

Ombudsman's Determination

Applicant	Mr S
Scheme	Hanson Industrial Pension Scheme (the Scheme)
Respondents	Hanson Holdings (1) Limited (the Company) HIPS Trustees Limited (the Trustee) Capita Employee Solutions (Capita)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by the Company, the Trustee or Capita.

Complaint summary

2. Mr S' complained that:
 - the Company and the Trustee did not allow him the opportunity to claim his pension commencement lump sum (**PCLS**) in the way that he wished to;
 - there was a delay in the calculation of his Scheme benefits;
 - incorrect information, regarding the payment of a pension arrears lump sum, was provided to HM Revenue and Customs (**HMRC**);
 - there were delays caused by Capita in updating an online pensions portal with the details of a one-off lump sum payment he made; and
 - he experienced general delays in receiving responses to his queries and requests for information.

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 S was originally a member of the Pioneer Mixconcrete Pension Plan.

5. On 1 May 2001, the Pioneer Mixconcrete Pension Plan was merged with the Scheme. Thereafter, Mr S was a member of the Pioneer Section of the Scheme (**the Pioneer Section**).
6. The Scheme is comprised of several sections, including the Pioneer Section. The Pioneer Section is an occupational defined benefit arrangement (**the DB Section**). Under the DB Section Mr S also paid additional voluntary contributions (**AVC**).
7. In September 2010, the DB Section of the Scheme was closed to future accrual and Mr S' benefits were deferred. In its place, a defined contribution section was introduced (**the DC Section**) which Mr S was duly enrolled into.
8. In October 2010, the Company wrote to Mr S and said that, following the closure of the DB Section, there was an option to opt out of retaining a future salary increase link with the DB Section. If he chose to opt out of a final salary link the Company would pay an increased employer contribution rate into the DC Section. If he chose to retain the final salary link, then the Company would pay a lower level of employer contributions into the DC Section.
9. Mr S opted to retain the final salary link with the DB Section.
10. On 24 October 2011, the Trustee wrote to Mr S and explained that, as he had chosen to retain a final salary link with the DB Section, at his normal retirement date (**NRD**), his pension would be calculated as the greater of the two following methods:
 - Method 1:
 - as of the date the DB Section closed, his annual deferred pension was £15,072.13. This included an annual post 1988 guaranteed minimum pension (**GMP**) of £1,085.76;
 - the GMP element would increase at a rate of 4%, for each complete tax year, from 30 September 2010 to the GMP payment date, which was when he reached age 65;
 - the excess benefits increased in line with the consumer price index, subject to a cap of 5% from 30 September 2010 to his NRD.
 - Method 2 – his pension would be calculated in line with his final pensionable salary up to the date he left pensionable service. The pension would then be increased in line with method 1 from 30 September 2010 to his NRD.
11. On 15 March 2017, Mr S paid a one-off contribution of £24,000 into his AVC fund via a cheque.
12. On 20 March 2017, £24,000 was debited from Mr S' bank account.
13. On 31 March 2017, Mr S' one off contribution was invested in the HIPS Index Linked Gilts AVC Fund.

14. On 30 April 2017, Mr S accepted voluntary redundancy from the Company.
15. On 18 January 2018, Mr S emailed the Trustee and queried whether he could use a portion of his DC Section benefits to fund the payment of the PCLS that he was eligible to receive under the DB Section. In Mr S' view, this would negate the requirement to commute some of his annual pension, under the DB Section, to facilitate the 25% PCLS he was due.
16. On 9 February 2018, Capita wrote to Mr S and explained that his DC Section benefits could not be used to fund the DB Section PCLS. It also explained that his ongoing final salary link with the DB Section related to an underpin that was only applicable to the DB Section.
17. Between February 2018 and June 2018, Mr S corresponded with Capita about claiming his DB and DC Section benefits.
18. On 7 March 2018, Mr S accessed his Hartlink account, the Scheme's online pensions portal, to check his Scheme benefits. In doing so, he noticed that the one off AVC contribution he paid, in March 2017, did not appear. He subsequently made Capita aware of this issue.
19. On 28 April 2018, Capita amended Mr S' Hartlink account so it correctly reflected the one-off AVC contribution he had made in March 2017.
20. On 7 June 2018, Mr S emailed Capita and referred to sections of the Finance Act 2004 and 2005, which he believed supported his view that his DC Section benefits could be used to fund his DB Section PCLS. He also referred to sections of the HMRC Pension Tax Manual 063220 (see Appendix).
21. On 27 September 2018, the Secretary for the Trustee (**the Secretary**) responded to Mr S' queries about the DB and DC Sections and his PCLS entitlement. The Secretary explained that the Scheme rules did not provide for a member to take a PCLS from across the DB and DC Sections of the Scheme. The benefits he accrued under the DB and DC Sections were treated separately and could not be combined in the way in which he had proposed. He was entitled to take two separate PCLS: one from each of the DB and DC Sections. However, he could use the AVCs to fund the PCLS available from the DB Section.
22. On 3 October 2018, Mr S responded to the Secretary and said that their response did not cover the poor service that he received from Capita, nor did it address the delay in his Hartlink Portal being updated to show his one-off AVC payment. He was recently informed that some schemes had amended their rules to allow for the payment of a PCLS in the way that he had suggested. He asked if the Trustee would consider amending the Scheme rules to facilitate his request.
23. On the same day, Capita sent Mr S a retirement illustration for the DB Section. Under the DB Section, he was entitled to an unreduced annual pension of £19,692.35 with a

PCLS of £18,044.67, or a reduced pension of £15,228 with a maximum PCLS of £101,522.

24. On 5 October 2018, Capita sent Mr S an AVC investment breakdown with a current value of £142,213.10.
25. On 9 October 2018, the Secretary informed Mr S that any amendments to the Scheme rules had an associated cost attached to it. So, there was no immediate scope to update them.
26. On 17 October 2018, Mr S wrote to the Company and said that he was recently informed that an amendment to the Scheme rules was not possible due to the associated costs. As he understood it, the Company contributed towards the cost of administering the Scheme. So, he asked if it had any input in making, or supporting, amendments to the Scheme rules that could accommodate his request. He said he would be put at a financial disadvantage if he was required to claim two separate PCLS' from the DB and DC Sections.
27. On 15 November 2018, the Company responded to Mr S and said:-
 - He was correct in that the Scheme rules could be amended to allow him to take an overall PCLS from the DB and DC Sections. However, this did not mean that any such amendments should be made.
 - A change to the Scheme rules in the way which Mr S suggested would be advantageous to him and a small number of other members. However, it would also bring about a number of disadvantages, notably that funding of the Scheme would become more expensive. This would increase the Scheme liabilities thereby reducing the security/funding level of the Scheme for the wider membership.
 - Any amendments to the Scheme rules, in relation to the DB Section, needed to be made in consideration of the wider Scheme membership, not just for those with DB Section benefits.
 - The suggested amendments to the Scheme rules would only be beneficial to members whose DB Section benefits were under the Pioneer Section. There were a number of Scheme members whose DB Section benefits were derived from other sections of the Scheme.
 - Because of the funding burden that would be placed onto the Scheme, there was no scope to amend the Scheme rules to accommodate his request.
28. On 26 November 2018, in response, Mr S said that it was incorrect for the Company to infer that a financial burden would be placed on the funding level of the Scheme, by amending the Scheme rules. He only wished to use the funds already available in the DC Section to fund his DB Section PCLS. The Finance Act 2004 and 2005 introduced changes to overriding statutory legislation to allow for the amendments he had suggested by simplifying the way in which members could take their benefits. He

believed that the Company's approach of considering the wider membership amounted to "unless you can help everybody, you should help nobody".

29. On 29 November 2018, Mr S wrote to HMRC to query what options were available to him in relation to claiming a PCLS from either the DB or DC Sections.
30. Between November 2018 and January 2019, Mr S corresponded with the Trustee about his Scheme benefits.
31. On 15 January 2019, HMRC responded to Mr S and explained that tax rules allowed for the payment of a pension and PCLS' to be made within certain limits, subject to a pension scheme's own rules. HMRC could not be involved with any entitlement disputes with a pension provider, nor could it provide financial advice.
32. On 17 January 2019, the Secretary wrote to Mr S and said:-
 - It was understood that he was corresponding with HMRC about his request to take a combined PCLS from the DB and DC Sections of the Scheme. So, it would not comment any further on the matter until he received a response.
 - It apologised for a delay in Capita providing him with a retirement illustration for the DB and DC Sections of the Scheme.
 - He first raised the query about the way in which he wanted to claim his PCLS on 18 January 2018. Thereafter Capita telephoned him on the 8 February 2018, followed up with a letter on 9 February 2018 outlining the correct approach.
 - Although it did take some time to respond to his subsequent request for an amendment to the Scheme rules these queries were not standard in nature and required the input of the Trustee and the Scheme's legal counsel. It apologised for any delays he had experienced.
 - The AVC cheque payment of £24,000, paid on 15 March 2017, was debited from his account on 20 March 2017 and invested on 31 March 2017. It was an error on his Hartlink account that prevented him from viewing the one-off contribution. This was amended by Capita in April 2018 when it adjusted his unit holding to reflect the contribution.
33. On 30 January 2019, Mr S wrote to the Trustee and briefly reiterated a number of the complaint points that he had previously raised with the Secretary and the Company. He added:-
 - At the closure of the DB Section, he elected to retain a final salary link. As he understood it, in doing so, the Company would only contribute 5% into the DC Section instead of 10%. If he was unable to claim the PCLS in the way he wished to, it appeared there was no meaningful benefits to retaining the salary link over increased employer contributions.

- It was not reasonable, in his view, to say that there would be a negative cost to the DB Section's funding level, by allowing him to fund his DB Section PCLS, with his DC benefits. This was because the Company had only paid a 5% contribution into the DC Section, instead of 10%, in effect saving itself a cost.
 - He believed that the Company was attempting to pressure him into claiming a PCLS from the DB Section, which would result in a reduction to his annual pension of around £4,500.
 - He was unsure of what stage of the Internal Dispute Resolution Procedure (**IDRP**) he currently fell under given the substantial correspondence he had with the Trustee and the Company.
 - Within the coming days he intended to claim his unreduced annual pension from the DB Section. However, he intended to leave his DC Section benefits until he received a sufficient response to his request for the amendment of the Scheme rules.
34. On the same day, Mr S returned his retirement declaration forms to Capita to claim his DB Section benefits. Mr S opted for a yearly pension of £19,692.35 with a PCLS of £18,044.67.
35. On 1 February 2019, the Secretary said that the Trustee believed that Mr S' complaint should be investigated under stage two of the Scheme's IDR. The Secretary also explained that the option to commute part of his pension, or use the AVC, for a PCLS, was only available at the point the DB Section benefits were put into payment. Once the DB Section benefits become payable, he forfeited his right to a PCLS from the DB Section, if he did not elect to claim one.
36. On 3 February 2019, Mr S emailed Capita and said that he no longer wished to claim his DB Section benefits. So, it should disregard the declaration forms he signed on 30 January 2019.
37. On 4 February 2019, Mr S telephoned Capita about ceasing his request for the payment of his DB Section benefits. Following the call, Mr S told Capita to proceed with setting up his DB Section benefits, in line with the option he chose on 30 January 2019.
38. On 28 February 2019, the Secretary responded to Mr S' stage two IDR complaint, on behalf of the Trustee and said:-
- Capita's letter of 9 February 2018 could have provided more information about his PCLS entitlement. However, Capita had correctly explained that he was unable to use his DC Section benefits to fund his DB Section PCLS.
 - The Scheme rules only allowed for the amount of PCLS, available under the DB Section, to be calculated in reference to the DB benefits, including any AVC's. The Scheme rules did not allow for the DB and DC Section benefits to be aggregated to entirely fund a PCLS from the DB Section.

- The way in which benefits were payable under the Scheme was a matter of Scheme design and had to comply with overriding UK tax legislation. The method by which a DB Section PCLS was calculated was an entirely valid method of calculation which complied with the Scheme rules and overriding UK legislation.
 - An amendment to the Scheme rules, to allow for the payment of a PCLS in the way Mr S wanted, would adversely affect the Scheme's funding position. The DB Section's funding was based on the assumption that a PCLS was commuted from DB Section benefits thereby reducing the annual pension available. To do so from the DC Section would adversely affect the DB Section funding.
 - He was entitled to a PCLS from both the DB and DC Sections. He could also use the AVC to fund part of his DB Section PCLS.
 - The Secretary apologised about the delay in updating his Hartlink account to reflect the one off AVC contribution he paid in March 2017. However, this did not affect the actual investment of the contribution.
 - In recognition of the service he received from Capita, it was prepared to offer him £500 in full and final settlement of his complaint.
39. On 3 April 2019, Capita sent Mr S an updated retirement illustration for the DB Section based on the disinvested AVC value. He could claim an annual pension of £18,170.86, with a PCLS of £17,633.95, or a reduced annual pension of £14,090.50 with a PCLS of £93,936.67.
40. In response, Mr S telephoned Capita to query the most recent DB Section retirement illustration he received as it had reduced in value.
41. On 5 April 2019, Capita wrote to Mr S and explained that:-
- The final salary link he retained in the DB Section meant that his DB Section benefits were underpinned by a revaluation method that incorporated changes in his salary from 30 September 2010 to his last date of pensionable employment.
 - The calculation of his DB benefits, taking into account the final salary underpin, were based on pensionable salary figures. The Pioneer Section defined pensionable salary as a member's salary at 1 April each year, less the lower earnings limit.
 - The Scheme rules defined pensionable salary as the highest average of pensionable salaries on three consecutive years, as of 1 April, within the last 10 years of pensionable service.
 - So, the difference between the retirement illustrations sent to him on 3 October 2018 and 3 April 2019, was due to an update in his pensionable salary which reduced the level of pension available to him under the final salary link underpin.

42. On 6 April 2019, Mr S emailed the Trustee to query the difference between the two retirement illustrations he received between October 2018 and April 2019. He said that the annual pension option had reduced from £19,692 to £18,171, a difference of £1,521.
43. On 17 April 2019, Capita wrote to Mr S and explained that it had recently discovered that the DC Section's definition for pensionable salary was incorrectly used in calculating his previous retirement illustrations for the DB Section. The correct definition of pensionable salary, under the DB Section, was "the member's salary less the lower earnings limit, fixed at 1 April for each year". Under the correct definition, his final pensionable salary was £49,734.65, as opposed to £55,178.65, which was derived by using the DC Section's definition of pensionable salary.
44. On 23 April 2019, Mr S responded to Capita and explained that his pensionable salary had increased by 25.9% between 30 September 2010 and 30 April 2017. He provided copies of the letters that the Company sent him around the time the DB Section was closed about his retention of the final salary link. He said he was yet to receive an apology from Capita about the incorrectly calculated retirement illustrations, the last of which had reduced by 8%.
45. On 7 May 2019, Mr S emailed Capita to follow up on a request for an up to date retirement illustration for the DB Section, and for an answer regarding the calculation of his benefits taking into account his final salary link.
46. On 10 May 2019, Capita sent Mr S a retirement illustration for his DB Section benefits. It said that the pensionable salaries used to calculate previous illustrations were incorrect as the lower earnings limit was not deducted from the Scheme earnings, so the factor used to apply the final salary link was lower than it should have been. His pensionable salaries were manually verified and compared against the difference between the lower earnings limit and Scheme earnings. This resulted in a raised salary linked revaluation which brought his unreduced annual pension up to £20,006.43 with a PCLS of £17,633.95, or a reduced annual pension of £15,443.66 and a PCLS of £102,957.74.
47. Between May and June 2019, Mr S corresponded with Capita and the Trustee about the calculation of his benefits as he did not agree that the annual figure of £20,006.43 was correct.
48. On 28 June 2019, Capita emailed Mr S and explained that the calculation of his DB Section benefits was referred onto the Scheme Actuary to review/calculate. The Scheme Actuary found that the proforma Capita used for regular salary linked calculations was not suitable in his case as it did not split out a 2/3% supplement for the salary linkage calculations. The 2/3% salary linkage supplement was based on average earnings above the average upper earnings limit, whereas the salary link on the remainder of his benefits was based on average earnings above the average lower earnings limit. Based on the Scheme Actuary's revised calculations, his correct

entitlement was a yearly pension of £20,462.17 and a PCLS of £17,633.95, or a reduced yearly pension of £15,779.63 and a maximum PCLS of £105,197.51.

49. On 30 June 2019, Mr S returned his completed retirement declaration forms to Capita to claim an annual pension of £20,462.17 and a PCLS of £17,633.95. He said that, as his pension would be backdated to his NRD, in October 2018, it should take steps to inform HMRC that a portion of the arrears payment he would receive was applicable to tax year 2018/19. This would avoid him being unnecessarily taxed at a higher rate.
50. On 5 August 2019, Capita's payroll team emailed Mr S and told him that £11,441.46 of arrears payment he received was applicable to tax year 2018/19. This had been removed from his year to date pay for tax year 2019/20 and would be reported to HMRC via an early year update. He would receive £3,217.58, on 30 August 2019, of which £1,457.20 was a tax refund for the arrears he received in tax year 2018/19, and £1,760.38 which was his monthly pension.
51. On 1 October 2019, Mr S emailed Capita's payroll team and explained that HMRC had recently informed him that it had not received any early year updates about what portion of the arrears payment was applicable to tax year 2018/19.
52. On 10 October 2019, Mr S completed an online tax return form for HMRC, for which he subsequently received a tax rebate of £2,760.
53. On 2 December 2019, Mr S emailed the Trustee and asked them to consider two additional complaints, in addition to the complaints that he submitted under each stage of the IDRPs, which were:
 - delays in correctly calculating his entitlement under the DB Section, while taking into account the final salary link; and
 - the provision of incorrect information to HMRC about a pension arrears sum he received.
54. On 17 January 2020, the Trustee responded to Mr S and said that it had considered his two additional complaints. It said that it was aware of the issues in calculating his DB Section entitlement. Neither of the two new complaints were directly raised with the Trustee; however, in recognition of the errors and troubles that he had encountered, it was prepared to increase the initial £500 offer, to £2,000.
55. On 18 January 2020, Mr S responded to the Trustee and said that he was unhappy with the way in which it had responded to his email of 2 December 2019.
56. On 28 January 2020, the Secretary wrote to Mr S and said that the Chair of the Trustee had considered his two additional complaints. The stage two IDRPs response of 28 February 2019 did not address the new complaints Mr S raised in December 2019, as neither of the points had occurred at the time. It was Capita's standard policy to tax the first payment of a pension in the tax year it was paid, in his case tax year 2019/20, this would include the arrears lump sum payment. Members were advised to contact HMRC directly to resolve their own personal tax position. Capita

does not ordinarily get involved with members' personal tax positions. Due to the errors that Mr S had encountered in claiming his pension, Capita took steps to ensure that his second pension payment was accordingly taxed. There was no error on the part of Capita to consider.

Adjudicator's Opinion

57. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Company, the Trustee or Capita. The Adjudicator's findings are summarised below:-

- Mr S took voluntary redundancy in 2017 and began exploring his retirement options. He queried whether he could use his DC Section benefits to fund his PCLS entitlement under the DB Section. He believed that in doing so he would negate the need to reduce his annual DB pension. He referred to sections of the Finance Act 2004, 2005 and section 063220 of the HMRC Tax Manual in support of his request.
- The HMRC Tax Manual states that a PCLS can be paid from more than one arrangement under the same pension scheme. HMRC rules allowed for the PCLS to be linked to an arising entitlement under one or more different arrangements the member may have held in the same registered scheme. In theory, this allows for a member's PCLS entitlement to be drawn from DC benefits rather than potentially claiming two or more smaller PCLS from different sections of a scheme.
- Mr S' understanding of PTM063220 was correct. However, while the HMRC tax manual outlines the applicable overriding tax legislation, there is no specific requirement for pension providers, administrators, or trustees to adopt all of the approaches outlined under PTM063220. Specifically, any applicable schemes that would wish to adopt such an approach would need to ensure it was adopted in accordance with the rules governing those schemes. The Scheme rules did not contain the required provisions to pay a PCLS in the way that Mr S wanted. Capita and the Trustee were acting in accordance with the relevant Scheme rules by informing Mr D that he could not claim a PCLS in the way he had suggested.
- There was no requirement for the Trustee, or the Company, to amend the Scheme rules to accommodate the request of an individual/group of members even if the request was permitted by HMRC's overriding tax legislation.
- The Ombudsman's powers are set out in Part X of the 1993 Act¹ and subsequent regulations. This legislation sets out what the Ombudsman can and cannot do. The Ombudsman has power to determine complaints that actual or potential beneficiaries have sustained injustice as a consequence of maladministration, and also disputes of fact or law (see sections 146(1)(a) and (c) of the 1993 Act). The

¹ See <https://www.legislation.gov.uk/ukpga/1993/48/part/X/enacted>

Ombudsman cannot change or create new legislation. He must consider the law and the relevant scheme rules that apply to the applicant at the relevant time and determine whether they have been applied correctly. The Ombudsman must decide complaints and disputes in accordance with established legal principles rather than by reference to what he may consider fair and reasonable.²

- Mr S made a one-off payment of £24,000 into his AVC fund on 15 March 2017, which was invested on 31 March 2017. However, his Hartlink account was not updated to reflect the contribution until 28 April 2018, after he approached Capita. It was unfortunate that it took more time than it should have for Capita to correct an otherwise simple issue. Mr S' AVC contribution was invested, within a reasonable period, so he did not suffer any investment/financial loss. In the Adjudicator's opinion Capita's actions amounted to poor administration, as opposed to maladministration.
- There were two errors in the calculation of Mr S' DB Section benefits which amounted to maladministration. As maladministration had occurred, the appropriate response was to return Mr S to the position that he would have been in had the errors not occurred. The Adjudicator was satisfied that the steps taken by the Trustee, in response to the errors, appropriately remedied any maladministration. There was no evidence to suggest that Mr S was not in receipt of his correct entitlement under the DB Section. Once Mr S' DB pension was put into payment, it was backdated to his NRD, in October 2018.
- Mr S received an arrears payment in June 2019, to account for the pension payment he would have received from his NRD in October 2018. This period fell over the end of tax year 2018/19 and the beginning of tax year 2019/2020. Mr S asked Capita whether it had notified HMRC about which part of the arrears payment fell within the applicable tax years.
- Capita said that it would provide an early year update to HMRC to breakdown what part of the arrears lump sum was applicable to tax year 2018/19. Although it was unclear, based on the information available, when, or even if, the early year update was sent. In any event, Mr S completed a tax return form and HMRC rebated any tax that was deducted from the arrears lump sum. Capita's actions, or potentially lack thereof, in dealing with Mr S' tax query/requests, was a further example of poor administration.
- The Trustee accepted that there were delays in responding to Mr S' queries; however, it said that a number of Mr S' requests required the input of the Scheme's legal advisers, or the Scheme Actuary, which took time. There was no doubt that Mr S did experience delays in his attempt to gain clarity on his entitlement to a PCLS and also the correct value of his DB Section benefits.

² *Henderson v Stephenson Harwood* [2005] Pens LR 209 (s12)

- There was an instance of maladministration in the handling and calculation of Mr S' DB Section benefits. The instances of poor administration related to updating Mr S' Hartlink account, the information provided to HMRC and various delays he experienced. The Adjudicator commented that he was satisfied that, due to the actions undertaken by Capita and the Trustee, Mr S had been returned to the position he would have been in, had it not been for the errors identified. The steps taken were implemented within a reasonable period. Mr S had not suffered any financial loss or detriment as a result of the identified errors.
- In recognition of the distress and inconvenience Mr S suffered, the Trustee offered him £2,000. The Adjudicator agreed that this amount sufficiently recognised the severe distress and inconvenience Mr S suffered between 2018 and 2019 in dealing with, and claiming, his pension. He was advised to contact the Trustee to accept the £2,000.

58. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S 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 S which are:-

- He accepted that he was unable to claim a PCLS from the DB Section in the way he had suggested. That was, by using the value of the DC Section to fund his entitlement to a PCLS under the DB Section. He understood that to do so, would require the Trustee and the Company to agree to amending the relevant Scheme rules, which neither was prepared to do.
- His main point of contention was the incorrect calculation of his DB Section benefits when taking into account the final salary link he retained. He was sent five separate retirement illustrations between 30 April 2017 and 28 June 2019. There was a difference of £2,291 between the highest and lowest of the figures quoted in the illustrations. He successfully calculated his entitlement under the DB Section to within £170 of the Scheme Actuary's calculation, for which he felt he did receive sufficient credit.
- If he had not contacted HMRC to explain what tax years the pension arrears lump sum should be split between, he would have unnecessarily paid additional tax. Capita was aware of how best to split the pension arrears between the relevant tax years, so it was in the best position to contact HMRC, but it did not appear to do so.
- There were numerous delays throughout his dealings with Capita. He believed that Capita used an expensive premium telephone service to discourage members from telephoning in with their queries or grievances. He was faced with the option of incurring an expensive telephone bill, or emailing Capita, who would very often respond outside of its own service level agreement.

Ombudsman's decision

59. I agree with the Adjudicator that there were instances of poor administration and maladministration between 2018 and 2019 on the part of the Trustee and Capita.
60. I find, however, that there is no evidence that Mr S has suffered a financial loss due to the errors. Despite the one-off AVC contribution of £24,000 not showing on Mr S' Hartlink account until 28 April 2018, it was invested correctly as at 31 March 2017. Once Mr S' DB Section benefits were calculated by the Scheme Actuary, they were backdated to his NRD. Mr D also completed a tax return and has since received a rebate for any overpaid tax due to the pension arrears sum.
61. I find that Capita and the Trustee have taken the necessary steps, within a reasonable period, to return Mr S to the position he would have been in had it not been for the errors identified, which the Adjudicator duly noted, in detail.
62. Capita and the Trustee's errors will have caused Mr S some distress and inconvenience. However, in recognition of the errors, the Trustee offered Mr S £2,000, which I find adequately remedies the distress and inconvenience suffered by Mr S. Mr S should contact the Trustee if he wishes to accept the offer
63. I do not uphold Mr S' complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman

19 August 2024

Appendix

Extract of the HMRC Pensions Tax Manual 063220

“Normally, a lump sum may be treated for tax purposes as a pension commencement lump sum only if the member has become ‘actually entitled’ to a relevant pension benefit under the registered pension scheme making the lump sum payment. The maximum amount payable will be capped by reference to the value of that arising pension entitlement. [PTM088200](#) explains when entitlement to different forms of pension benefit arise in different circumstances.

...

The pension entitlement giving rise to the pension commencement lump sum payment does not have to arise under the same arrangement paying the lump sum. The pension commencement lump sum can be linked to an arising pension entitlement under one or more different arrangements the member may hold in the same registered pension scheme.

This allows the maximum pension commencement lump sum payable to be calculated on a scheme-wide basis, based on all that member’s entitlements arising under that scheme. And the member can be given the choice of drawing their lump sum entitlement from one source under a scheme, rather than potentially drawing two or more smaller lump sum payments from different types of arrangements held under the scheme.

For example, many registered pension schemes providing defined benefits to its members hold additional voluntary contributions (AVCs) paid by the member under a money purchase arrangement(s) thus separating them from the main scheme benefits which are held under a defined benefit arrangement(s). Instead of drawing two separate lump sum payments, each based on the pension entitlement from one of the arrangements, the scheme can give the member the option of drawing more (or all) of their total lump sum entitlement under the scheme from the money purchase arrangement(s) holding their AVC benefits. This means that the member can use any funds generated from their AVC fund to provide their entire lump sum benefit entitlement. The main scheme benefits retained in the defined benefits arrangement are then used to generate a higher scheme pension and no lump sum.

To take another example, the member may hold two policies under a scheme in different money purchase arrangements, each one with a different insurance company, and may wish to use the contract with the lower annuity rate to provide their lump sum benefit.

Where a pension commencement lump sum is paid that has been generated, either in full or in part, by cross-reference to a pension entitlement under a

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different arrangement under the same scheme, any lump sum entitlement arising under that other arrangement must take into account the payment from the arrangement paying the lump sum.”