

Ombudsman's Determination

Applicant	Mrs Y
Scheme	Monsanto Pension Plan (the Plan)
Respondents	Law Debenture (the Trustee) Capita Employee Benefits (Capita)

Outcome

1. I do not uphold Mrs Y's complaint and no further action is required by the Trustee or Capita.

Complaint summary

2. Mrs Y has complained:-
 - About the way her benefits were commuted to provide her with a Pension Commencement Lump Sum (**PCLS**). Mrs Y asserts that she has suffered a financial loss because the element of her pension that is subject to increases in payment was commuted first to provide the PCLS.
 - That she was provided with incorrect information prior to her retirement, which led her to choose a retirement option that has resulted in her being financially disadvantaged in retirement.

Background information, including submissions from the parties

3. Mrs Y's benefits in the Plan were made up of four different elements. These were:
 - the Guaranteed Minimum Pension (**GMP**) Mrs Y accrued before 6 April 1988 (**the Pre 88 GMP**);
 - the GMP Mrs Y accrued on or after 6 April 1988 (**the Post 88 GMP**);
 - benefits Mrs Y accrued before 6 April 1997 in excess of the GMP (**the Pre 1997 Benefits**); and
 - benefits Mrs Y accrued from 6 April 1997 in excess of the GMP (**the Post 1997 Benefits**).

4. On 12 September 2018, Mrs Y requested a retirement pack from Capita, the Plan's administrator at the time.
5. On 18 September 2018, the retirement pack was sent to Mrs Y. This detailed the options Mrs Y could choose at retirement. These were:
 - take a full retirement pension of £21,357.73 per annum (**Option 1**); or
 - take a reduced retirement pension of £15,768.34 per annum and the maximum PCLS of £105,122.26 (**Option 2**).¹
6. The notes included in the retirement pack said:

“How is my PCLS calculated?”

The rules of the Scheme allow you to give up some of your pension in exchange for a one-off lump sum that is paid to you at retirement. The rules and relevant legislation set out the maximum PCLS that can be paid. The amount of lump sum you can receive and the pension that you are entitled to give up in exchange for the lump sum is calculated using a commutation factor set by the Scheme Actuary which is determined using various assumptions, including, for example, anticipated life expectancy.

Neither Capita nor the Trustee can advise you on whether it is in your best interests to opt to receive a PCLS in exchange for a reduced retirement pension. This will depend on your own personal circumstances and it is recommended that you seek professional financial advice where appropriate.”

7. The notes also included information concerning the increases applicable to Mrs Y's pension in payment and these are detailed in Appendix 1.
8. Mrs Y chose Option 2 and returned the relevant paperwork to Capita.
9. On 7 December 2018, Capita sent Mrs Y a retirement confirmation letter. This letter confirmed to Mrs Y the PCLS that would be paid into her bank account on or around her retirement date and it also confirmed the value of her annual pension.²
10. In March 2019, Capita sent Mrs Y a pension increase letter (**the PI Letter**). This letter informed Mrs Y of the elements of her pension in payment that were subject to annual increases.
11. Subsequently, there were exchanges between Mrs Y and Capita concerning the PI Letter and how Mrs Y's benefits were commuted to provide the PCLS.

¹ Mrs Y also had the option to specify the amount of PCLS she wished to take if she did not wish to take the maximum.

² Capita explained that the pension would be paid monthly in advance and that the first instalment would be paid to Mrs Y's bank account on 21 December 2018.

12. Mrs Y raised a complaint with Capita as she was disappointed to discover that her Post 1997 Benefits had been commuted first to provide the PCLS, but that this was not explained in the retirement pack she was sent by Capita.
13. On 13 June 2019 (**the June 2019 Letter**), Capita replied to Mrs Y's complaint. In summary it said:-
 - The commutation of her pension had been completed correctly in that the Post 1997 Benefits had been commuted first. In her case, this element of her benefits had been exhausted.
 - Having reviewed the pension documentation provided prior to retirement, it accepted that how her benefits would be commuted was not made clear, and it had amended its correspondence accordingly. It also raised this issue with the Trustee and the Trustee is aware of the changes made.
 - It apologised for not providing clear information regarding the order of how her benefits would be commuted and how it would affect her pension.
 - In recognition of its error, it offered Mrs Y a good will gesture of £100, in full and final settlement of her claim against Capita and the Trustee (**the Offer**).
14. Subsequently, there were further exchanges between Mrs Y and Capita, and Mrs Y made a further complaint.
15. On 8 August 2019, Capita sent Mrs Y a letter providing a breakdown of the different elements of her benefits, pre and post commutation, as at the date of her retirement.³ Capita also said:-
 - It noted that Mrs Y had expressed a concern that the Plan's order of commutation for a PCLS started with her Post 1997 Benefits which received an automatic increase, then followed with the Pre 1997 Benefits, which only received discretionary increases.
 - The pension was commuted by a commutation factor which determined the amount of PCLS Mrs Y received from commuting the benefit. The factor was based on the type of increase and, as such, was higher for the Post 1997 Benefits.
 - Although a higher proportion of her benefits did not receive an automatic increase post commutation compared to pre commutation, if the Plan's order of commutation was to commute the Pre 1997 Benefits first, she would have needed to commute more annual benefit to receive the same PCLS, and her annual post commutation pension would have been lower than it was.

³ Capita provided a table with this information and this table is detailed in Appendix 2.

16. On 20 November 2019, Mrs Y made a complaint to the Trustee under the Plan's Internal Dispute Resolution Procedure (**IDRP**). In summary she said:-
- When deciding on her retirement options and whether to choose Option 1 or Option 2, she chose Option 2 as it was her understanding that by doing so she would still receive her Post 1997 Benefits.
 - When she received the PI Letter, she was surprised that the Post 1997 Benefits element of her pension had not been included in the calculations.
 - Consequently, she telephoned Capita to query this. Capita promised to raise her query as a complaint and to reply to her as soon as possible. Unfortunately, she had to chase Capita twice before she received a written response.
 - From what she understood from the June 2019 Letter, her Post 1997 Benefits had been commuted into a PCLS, but she had not seen any proof of that to date. The June 2019 Letter acknowledged that this information had not been made clear in any pension documentation she had received prior to her retirement.
 - She appreciated that all future documentation to retirees would be amended so that they could make an informed choice over which option they should choose. However, it remained that she had based her decision on what choice of retirement option to take on the documentation she had received prior to her retirement, and it was also part of the reason she chose to retire at age 60.
17. On 18 December 2019, the IDR stage one decision maker replied to Mrs Y. In summary it said:-
- It was acknowledged that while members were able to request details of the split between the relevant elements of their benefits, it would have been beneficial for this to have been provided as part of the standard retirement pack information. The Trustee would work with Capita to assess the feasibility of providing this level of breakdown, and to emphasise to members that this can be requested if further clarity was needed.
 - It was not possible to rescind or reverse a benefit crystallisation event, such as receiving a pension and a PCLS, or the associated options taken as part of that event.
 - The overall responsibility of the Trustee was to ensure that the benefits were calculated and paid in accordance with the Rules of the Plan (**the Rules**).
 - Based on the circumstances of Mrs Y's case, it did not deem that she had been treated unfairly, and it was satisfied that the Rules had been correctly applied by Capita, when setting up the payment of her retirement benefits.
18. Dissatisfied with the IDR stage one decision, on 25 January 2020, Mrs Y complained through stage two of the IDR. In summary she said:-

- She chose Option 2 instead of Option 1 based on the information she had received prior to her retirement. That information clearly stated that she would receive guaranteed increases in two elements of her pension. These were the Post 88 GMP and the Post 1997 Benefits.
 - She chose to access her pension at the age of 60, instead of later, based on the same information.
 - She now understood that only her Post 88 GMP was eligible for annual increases in payment.
 - She welcomed the apology and acknowledgement that she did not receive clear information about how her pension would be commuted, and how this would affect her pension that was stated in the June 2019 Letter.
 - However, it still remained that her finances and physical and mental well-being would be significantly impacted by her choosing Option 2. This was because she was relying on the increases to compensate for the effects of inflation.
 - She had been financially disadvantaged by what had happened and had suffered inconvenience and stress for which she believed she should be compensated.
19. On 16 April 2020, the Trustee replied to Mrs Y's complaint under stage two of the IDR. It reiterated comments Capita had made in its letter dated 8 August 2019 and did not uphold Mrs Y's complaint for broadly the same reasons as those stated in the stage one IDR decision.

Summary of Mrs Y's position

20. Mrs Y has said in summary:-

- She was complaining because she did not receive the guaranteed annual increases she was expecting in retirement, on her Post 1997 Benefits.
- Capita had accepted that she was not provided with clear information prior to her retirement. It is her opinion that she was misled. Capita and the Trustee confirmed that they would make the information clearer in the future, but this does not benefit her.
- Had she been provided with clear information prior to her retirement regarding the impact of choosing either Option 1 or Option 2, she may have chosen Option 1 and may have deferred her pension to a later date, to ensure she would be in a good position financially throughout her retirement. She was concerned that the annual increases she was likely to receive would be significantly less than the Consumer Prices Index.
- Her mental wellbeing had been affected considerably since becoming aware of this issue. She relies on this pension to support her and her family financially. She has suffered unnecessary stress as a consequence of the poor service and advice

from Capita throughout the informal complaint stage. She also found the IDRPs overwhelming and stressful.

- She would like The Pensions Ombudsman (**TPO**) to investigate her complaint, to achieve the most suitable financial compensation for her, which would cover the financial loss she has suffered and the effects on her mental health.
- Due to the time that has lapsed, she could not recall if there were any other reasons that made her decide to retire and claim her benefits from the Plan at the age of 60. However, other reasons were probably financial pressures, as her child started university in 2019 and had just finished his four-year course. Her husband's income had not been very stable for a while.
- If she had been informed, prior to her retirement, that the PCLS would be calculated by commuting her Post 1997 Benefits first, she may not have chosen Option 2, if this option was found to be overall worse in the short and long term than Option 1. She would have involved the help of her independent financial adviser (**IFA**) in this decision.
- To mitigate her circumstances, since being informed of the impact the PCLS has had on her Post 1997 benefits, she has had to restrict her outgoings because she has not been receiving the expected yearly increases to her pension in payment.

Summary of Capita's position

21. Capita has said:-

- It accepts that the retirement pack sent to Mrs Y did not provide a breakdown of the different elements of her pension, and the order by which they would be commuted to provide the PCLS. It has apologised for this omission and made alterations to the retirement packs.
- Different commutation factors apply for different pension elements to account for the pension increases applicable. In Mrs Y's case, the commutation factor for her Post 1997 Benefits, which receive automatic increases, was 19.78. The commutation factor for her Pre 1997 Benefits, which receive discretionary increases, was 14.98. So, to commute the benefits any other way would have resulted in Mrs Y receiving a lower starting pension.
- Although it could not find any evidence that Mrs Y had suffered a financial loss, it acknowledged an error had been made which caused her distress and inconvenience.
- Following a further review of Mrs Y's case, it would like to increase the Offer from £100 to £500.

Summary of the Trustee's position

22. The Trustee provided a copy of the Rules⁴ and a table showing the difference between the actual pension and PCLS Mrs Y received and what she would have received had her benefits been commuted using her Pre 1997 Benefits first.⁵ It also said in summary:-

- Had Mrs Y's Pre 1997 Benefits been commuted first to provide the PCLS, instead of her Post 1997 Benefits, the available PCLS would have been lower. This is because the Pre 1997 Benefits, being subject to nil increases, have a lower commutation factor.
- No further discretionary increases have been awarded to Mrs Y's Pre 1997 Benefits since 1 April 2020.
- If Mrs Y's PCLS had been commuted from her pre 1997 Benefits first, instead of her Post 1997 Benefits, and she had given up the same "£" per annum of pension as at the date of her retirement, her pension would have increased by £1,122 per annum between 15 December 2018 and 9 June 2023.
- It had investigated how commutation had historically been applied in practice to Pre and Post 1997 Benefits. It understands there has been a long-standing practice of providing commutation from the Post 1997 Benefits in the first instance for some years.
- If Mrs Y had not opted to take a PCLS, the total value of the pension payments between 1 January 2019 and 30 September 2023, including all applicable increases, would have been £104,263.15. The value of the benefits actually paid to Mrs Y between the same period was £181,941.85 (£76,819.59 pension payments and £105,122.26 PCLS) meaning that she would not have been in a better financial position at this time.⁶
- It is unable to say for certain when Mrs Y would be in a better financial position, as future pension increases were currently unknown. However, it had performed a projection based on Mrs Y receiving the full increase available to her benefits each year and it can confirm that she would not potentially be in a better financial position having not taken a PCLS from the Plan, until 2032.

⁴ The Trustee explained that Rule 6.7 prescribes how the PCLS should be calculated and is detailed in Appendix 3.

⁵ This is detailed in Appendix 4.

⁶ The Trustee explained that the figures stated in this paragraph were gross and did not account for tax Mrs Y would pay on those benefits.

Adjudicator's Opinion

23. Mrs Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or Capita. The Adjudicator's findings are summarised below, in paragraphs 24 to 35.

The commutation order of Mrs Y's benefits

24. Mrs Y was disappointed in the way her Plan benefits were commuted to provide her with a PCLS. She asserted that she had suffered a financial loss because the element of her pension that was subject to guaranteed increases in payment was commuted first to provide the PCLS.
25. Capita administered the Plan on behalf of the Trustee and as such, it had to ensure that the Plan was administered in accordance with the Rules. Rule 6.7 permits the Plan Actuary to decide how the PCLS should be calculated. Capita had to commute members' benefits in accordance with the Actuary's instructions.
26. The Trustee confirmed that it had been a long-standing practice of providing commutation from the Post 1997 Benefits in the first instance for some years. So, Mrs Y had not been treated any differently from other members of the Plan.
27. Because of this, it was the Adjudicator's opinion that there had been no maladministration by Capita in this regard.
28. The Adjudicator understood Mrs Y's disappointment that the element of her pension that was entitled to guaranteed increases was commuted first to provide the PCLS. However, it was the Adjudicator's view that Mrs Y did not incur a financial loss as a result of Capita commuting her Post 1997 Benefits first. Instead, she had suffered a loss of expectation.
29. This was because although Mrs Y would not receive any increases on her pension in payment in relation to her Post 1997 Benefits, had Capita not commuted her Post 1997 Benefits first she would have had to give up more of her benefits to receive the same PCLS that she had received. She also received a higher annual pension than she would have received, had Capita commuted her Pre 1997 Benefits first, to provide the PCLS. Further, to date, Mrs Y had received higher benefits overall, than she would have received had she not opted to take the PCLS.
30. It was the Adjudicator's opinion that this element of Mrs Y's complaint should not be upheld.

Information provided to Mrs Y prior to her retirement

31. Mrs Y asserted that she was provided with incorrect information prior to her retirement, which led her to choose a retirement option that has resulted in her being financially disadvantaged.
32. After reviewing the information contained in the retirement pack that Capita had sent to Mrs Y on 18 September 2018, the Adjudicator accepted that the information could

have been clearer in relation to how Mrs Y's benefits would be commuted to provide the PCLS. However, the information that Capita had provided to Mrs Y was not factually incorrect. So, it was the Adjudicator's view that there was no maladministration by Capita in this regard.

33. Further, based on Mrs Y's circumstances at the time, it was the Adjudicator's view that, on the balance of probabilities, she would not have acted any differently had she been provided with clearer information concerning the order of how the different elements of her benefits would have been commuted to provide the PCLS.
34. It was the Adjudicator's opinion that this element of Mrs Y's complaint should not be upheld either.
35. The Adjudicator noted that Capita had offered Mrs Y £500 in recognition of the distress and inconvenience she had experienced. Mrs Y may wish to contact Capita directly to accept this Offer.
36. Mrs Y did not accept the Adjudicator's Opinion and in response said in summary:-
 - She does not feel that the complaint summary reflected her complaint. Throughout the investigation, she stated that she made her decision on which option to choose in relation to her retirement benefits based on the information she had received prior to retirement.
 - Capita has acknowledged that it did not provide her with clear information to make this decision. So, with the help of TPO, she wished to know if she has been financially disadvantaged because of the retirement option she chose.⁷
 - The Trustee stated that by choosing the PCLS option, she will potentially be in a worse situation from 2032, when she will be age 74. This is particularly concerning because, based on figures on the Office of National Statistics' website, the estimated life expectancy for women in 2018-2020 is 82.9 years.
 - The Adjudicator said that she would have not acted any differently if she had been provided with clearer information concerning the order of how the different elements of her benefits would have been commuted to provide the PCLS. She did not recall, prior to retirement, receiving any information on how the PCLS would be calculated, nor the order by which the different elements of her pension would be commuted towards the PCLS. More importantly, she was not informed how choosing the PCLS would impact on future increases to her pension in payment.

⁷ Mrs Y provided a table detailing the annual increases she had received on her pension in payment to date, to evidence the impact her Post 1997 benefits being commuted to provide the PCLS first, has had on her retirement income.

- Had she received this degree of information, she could have sought advice from an IFA, concerning which retirement option to choose, particularly because she was planning to access her pension from the age of 60.
 - She was surprised that the focus of the investigation seemed to be on the PCLS only and not on the impact of not receiving clear information prior to retirement.
 - Had she received clearer information prior to retirement, she may have been persuaded by her IFA to choose the non-PCLS option because that may have been a better choice financially in the long term. The IFA's conclusion may have been based mainly on the better annual increases on the different elements of her pension in payment.
37. Subsequently, there were further exchanges between Mrs Y and the Adjudicator concerning the Adjudicator's Opinion.
38. Mrs Y did not accept the Adjudicator's Opinion, and her complaint was passed to me to consider. I note Mrs Y's further comments, but I find that they do not change the outcome. I agree with the Adjudicator's Opinion

Ombudsman's decision

39. The crux of Mrs Y's complaint is that she did not receive clear information prior to her retirement, and this had an impact on the pension option she chose at retirement.
40. Having considered the information Capita had provided to Mrs Y prior to her retirement, I do not find that Capita provided her with factually incorrect information. I consider that Capita could have provided more detailed information to Mrs Y, concerning how the commutation of her benefits to provide the PCLS would impact the different elements of her pension in payment. However, Capita's failure to do so did not amount to maladministration or amount to a breach of law.
41. I note Mrs Y's comments that an IFA may have advised her not to choose the PCLS option because of the impact this could have on her pension in payment. However, the notes included in the retirement pack Capita sent to Mrs Y on 18 September 2018, recommended that she should seek the advice of an IFA (see paragraph 6 above). Nonetheless, Mrs Y did not seek the advice of an IFA prior to making the decision of what retirement option to choose. It is not certain that an IFA would have advised Mrs Y to choose an alternative option to what she chose. I cannot make a finding on speculative advice Mrs Y may or may not have received from an IFA.
42. The Trustee has provided evidence that, to date, Mrs Y has not suffered a financial detriment because of the option she chose at retirement. It has explained that, based on its projections, Mrs Y would not potentially be in a better financial position until 2032, had she chosen not to receive a PCLS.
43. It is not known for certain if and when in the future Mrs Y would have been better off financially, had she not opted for a PCLS. I cannot make a finding for a speculative

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“loss”. Further, based on the Trustee’s assumptions, I consider that Mrs Y has a sufficient amount of time to mitigate any financial detriment she may incur in the future (although, for the reasons given above, even then I do not consider that the Trustee or Capita are responsible for any detriment that might arise).

44. I do not uphold Mrs Y’s complaint.

45. Mrs Y may wish to contact Capita directly to see if the Offer is still open to her.

Dominic Harris

Pensions Ombudsman
28 December 2023

Appendix 1

Relevant sections of the notes that were included in the retirement pack Capita had sent to Mrs Y on 18 September 2018, that detailed how different elements of her pension would increase once in payment.

“How will my pension increase once in payment?”

Your pension, in excess of your Guaranteed Minimum Pension, will be increased by the Scheme each April as follows:

<u>Pension Accrued</u>	<u>Increase Amount</u>
Before 6 April 1997:	At the discretion of the Trustees.
From 6 April 1997 to 5 April 2005:	In line with the Consumer Prices Index (CPI) to a maximum of 5%

...

What is a Guaranteed Minimum Pension (GMP) and how is it increased?

...

The part of your pension, if any, representing the GMP accrued before 6 April 1998 will not be increased whilst in payment by the Scheme. The Scheme is not required under legislation to increase this element of your pension.

The part of your pension, if any, representing the GMP accrued after 5 April 1988 will be increased from the GMP Payment Age by the Scheme each April in line with inflation, up to a maximum of 3% per annum. The Scheme is only required under legislation to increase this element of your pension up to a maximum of 3% per annum.”

Appendix 2

The breakdown of each element of Mrs Y's benefits as detailed in Capita's 8 August 2019 letter to Mrs Y.

Benefit Type	Pre-Commutation	Post-Commutation
Pre 06/04/1997 Excess Benefits	£12,083.02 per annum	£10,950.56 per annum
Post 06/04/1997 Excess Benefits	£4,456.91 per annum	£0.00 per annum
Pre 06/04/1997 GMP	£1,672.32 per annum	£1,672.32 per annum
Post 06/04/1997 GMP	£3,145.48 per annum	£3,145.48 per annum

Appendix 3

Relevant sections of the Monsanto Pension Plan Rules

“6.7 Lump sum benefits on retirement

Any Member who retires from Pensionable Service and who under the provisions of any Section becomes entitled to a pension out of the Fund may, at the time when such pension commences to be payable, elect to receive a lump sum equivalent to 3/80th of the greater of:

- (i) the Member’s Pensionable Salary at the date of retirement; and
- (ii) the total Salary, of the Member during the twelve months preceding the date of retirement;

for each year of his employment with the Employers (not exceeding 40 years) and not exceeding the limits specified in Overriding Appendix A or with the consent of the Trustees such greater sum as the Member may require but not exceeding the capital value in actuarial terms of such pension and not exceeding the limits specified in Overriding Appendix A. The consideration for such lump sum shall be a reduction in the pension payable under the foregoing provisions of this Part of an amount which shall be certified as reasonable by the Actuary.”

Appendix 4

Table showing a comparison of the retirement benefits Mrs Y would have received had her benefits been commuted differently.

Dates	Actual pension (pa)	Actual PCLS	Alternative pension (pa)	Alternative PCLS	Difference in pension (pa)	Difference in PCLS
15/12/2018	£15,768	£105,122	£15,768	£83,724	£0	£-21,398
01/04/2021	£16,243		£16,240		£-3	
01/04/2023	£16,515		£16,890		£375	