T's benefits to make the Offer seem more attractive. The Employer has clearly stated that the GMP was not affected by whether or not Mr T took the PIE option and so the fact that only part of the GMP is subject to increases does not impact in any way on the Offer.
34. Mr T has acknowledged that the "Break Even Age" and "Crossover Age" provided in the Offer were unaffected by the incorrect GMP figure but makes the point that the "Break Even Age" and "Crossover Age" are forecasts and that he did not want to appeal against them on that basis but rather that the amount of GMP which would attract increases was not a forecast but a statement of fact. Although I agree that the information being provided was a series of forecasts under different scenarios to help with decision-making, the information about the potential increase in GMP was not part of the forecasts. The statement that the GMP could increase by 3% was correct and although it would have been helpful for Mr T to have additional information regarding how the GMP was broken down this was not necessary for the purposes of deciding whether or not to accept the PIE option.
35. I note that Mr T did ask Mercer for more information regarding how his GMP would operate and he received an incorrect reply. He was also provided with incorrect information from Mercer regarding how much his of his income would remain fixed if he accepted the Offer. Although the Employer originally supplied the information regarding Mr T's pension details, I would expect Mercer to be aware of how GMP operated and that any forecasted benefits would have been on a correct basis. Mercer has accepted that the misinformation it provided was maladministration.
36. In the circumstances I do not find that there has been additional maladministration by the Employer in providing simplified information.
37. I uphold Mr T's complaint in part.

## **Directions**

38. Within 28 days of the date of this Determination Mercer shall pay Mr T £500, in recognition of the significant non-financial injustice it has caused him.

CAS-35991-Q6G0

**Dominic Harris**

Pensions Ombudsman  
6 December 2023