

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Kobusch UK Ltd Pension Scheme ( <b>the Scheme</b> )
Respondents	20-20 Trustee Services Limited ( <b>the Trustee</b> ) First Actuarial LLP ( <b>FA</b> ) Kobusch UK Limited

## Outcome

1. I do not uphold Mr Y's complaint and no further action is required by the Trustee, FA or Kobusch UK Limited.

## Complaint summary

2. Mr Y has complained that he was given incorrect information about the pension he was due to receive upon his retirement. He says he should receive the pension based on the calculation using the minimum revaluation increase for his deferred benefits.

## Background information, including submissions from the parties and timeline of events

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 Y was a member of the Scheme from 1 December 2000 until 16 October 2013. His retirement age under the Scheme was 60, which he reached in June 2018.
5. On 17 February 2014, the former administrator of the Scheme, Aon Hewitt (**Aon**), provided Mr Y with a deferred benefits pack. This said his deferred pension would be increased for each complete year from his date of leaving until his normal pension date, by the increase in the Retail Price Index (**RPI**) or 5%, whichever was the lower, subject to a minimum of 3% per year.
6. On 5 April 2018, FA issued a retirement quotation to Mr Y. This said his pension in payment would increase in line with the RPI, subject to a maximum of 5% per year and a minimum of 3% per year. It did not mention a minimum increase to his deferred pension.

7. In May 2018, Mr Y raised a query with the Trustee about the discrepancies between the figures provided to him in 2014 and 2018, in respect of the application of a minimum revaluation to his deferred pension benefits. He noted that the 2018 figures did not include the minimum increase of 3% to his deferred pension, which resulted in his pension being lower than it would have been if the 2014 figures had been used.
8. On 31 May 2018, the Trustee responded to Mr Y's query and said that Aon's statement in the 2014 documentation contained an error and that there was no applicable minimum of 3% increase for the calculation of his deferred pension.
9. On 4 June 2018, Mr Y emailed the Trustee. He referred to the Scheme Member's Explanatory Booklet, with regard to increases in deferred pensions, which stated:

"Deferred pensions are increased as follows... will be increased at 5% per annum compound (or the increase in the Retail Price Index, if less) during the period between the date of leaving and Normal Retirement Date".
10. Mr Y argued there should be an additional eight months in the calculation of his deferred pension, as he left the Scheme in October 2013 and reached age 60 in June 2018.
11. Mr Y raised a complaint under the Scheme's two-stage Internal Dispute Resolution Procedure (**IDRP**). On 20 July 2018, the Trustee emailed Mr Y with the stage one IDRP response. It said the deferred revaluation was by reference to the definition of 'Revaluation Increase' in the Scheme Rules (**the Rules**), that is with no reference to a minimum of 3%. It also confirmed that revaluation was by complete years only, in accordance with the Rules.
12. On 20 December 2018, Mr Y raised another complaint, which was taken by the Trustee to be his application for the issue to be reconsidered under stage two of the IDRP.
13. On 4 March 2019, the Trustee wrote to Mr Y with its stage two response. It said that under the Rules, a deferred member was only entitled to a revaluation increase which was the lower of 5% compound per annum and the increase in the RPI. It also said that the period over which inflation was taken into account when revaluing a member's deferred benefits was the number of complete years between the date they left the Scheme and the date they started drawing their pension. The Trustee said that for an enhancement such as Mr Y was claiming to be effective, it would have had to request an additional contribution from the principal employer to fund such an increase. It said that no such request had been made.
14. As at the date of this Determination, ITEC Packaging (Chester-Le-Street) Limited, (formerly known as Kobusch UK Limited), is in administration.

## Adjudicator's Opinion

15. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee, FA or Kobusch UK Limited. The Adjudicator's findings are set out as follows:-
- The deferred benefits pack that Mr Y was sent on 17 February 2014, was not a clear and unequivocal representation. As there had been no relevant representation, there had been no negligent misstatement.
  - The provision of incorrect information was maladministration, however, the Adjudicator took the view that the Trustee was not bound to follow the incorrect information and Mr Y was only entitled to receive the benefits provided for under the Rules.
  - Mr Y had not suffered a financial loss as a result of the provision of incorrect information, nor had non-financial injustice occurred.
  - Mr Y had not provided any evidence that he made financial commitments, in reliance on the misinformation, that he would not have otherwise made had he received the correct information.
  - The misinformation was a one off, and not carried forward in any other statements. It was not provided for in the Rules, so it was not applicable to Mr Y's benefits.
  - The relevant section of the Rules with regard to revaluation of benefits for a deferred member (see the Appendix) referred to the lower of 5% per annum compound and the percentage increase in the RPI. There was no mention of a 3% minimum revaluation. The Rules also referred to the revaluation period as being the "number of complete years in the period beginning on the day after the Member leaves the Scheme and ending on his 60<sup>th</sup> birthday".
  - Mr Y's deferred benefits were correctly calculated in accordance with the relevant Rules and he was not entitled to receive a higher amount.
16. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided some further comments in response to the opinion. Mr Y said:-
- He had already shown that he had incurred a financial loss, as his pension and lump sum would both be higher had the previously stated revaluation been applied.
  - The deferred benefits pack provided by Aon clearly stated a minimum increase of 3% per annum to his deferred benefits. It also contained a material error that missed a six-month addition to his length of service. Mr Y recalled receiving another deferred benefits pack, in April 2014, which also contained the 3% minimum, but has not provided a copy of this. This meant Aon had two

opportunities to avoid making an inaccurate statement. Both packs made clear representation that his pension would be increased by a minimum of 3% per annum.

- He did not recall seeing the Rules but there was clearly a difference between what the Rules said about a minimum revaluation and what was stated in the deferred benefits pack.
- He had not been asked for evidence of financial commitments in reliance on the misinformation. He had a spreadsheet running that used information provided to determine whether he could afford to retire in 2016 or look for another job. He took a contract with another company during 2014, which ended in 2016 in reliance of the information regarding a minimum revaluation amount.
- The Trustee used RPI over a cumulative four-year period from October 2013 to October 2017 despite a clear reference in the member's handbook to the increase being calculated per annum. He had seen no evidence that the Rules had been applied correctly in applying the increase for complete years only. The booklet clearly stated deferred pensions were increased, "during the period between the date of leaving and normal retirement date". It was only the Guaranteed Minimum Pension (**GMP**) element prior to 1997 that was subject to complete tax years.
- He had been informed that there had been a Scheme amendment made effective from 6 April 2009. However, he had no recollection of any such Scheme amendment and in his role as Chairman of the Trustee at that time, the change would have his signature on it. His reading of the amendment was that it clearly said the increase was per annum and thus invalidated the method used by the Trustee and FA to calculate the increases in his deferred pension.
- The Adjudicator, Trustee and FA accepted that the 3% per annum minimum increase was put in writing by Aon and yet no one had tried to recover any costs incurred to the Scheme resulting from the error by Aon. He found this very unusual especially considering that Aon had previously reimbursed the Scheme during his Chairmanship of the Trustee when it made mistakes. He has made this point previously to the Trustee and FA but they have failed to react.

17. I have considered the additional points raised by Mr Y, however they do not change the outcome. I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

18. I have taken account of the additional arguments Mr Y has made but I do not consider that he reasonably relied on the deferred benefits pack issued by Aon in 2014, nor do I consider that he fundamentally changed his financial position to his detriment.

19. There is no dispute that misinformation was provided to Mr Y within the deferred benefits pack. The provision of misinformation in this case amounts to maladministration. However, I would only direct redress if it can be shown that

financial loss has flowed from the incorrect information given, and that Mr Y has reasonably relied upon that misinformation.

20. Mr Y has not supplied any tangible evidence to show how he might have made up any perceived shortfall in his retirement income had he been aware of the correct position earlier. Nor have I seen any evidence of how any such steps would be financed. There is also no evidence that Mr Y made financial commitments in reliance on the misinformation that he would not have otherwise taken had he received the correct information. He has said he took another employment contract between 2014 and 2016, however, it was not until 2018 that he was aware of the incorrect information regarding his deferred pension. I do not therefore accept that a potential financial loss has occurred.
21. The Trustee, FA and Kobusch UK Limited are not obliged to honour the incorrect information contained in the deferred benefits pack. While the provision of incorrect information is maladministration, Mr Y is only entitled to receive the correct benefits calculated according to the Rules, a copy of which would have been available to Mr Y upon request.
22. Mr Y believes that there has been a misrepresentation and therefore a finding of negligent misstatement should be made. However, the deferred benefits pack was not a clear and unequivocal representation so there was no relevant misrepresentation. But even if there were, for such a claim to be successful, Mr Y must show that he relied on the misrepresentation and that this reliance caused him a loss. I have not seen any evidence that Mr Y either, relied on the information contained in the deferred benefits pack, or that he has suffered a financial loss.
23. Mr Y has said there should be an additional eight months in the calculation of his deferred pension, as he left the Scheme in October 2013 and reached age 60 in June 2018. His argument is that his deferred benefits were only revalued for the period from October 2013 to October 2017.
24. Schedule 2 of the Rules sets out the method used for the revaluation of a deferred member's benefits and refers to the lower of 5% per annum compound and the percentage increase in the RPI. The Rules also state the revaluation period is the, "number of complete years in the period beginning on the day after the Member leaves the Scheme and ending on his 60<sup>th</sup> birthday". So, I am satisfied that Mr Y's deferred benefits were correctly calculated in accordance with the relevant Rules and he is not entitled to receive a higher amount.
25. Mr Y has said he has no recollection of the Scheme amendment effective from 6 April 2009. I do not doubt what Mr Y has said, however, the relevant Rules explain how the revaluation of benefits of a deferred member are calculated and I am satisfied Mr Y's deferred benefits were correctly calculated in accordance with those Rules. Whether Mr Y was aware of any amendments to the Rules is irrelevant and I need only consider whether the Rules have been followed correctly, which in this case they have been.

26. Mr Y has challenged the assertion that the Rules override the member's handbook. While I understand Mr Y's argument, the Rules do take primacy and it is on these that the administration of the Scheme is based and not any other member communication. Mr Y is only entitled to benefits calculated in accordance with the Rules and not to a higher amount or any other amount that may or may not be stipulated in any other document. I note that the member's handbook states, "The Trust Deed and Rules are available for your inspection on request. They are written in formal language, which will prevail in the event of any conflict with the wording in this booklet". While there was misinformation, which amounts to maladministration, the Scheme is not bound to follow that misinformation. Mr Y has not suffered a financial loss. He is only entitled to receive benefits calculated in accordance with the Rules.
27. Notwithstanding the above, Mr Y was provided with incorrect information. The provision of incorrect information does amount to maladministration on the part of Aon. While Mr Y has not shown that he sustained injustice in the form of financial loss as a consequence, it is clear that he has sustained non-financial injustice. However, as there was only one instance of maladministration, in the provision by Aon of the deferred benefits pack in February 2014, I do not find this was significant, such as to warrant an award in this regard.
28. I do not uphold Mr Y's complaint.

**Anthony Arter CBE**

Pensions Ombudsman

20 September 2023

## Appendix

### **Extract from Schedule 2 to the Scheme Rules as amended by a deed of amendment dated 20 May 2010 which took effect from 6 April 2009**

29. 'Revaluation Increase' provides:

“(i) for a Member who leaves the Scheme (other than by death) after the 31st December 1990 and at least one year before his 60<sup>th</sup> birthday,[...]

An amount calculated using the formula

$A \times (B - C)$

Where

A – is the lower of:

(1) five percent per annum compound; and

(2) the percentage increase in the Index of Retail Prices,

applicable to a revaluation period of the number of complete years in the period beginning on the day after the Member leaves the Scheme and ending on his 60<sup>th</sup> birthday.

B – is for the Member, an amount calculated in the manner set out in paragraphs (a) and (b) of Rule 6 (Normal Retirement Pension) but for the purpose of this calculation the Member's Pensionable Service shall be the number of years and complete months of Service as a Member each complete month counting as one-twelfth of a year [...]

C – is the Accrued Guaranteed Minimum (if any).”