CAS-52045-C6K1

Ombudsman's Determination

Applicant	Mr R
Scheme	The British Steel Pension Scheme (**the Scheme**)
Respondent	B.S. Pension Fund Trustee Limited (**the Trustee**)

Outcome

1. I do not uphold Mr R's complaint and no further action is required by the Trustee.

Complaint summary

2. Mr R has complained that he was prevented from taking benefits as a lump sum before major changes were made to the Scheme during 2017 and 2018. As a result, his lump sum was substantially lower than it would have been. He has also complained that he can only continue to receive the remainder of his benefits as an income, rather than one or more lump sums, as he had expected and planned for.

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 R was employed by British Steel and joined the Standard Section of the Scheme on 19 August 1996. He ceased pensionable employment under the Scheme when it was closed on 31 March 2017.

5. On 15 December 2016, the employer had written a 20-page letter (including appendices and a Q&A section) headed 'Consultation on proposed closure of British Steel Pension Scheme' to all affected members of the Scheme. This letter set out the proposals for the future of the Scheme and the rationale behind it. It said:

   "For the avoidance of doubt, closure of the Scheme to future benefit accrual would mean that your benefits would be calculated in the same way as if you had left employment on 31 March 2017."

6. The letter explained that the employer was arranging member presentations in the coming weeks that would further explain the proposals and that a Q&A document

would be posted online and regularly updated as the consultation process progressed.

7. The letter concluded by saying:

> "Please take the time to carefully review the information provided with this letter so you can understand the proposed changes and the possible impact on you. The Company is committed to a comprehensive consultation process that gives you the opportunity to provide feedback and submissions and have your questions answered."

8. In May 2017, the Trustee sent Mr R a 'Deferred Benefit Statement' (**the Statement**) detailing the value of his Standard Section deferred benefits following the cessation of future accrual from 31 March 2017. This provided an illustration of the early payment of his deferred benefits as a total annual pension of £7,266 per annum, or a tax-free lump sum of £33,325 with a reduced pension of £4,999 per annum. A note to the Statement explained that the basis for calculating the Scheme's early payment reductions was changing, which was expected to result in higher pensions for members taking early payment of their Scheme benefits in most cases.

9. On 28 June 2017, following a request from Mr R the Trustee issued an 'Estimate of Early Retirement Benefits' to him (**the 2017 estimate**). This showed that he had two options, a full pension of £8,641.59 per annum, or a tax-free lump sum of £39,572.05 with a reduced pension of £5,935.81 per annum.

10. In 2017/2018, following the closure of the Scheme, it underwent a major re-structure. As a result, members were given a choice to either retain their benefits in the Scheme in the knowledge that it was likely to enter the Pension Protection Fund (**the PPF**), or to switch to a new scheme with reduced benefits.

11. In August 2017 Issue 1 of a newsletter 'Time to Choose' (**the newsletter**) was produced by the Trustee. This said that from 31 March 2018 the Scheme would start to move to the PPF. It explained that for some members this might result in lower benefits and future increases would also be lower. A new scheme was also being set up, which members could switch to if they wanted. This would pay the same benefits as the current one but future increases would be lower.

12. The newsletter said that all members had two options which were to either:

- remain in the Scheme, which became known as the Old British Steel Pension Scheme (**the OBSPS**) and move, with that scheme, to the PPF; or
- transfer into the new British Steel Pension Scheme (**the BSPS**).

It made clear that the choice for non-pensioners (such as Mr R) would depend on their personal situation and that those who were more than a year from normal retirement age (usually 65) could also choose instead to transfer out of the current scheme to a different pension arrangement.

13. Between mid-October and the end of November 2017, 40 meetings were held round the country for members to find out more and to ask questions. There was also a new part created on the pensions website featuring a Q&A section and providing the latest information. Finally, although the Trustee could not give financial advice, it was setting up a free and impartial helpline for members to speak to a pensions expert.

14. On 10 October 2017, the Trustee sent a detailed options pack of information (**the pack**) to Mr R. This indicated that the BSPS would provide a larger pension, with the same or higher increases compared to the PPF and a better spouse's pension. However, the PPF was more generous in the way it worked out tax-free cash and that if the member took the maximum tax-free cash this would currently more than make up for the PPF's reduction to the pension.

15. The pack included a number of examples of what members might choose, including one of a member who wanted to retire early and take as much tax-free cash as possible.

16. At some point in or around March 2018, Mr R elected to transfer to the BSPS. Mr R says that prior to this, he had requested, several times, to take 25% of his benefits as a tax-free lump sum, and was prevented from doing so, as this option was unavailable to members who had not reached their State Pension Age.

17. On 28 June 2018, following a request from Mr R, the Trustee issued an 'Estimate of Early Retirement Benefits' to him (**the 2018 estimate**). This showed that he had two options, a full pension of £9,231.85 per annum, or a tax-free lump sum of £44,354.11 with a reduced pension of £6,653.03 per annum.

18. In an undated form 'Election for pension commencement lump sum' Mr R opted to take the maximum lump sum and residual pension effective from 13 August 2018.

19. Later in 2018, Mr R enquired about taking additional lump sums from the OBSPS. However, he was informed that this was not possible because he did not have this type of pension.

20. On 13 May 2020, Mr R wrote to the Trustee alleging unclear, unfair and misleading information, provided to him at various times, about his benefit options under the BSPS.

21. The Trustee replied to Mr R, on 20 May 2020, and rejected all parts of his complaint. In summary, it said he appeared to be confused about which options were available to him under the BSPS, in line with the choice he had made in 2018.

22. On 26 September 2020, Mr R complained to the Trustee under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). His complaint was in three parts:-

- He was not properly advised about his retirement options on joining the OBSPS in 1996.

- There were restrictions on how much tax-free cash he could take on retirement.
- He had suffered a loss of lump sum benefits as a result of his decision to switch from the OBSPS to the BSPS under ‘Time to Choose’.

23. He said that he did not understand how pensions worked and that that he had not had them explained to him. He had based his assumptions on the options open to him on what he had read and what other members had told him. He thought he was entitled to a lump sum equal to 25% of his fund

24. On 21 October 2020, the Trustee issued its decision on Mr R’s complaint (**the decision letter**). It said that it had provided members of the Scheme with detailed information on their benefit entitlements through annual benefit statements, newsletters, handbooks and the Scheme website. It pointed out that the member handbook at the time Mr R joined the Scheme showed that a ‘normal retirement pension’ was payable for life but that part of it could be exchanged for a cash lump sum.

25. The decision letter also pointed out that when Mr R took early retirement he opted to take the maximum lump sum and residual pension, thereby indicating that he understood that there was an amount of pension left over.

26. In conclusion, it said: “I find that the OBSPS and BSPS communications clearly set out the options available to you when you came to take your retirement benefits, including the appropriate maximum cash lump sum available to you.”

27. On 20 November 2020, Mr R appealed the decision under stage 2 of the IDRP. He said that he had read the Trustee’s letter of 21 October 2020 several times and did not understand the terminology. Consequently he was not satisfied with the response and wished to appeal under stage two of the IDRP.

28. On 1 December 2020, the Trustee responded to Mr R’s letter of 20 November 2020. It did not uphold Mr R’s appeal and confirmed that Scheme communications set out the nature of the benefits payable under the Scheme and confirmed that Mr R’s benefits were being correctly paid in accordance with the Rules.

Mr R’s position

29. He had always thought he could take all of his pension when he wanted at retirement and this was the reason he had joined the Scheme. His sole purpose was to be able to save and buy a property abroad to enjoy his retirement.

30. Nobody representing the Scheme had ever explained to him personally what his pension could or could not do for him. He receives a monthly payment but this is not what he had expected or wanted.

31. He had requested a tax-free lump sum several times and each time he was told, during telephone conversations, that he could not do this until he had 'physically

retired at state pension age'. He queried the fact that he was not entitled to a 25% tax free lump sum as he was over age 55, but each time this was refused.

32. In the process of the Scheme going through the Time to Choose process he believes the value of his pension dropped by around £24,000.

33. After the changes took place and his new pension was set up with Aviva he had telephoned Aviva and told them that he would like to transfer the whole of his Scheme pension across to them. He recalls speaking to a lady who advised him to leave his pension with British Steel. He says he took the advice but considers it has turned out to be a huge mistake.

34. When he later queried again with the new BSPS his entitlement to a 25% cash free lump sum, he was told he could take it, which he did. He has since asked why he cannot take the rest of his benefits as a lump sum and why he was not allowed to take a 25% tax free lump sum when he first requested it. He does not understand the responses he has received.

35. Had he been allowed to take the 25% cash lump sum when he first requested it then the amount would have been much greater as this was before the pension scheme changed and his pot reduced.

The Trustee's position

36. Its position remains as detailed in its stage one IDRP letter dated 21 October 2020.

37. Mr R seems to be of the understanding that 'pension freedoms' were available to him or became available to him when he took his retirement benefits. However, it is not clear how he came to be of this view.

38. It thoroughly refutes Mr R's assertion that he was not provided with detailed information on his benefit entitlements and retirement options. Members were provided with annual benefit statements showing their annual pension and, if they met the early payment age condition, the maximum tax-free cash entitlement and residual pension values.

39. Communications issued to members as part of the 'Time to Choose' exercise explained that the main difference between the terms of the OBSPS and the BSPS related to the basis of future pension increases. Mr R's claim that he suffered a loss in his maximum tax-free entitlement as a result of his decision to switch to the BSPS is incorrect as is shown by the 2017 estimate, produced under the OBSPS terms, and the 2018 estimate, produced under the BSPS terms.

Adjudicator's Opinion

40. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee The Adjudicator's findings are summarised in paragraphs 41 to 58 below:-

41. Mr R’s complaint about his conversation with Aviva related to financial advice he had received from a firm regulated by the Financial Conduct Authority. As such it falls outside the jurisdiction of the Pensions Ombudsman and if Mr R wished to pursue this aspect of his complaint he should do so through Aviva and the Financial Ombudsman Service.

42. The Adjudicator was aware that during the ‘Time to Choose’ exercise many members were given what has since been found to be unsuitable financial advice to transfer out of the Scheme and may have lost significant amounts of their pension savings as a result.

43. That was not to say that would have been the case for Mr R, as each individual’s circumstances and needs are different, but as a general rule a defined benefit pension, such as that provided by the Scheme, is considered to be a valuable asset and only in exceptional circumstances would advice to transfer away be deemed to be in the member’s best interests.

44. In the Adjudicator’s view Mr R’s complaint was based on a misunderstanding of how the Scheme operated and the benefits it provided. The Scheme is governed by rules and legislation which the Trustee has to apply. The Adjudicator explained that because the rules are complex to understand, they are usually explained in layman’s terms in member booklets, as in this case. Therefore, although it is the rules which govern the scheme, the booklet is important in conveying to the members, in more easily understandable terms, how the scheme works.

45. It is normal practice for every occupational pension scheme to provide an employee with access to a member booklet when they join the scheme. In the Adjudicator’s view, on the balance of probability, it was more likely than not that Mr R would have received a member booklet when he joined the Scheme. This would have explained the basis of the Scheme, the benefits and when they were payable, and any contributions required from the member.

46. The Adjudicator also considered it more likely than not that Mr R would have been provided with an annual statement of benefits which would have set out the benefits he had accrued under the Scheme to date. Moreover, the 2017 estimate and the 2018 estimate both showed that he had two options at retirement: to either take a full pension or to take a reduced pension plus a tax-free cash sum. There was no other option provided for and certainly no suggestion that the benefits could be fully cashed out.

47. Following receipt of the 2018 estimate, Mr R completed the ‘Election for pension commencement lump sum’ thereby opting to take the maximum lump sum and residual pension. There was no indication at the time that Mr R did not understand the choice he was making. It was not until nearly two years later that Mr R raised this as an issue, so it would appear that he was happy with the arrangement throughout that time.

48. The Adjudicator acknowledged that pensions can be complex, but in his view the estimates provided to Mr R were clear and unambiguous in their wording so that the decision Mr R made, to take a reduced pension and tax-free cash, was an informed one.

49. Mr R had said that his tax-free cash sum was substantially lower than it would have been. The Adjudicator disagreed. The 2017 estimate showed a cash sum of £33,325; by June 2017, following changes to the early retirement basis, this had increased to £39,572.05; and the 2018 estimate, issued shortly before Mr R chose to take his benefits, showed it had increased to £44,354.11. So, there was no evidence to suggest that his cash sum was reduced.

50. Mr R agreed that he was provided with booklets but says that he did not understand them. The Adjudicator considered that, at any time, and particularly during the time of significant changes to the Scheme between 2016 and 2018, if Mr R had had concerns or did not understand, he could have asked questions via the Scheme's helpline or spoken to an independent financial adviser to clarify the position and how it affected him.

51. With regard to the proposed closure of the Standard Section of the Scheme in March 2017, the Adjudicator said that, with hindsight, the production of a 20-page letter covering a number of issues relating not only to the Scheme closure but also to the business itself was not the best way to introduce the potential changes. But the letter explained that the employer was arranging member presentations in the coming weeks to further explain the proposals and that a Q&A document would be posted online and regularly updated as the consultation process progressed. In the Adjudicator's view there would have been opportunities for Mr R to ask questions and find out more about the closure and how it affected him.

52. The Adjudicator sympathised with Mr R in that, when it came to the Time to Choose exercise, it must have been difficult to take in all the changes that were taking place. He said that, as a 2019 independent review of the communication and support given to OBSPS members (**the review**)[1] said "Members who had never previously thought much about pensions were now faced with making a very significant decision on a very complex issue to a very tight deadline."

53. The background to the exercise was one of significant change and an element of mistrust between the workforce and the management. So Mr R may well have based his assumptions on the options open to him on what he had read and what other members had told him. That said, while the review made clear that the communication was not perfect, Time to Choose was dealing with complex issues and had to find a balance between being sufficiently detailed but at the same time understandable. The review found that despite the difficulties, Time to Choose

[1] Independent review of communications and support given to British Steel Pension Scheme members January 2019

generated a response rate of over 80% and the vast majority of Scheme members selected the right option for them.

54. Mr R said he always believed that he could do as he wished with his pension at retirement, including taking the whole sum out in one go or taking various sums out as and when he wanted. But he was never entitled to these options under the Rules.

55. What Mr R described was called ‘Pension Flexibility’, also known as ‘Pension Freedoms’. This was introduced by the Government in 2015 to allow individuals with money purchase savings to access their entire pension fund flexibly if they wished and to make their own choices about how to use their pension savings. The four main options for individuals over 55 were to withdraw all the money in one go, leave it in the scheme and take a regular or occasional income, buy an annuity, or enter into a ‘drawdown’ arrangement.

56. However, only defined contribution pensions, also known as 'money purchase' pensions, were covered by Pension Flexibility. Defined benefit pensions, such as those provided by the Scheme, were not covered under the Pension Freedoms legislation. Moreover, those freedoms only came into effect in 2015 and certainly were not available when Mr R joined the Scheme in 1996.

57. Mr R also said he would not have joined Scheme had he known he could not take his benefits entirely as cash and that he would have just saved the money instead. But that was to ignore the fact that a significant part of his benefits was purchased by the Employer’s contributions which he would not have enjoyed had he not joined.

58. The Adjudicator considered that Mr R was receiving the benefits to which he is, and always was, entitled to under the Scheme. There was no evidence to show he had suffered any loss through maladministration on the part of the Trustee.

59. The Trustee accepted the Adjudicator’s Opinion whereas Mr R did not and the complaint was passed to me to consider. Mr R 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 R below.

60. The Trustee had refused on several occasions to allow him to take his 25% cash lump sum which he believes he was entitled to.

61. He agrees that the amount of cash that he was eventually allowed to take was higher but this should not be allowed to detract from the fact that part of his cash lump sum was lost due to the Trustee’s refusal to allow him to take what he was entitled to at the time he had requested it.

62. He had never agreed to, nor was in favour of, the changes to the Scheme.

Ombudsman's decision

63. The amount of the cash lump sum that Mr R could take was set out in the Rules of the Scheme, and subject to overriding legislation. It was also described in member literature (for example, member booklets). In this case, not unusually for defined benefit pension arrangements of this type, the Rules allowed Mr R to exchange pension for a cash lump sum, when the pension came into payment. There was no option to take the entire benefit as cash in the normal course of matters. The amount of cash lump sum a member of the Scheme could take was dependent on the level of pension and the member's age at retirement. The maximum amount of tax-free cash allowable was calculated in accordance with a formula prescribed by HM Revenue & Customs. The formula was explained in the member booklet.

64. While I appreciate that Mr R may not personally have been in favour of the changes, I am satisfied that the Trustee and British Steel provided sufficient notice of the proposed changes to the Scheme and carried out extensive consultation with all members regarding the impact of those changes on members' benefits.

65. I find that Mr R's benefits were calculated and paid correctly in accordance with the Rules.

66. I do not uphold Mr R's complaint.

Dominic Harris

Pensions Ombudsman
29 May 2024