Ombudsman's Determination

Applicant	Mr I
Scheme	Dantec Pension Scheme (**the Scheme**)
Respondents	KPMG LLP (**KPMG**)

Outcome

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

Complaint summary

2. Mr I complained about the level of service he received from KPMG. Specifically, he was unhappy with the delays he experienced in obtaining retirement quotations. He claims the alleged delays have caused him to incur a financial loss and he should be reimbursed for the shortfall in his pension.

Background information, including submissions from the parties

3. Mr I joined the Scheme on 3 September 1984.

4. On 28 February 2007, Mr I ceased pensionable service in the Scheme and became a deferred member. The Scheme trustee is Little & Company Actuaries and Consultants (**the Trustee**).

5. The Scheme is governed by its Trust Deed and Rules (**the Scheme Rules**). The Rule relevant to Mr I's complaint is Rule 12 (b) which states the following:

> "If a member leaves service or ceases to be an Eligible Employee he shall be entitled on his Normal Retirement Date to receive a pension of such amount as is equal to that proportion of his Normal Basic Pension accrued at the date of his leaving service or ceasing to be an Eligible Employee."

6. The Scheme Rules define Normal Retirement Date (**NRD**) as:

> "The date of the member's 65th Birthday if male or 60th birthday if female."

7. On 25 September 2018, the Trustee provided Mr I with a retirement quotation produced by Aviva, the administrator of the Scheme at the time. It showed a reduced annual pension of £16,411 and a tax-free lump sum of £109,408.

8. On 6 March 2019, Mr I emailed the Trustee to request a cash equivalent transfer value (**CETV**) quotation.

9. On 29 March 2019, the Trustee provided Mr I with a CETV quotation produced by Aviva. In addition to the CETV amount this statement also showed a reduced annual pension of £17,698 and a tax-free lump sum of £117,988.

10. In June 2019, KPMG replaced Aviva as the Scheme administrator.

11. On 19 August 2019, Mr I emailed the Trustee to inform it that he intended to draw his pension on 7 December 2019 after he reached his NRD.

12. On 27 September 2019, the Trustee acknowledged Mr I's email and confirmed that KPMG had been informed of his intentions.

13. On 13 November 2019, Mr I emailed the Trustee saying that there were less than four weeks until his intended retirement date, and he had not received a retirement quotation.

14. The Trustee responded to Mr I on the same day and confirmed that a chaser letter had been sent to KPMG.

15. On 27 November 2019, Mr I emailed the Trustee again saying that there were only 10 days before his intended retirement date, and he had still not received a retirement quotation.

16. On 28 November 2019, the Trustee provided Mr I with a retirement quotation produced by KPMG (**the November 2019 retirement quotation**). This quotation was based on his intended retirement date of 7 December 2019. It showed a reduced annual pension of £17,425 and tax-free lump sum of £116,169.

17. On 2 December 2019, Mr I emailed the Trustee querying why the November 2019 retirement quotation from KPMG showed a lower annual pension than the CETV quotation he received from Aviva in March 2019.

18. On 3 December 2019, The Trustee acknowledged Mr I's email and advised that his enquiry had been passed to KPMG. Mr I was also informed that KPMG would be liaising with him directly.

19. KPMG contacted Mr I on the same day and explained that in order to resolve his enquiry it was reviewing the archive files from Aviva.

20. On 6 December 2019, the Trustee provided Mr I with a revised retirement quotation produced by KPMG. This quotation was based on his intended retirement date of 7 December 2019. It showed a reduced annual pension of £17,858 and a tax-free lump of £119,055.

21. After reviewing the retirement quotation Mr I emailed the Trustee and queried why the maximum tax-free lump sum was under 20% of the total value of his pension

entitlement. He said he understood that he was allowed to take up to 25% of his entitlement as a tax-free lump sum.

22. On 12 December 2019, KPMG responded to Mr I's enquiry and explained how the tax-free lump sum was calculated. Mr I was advised that his pension benefits were calculated using an assumed commutation factor of 10 and this was the reason why his tax-free lump sum was lower than 25%.

23. On 7 January 2020, Mr I emailed KPMG to raise an enquiry about the assumed commutation factor.

24. On 15 January 2020, KPMG responded to Mr I's email and advised him that if he wanted to query the commutation factors, he should contact the Trustee.

25. Mr I contacted the Trustee on the same day and queried why the commutation factors were so low.

26. On 22 January 2020, The Trustee responded to Mr I's enquiry. It explained that:-

- The commutation factors for the Scheme were under actuarial review, and it could take some months before new factors were in place (if it was decided that any amendment was required).

- It had no objections to Mr I delaying payment of his pension until the new commutation factors were introduced and changes (if any) came into effect.

- If Mr I decided to commence his pension before any new factors were introduced, it would not be able to apply the new factors retrospectively.

27. On 26 January 2020, Mr I emailed the Trustee. He explained that he was prepared to delay drawing his pension until any changes from the actuarial review were in place. However, the Trustee needed to confirm that his pension payments would be backdated to his intended retirement date of 7 December 2019.

28. On 3 February 2020, the Trustee emailed Mr I and confirmed that his pension payments would be backdated to 7 December 2019.

29. On 2 March 2020, ISIO replaced KPMG as the scheme administrator.

30. On 1 May 2020, the Trustee provided Mr I with a retirement quotation produced by ISIO. This quotation was based on the new commutation factors that had been adopted by the Scheme after the actuarial review had been completed. It showed a reduced annual pension of £17,858 and tax-free lump sum of £133,052.

31. On 11 May 2020, Mr I emailed the Trustee to complain about his outstanding concerns. He said that:-

- During the 2019/2020 tax year he had no income. If his pension had commenced on 7 December 2019 as he initially requested, he would have been under the

£12,500 income tax threshold and would not have paid any tax on his pension payments.

- Because of KPMG's delays, his pension payments from December 2019 would be taxed in the 2020/2021 tax year. Which meant he would have to pay income tax on his backdated payments.

- As the delays were not his fault, KPMG should reimburse him for the tax he would incur and make up the shortfall in his pension.

32. On 19 May 2020, the Trustee emailed Mr I to inform him that it was liaising with HMRC and ISIO to resolve his complaint.

33. The Trustee telephoned HMRC on the same day and explained the circumstances surrounding Mr I's pension payment. It stated that Mr I was due to receive his first pension payment on 1 July 2020, but this would also include back payments for his January, February, and March 2020 pension instalments. The Trustee explained that Mr I was concerned he would have to pay more tax due to all his pension payments falling under one tax year. The call handler from HMRC informed the Trustee that the backdated pension payments would have to be taxed in the year they were paid, HMRC could not treat the backdated payments as income for the previous year.

34. On 22 May 2020, The Trustee wrote to Mr I and responded to his complaint. It stated that: -

- It did not agree that Mr I had suffered a financial loss or that KPMG should reimburse him for any additional tax that he felt he would incur.

- After Mr I was informed that an actuarial review was underway on 22 January 2020, he was not required to delay drawing his pension, but he chose to do so. This was despite there being no guarantee that the new factors might be more generous.

- Although Mr I had the option of drawing his pension in the 2019/2020 tax year, he chose to defer in the event that the new factors would be more generous to him as a retiring member of the Scheme. He elected to wait and will now receive higher pension benefits as a result.

35. On 5 June 2020, Mr I asked the Trustee to review his complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said that:-

- KPMG caused a delay when providing retirement quotations.

- KPMG provided him with an incorrect retirement quotation on 28 November 2019 which had to be revised on 6 December 2019.

- He had suffered a financial loss because his backdated pension payments, which commenced on 1 July 2020, would be taxed as income in the 2020/2021 tax year rather than 2019/2020.

36. On 9 July 2020, The Trustee issued its single stage IDRP response. It stated that:-

- The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (as amended) (**2013 Disclosure Regulations**), determine the information which must be provided to a member drawing their benefits and the timescales by which it must be provided. The Scheme was not required to comply with any other timescales when providing retirement information.

- Both the retirement quotations provided to Mr I in 2019 were supplied before his intended retirement date of 7 December 2019. Therefore, Mr I was notified of his benefits within the timescales set down by the 2013 Disclosure Regulations and no breach of regulations occurred. It was satisfied that there was no material delay in Mr I being provided with the retirement quotations he requested.

- It was regrettable that the November 2019 retirement quotation was incorrect, however, a revised quotation was provided swiftly by KPMG on 6 December 2019 which was before Mr I's intended retirement date of 7 December 2019.

- It was satisfied that KPMG had sufficient competence and resources to perform the Scheme administration role and that its swift action to issue a revised quotation was proportional.

- Mr I may pay more tax due to the fact that he will be receiving all of his pension payments in the 2020/2021 tax year. However, this was because of his own decision to delay the drawing of his pension and not the responsibility of the Trustee or the Scheme administrator.

37. Mr I's position:-

- KPMG caused major delays when providing him with retirement quotations. After he contacted the Trustee in August 2019, it took KPMG 73 working days to provide the November 2019 retirement quotation, which was then revised seven working days later on 6 December 2019.

- As his pension payments were made in the 2020/2021 tax year, he had to pay income tax. If these payments had been made in the 2019/2020 tax year, he would not have had an income tax liability. He would like KPMG to reimburse him for the tax he paid.

38. KPMG's position:-

- Mr I's retirement quotation request of 19 August 2019 was not referred to KPMG until 27 September 2019. And once the request was received, it had to rework some of the equalisation data it held for Mr I which delayed the calculation of the retirement quotation. In its view, Mr I should have been made aware of this delay.

- The November 2019 retirement quotation was incorrect due to an error, however the quotation was promptly corrected, and a revised version was sent to Mr I on 6 December 2019.

- It does not accept responsibility for any financial loss Mr I may have suffered from his decision to delay drawing his pension.

Adjudicator's Opinion

39. Mr I's complaint was considered by one of our Adjudicators who concluded that no further action was required by KPMG. The Adjudicator's findings are summarised in paragraphs 40 to 47 below.

40. Mr I experienced two instances of potential delay and the Adjudicator examined both separately to consider whether there had been any maladministration.

41. Mr I received the first retirement quotation on 28 November 2019, which was subsequently revised on 6 December 2019. The Adjudicator noted that Mr I had informed the Trustee as early as 19 August 2019 about his intention to draw his pension on 7 December 2019. KPMG had stated that it only received Mr I's retirement quotation request on 27 September 2019. So, while the time taken by KPMG to provide the initial quotation, and the revised version, was longer than Mr I might have expected, it did not, amount to an exceptional delay. Also, since Mr I had taken the decision to retire before he had seen the finalised figures, it was difficult to accept that he suffered any significant inconvenience due to the initial delay.

42. The Adjudicator noted that Mr I had previously received a retirement quotation from Aviva in September 2018 and a CETV quotation in March 2019 and both of these quotations showed the annual pension and lump sum he was entitled to on retirement. Therefore, in her view, sufficient information had been made available to Mr I ahead of his intended retirement date for him to have made an informed decision regarding his pension.

43. Additionally, when it came to the provision of retirement information, the Trustee was only required to adhere to the statutory time frame outlined in the 2013 Disclosure Regulations. Regulation 20(3)(a) of the 2013 Disclosure Regulations stated that when pension benefits became payable to a member, whether on or after NRD, retirement information had to be provided either before the benefit became payable or within one month after it became payable (See Appendix). Considering that, Mr I had intended to draw his pension on 7 December 2019, after he reached his NRD, the Adjudicator was satisfied that KPMG had complied with the statutory time frame when it issued the retirement quotations on 28 November and 6 December 2019.

44. The second delay pertained to the retirement quotation Mr I received on 1 May 2020. After reviewing the available evidence, the Adjudicator was of the opinion that this delay was not attributable to KPMG but was primarily due to the actuarial review of the commutation factors. The Trustee informed Mr I of this review on 22 January

2020, explaining that it could take several months for any changes to be implemented. KPMG was not in a position to produce an up-to-date quotation for Mr I using the new factors while the review was ongoing and he elected to wait until the review was complete to claim payment of his pension. By the time the actuarial review was complete, ISIO had taken over as the Scheme administrator. After its appointment on 2 March 2020, ISIO acted promptly to produce a retirement quotation which was issued to Mr I on 1 May 2020. The Adjudicator noted that the new commutation factor changes had increased the tax-free lump sum Mr I received.

45. Although Mr I's pension payments commenced in July 2020, the payments were backdated to his intended retirement day of 7 December 2019, as per his request. This backdating ensured that Mr I was not financially disadvantaged by any delays. The tax implications that arose from the backdated pension payments being made in the 2020/2021 tax year were a direct consequence of Mr I's decision to postpone drawing his pension until the actuarial review was complete. Thus, KPMG could not be held responsible for any income tax that became due on the backdated payments as it was Mr I's responsibility to have considered the potential financial consequences of delaying payment of his pension.

46. There was no dispute that Mr I was provided with an incorrect retirement quotation on 28 November 2019. The Adjudicator acknowledged that this would have been frustrating for Mr I. However, since the issue was rectified within six days, with Mr I receiving a revised quotation on 6 December 2019, she was satisfied that the misinformation was corrected in a timely manner and had no material impact.

47. The Adjudicator concluded that the provision of Mr I's retirement quotations was not delayed unduly and that he had not suffered any financial loss as a result of any delay. While Mr I was disappointed with the income tax he had incurred on his backdated pension payments, this was not due to any maladministration by KPMG.

48. Mr I did not accept the Adjudicator's Opinion and asked the Adjudicator to reconsider. He provided the following comments:

- KPMG forced him to delay drawing his pension. Had he accepted the retirement quotation issued on 6 December 2019, he would have committed himself to a lifetime loss of income.

- He had a right to be provided with an accurate retirement quotation in a timely manner from experts who were well paid for their work. He would have expected that the provision of such a quotation would have been a well-trodden path, assisted by computerised systems.

- It would be wrong to imply that he did well out of the process by getting a higher pension considering he only received his proper entitlement, paid late and to his disadvantage.

49. The Adjudicator considered Mr I's comments but concluded that these did not change her opinion. She stated the following:

- In January 2020, the Trustee had informed Mr I that he could claim his pension from his NRD or wait until the actuarial review had been completed. Mr I responded to the Trustee, confirming that he was prepared to delay drawing his pension until the actuarial review was over, whilst knowing that it could take several months for changes (if any) to come into effect. In her view, this indicated that Mr I had made the decision to delay drawing his pension and it was not forced upon him by KPMG.

- The Trustee had not provided any guarantees to Mr I that the actuarial review would result in any changes, or that these changes would be favourable to him. There was always a possibility that if, and when, new commutation factor changes were introduced, Mr I's benefits would remain unchanged or be lower than those quoted to him on 6 December 2019.

- If Mr I had drawn his pension at his NRD, the Trustee was only required to provide him with the pension he was entitled to at that time, which was, an annual pension of £17,858 and a tax-free lump of £119,055. It was only after the actuarial review was complete and more favourable commutation factors had come into effect, that Mr I's entitlement increased to an annual pension of £17,858 and tax-free lump sum of £133,052. Mr I was not entitled to the higher tax-free lump sum at his NRD which was before the actuarial review.

- She was unable to comment on the business processes followed by KPMG and the systems it utilised to calculate retirement quotations. Her responsibility at TPO was to consider if there had been any maladministration by a respondent in relation to their service or actions. In Mr I's case, it was her opinion that there had been no maladministration by KPMG and therefore in her view the complaint should not be upheld.

50. Mr I disagreed with the Adjudicator's Opinion and the complaint was passed to me to consider.

51. Mr I provided some additional comments which are summarised below:

- He had to pay income tax on pension payments that should have been paid to him in the 2019/2020 tax year but were actually paid in the 2020/2021 tax year. Therefore, he had incurred a financial loss.

- Ultimately, receiving a higher pension did not negate the fact that he had to pay income tax on the backdated pension payments amounting to £1,000.

- The delays KPMG caused him to experience amounted to 130 working days. If there had been no delays, his pension payments would have commenced four months earlier in January/February 2020 in the 2019/2020 tax year and no income tax would have been applicable on these payments.

52. I note the additional points raised by Mr I, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

53. Mr I contended that the delays he encountered when obtaining retirement quotations from KPMG have caused him to incur a financial loss. He said that due to these delays his pension did not commence until July 2020 which resulted in his backdated pension payments from 7 December 2019 being taxed as income in the 2020/2021 tax year as opposed to the 2019/2020 tax year.

54. My powers are set out in Part X of the 1993 Act[1] and subsequent regulations. This legislation sets out what I can and cannot do. In particular, I must apply the law that applies at the relevant time and determine whether it has been applied correctly. I must decide complaints and disputes in accordance with established legal principles rather than by reference to what I may consider fair and reasonable.[2]

55. I acknowledge that the delay Mr I encountered in relation to the provision of the retirement quotations was less than ideal. However, I agree with the Adjudicator that none of these delays amounted to maladministration or caused Mr I to incur a financial loss. The first quotation was provided to Mr I on 6 December 2019, in compliance with Regulation 20(3)(a) of the 2013 Disclosure Regulations. KPMG was not required to adhere to any other timescale when providing this information. The second quotation was provided on 1 May 2020, after the actuarial review, as Mr I had explicitly requested on 26 January 2020.

56. It is important to note that in common law, the duty to mitigate requires an individual to take reasonable steps to prevent or minimise potential losses. Thus, Mr I had a duty to mitigate any potential financial loss that could result from his failure to draw his pension in the 2019/2020 tax year.

57. The available evidence is clear that Mr I could have elected to draw his pension in the 2019/2020 tax year by accepting the retirement quotation issued to him on 6 December 2019. However, he chose to postpone putting his benefits into payment until a new retirement quotation could be provided to him after the actuarial review, possibly with the expectation that any changes to the commutation factors would be more favourable to him. The Trustee had forewarned Mr I on 22 January 2020 that it could take several months for any new commutation factors to come into effect. So, Mr I ought to have anticipated that he may not receive an up-to-date retirement quotation that he could use to claim his pension until after the new tax year had commenced on 1 April 2020. In light of this, I consider that by failing to draw his pension in the 2019/2020 tax year, Mr I inadvertently accepted the income tax liability that arose on his backdated pension payments in the 2020/2021 tax year. KPMG

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

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

cannot be held responsible for Mr I’s decision to delay payment of his pension benefits.

58. I do not uphold Mr I’s complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
28 November 2023

Appendix

The Occupational and Personal Pension Schemes (Disclosure of information) Regulations 2013 (as amended):

20 ---(1) The information mentioned in paragraph (2) must be given to a person in accordance with this regulation where benefit under the scheme has, or is about to, become payable to the person.

(2) The information is the information listed –

(a) in paragraphs 6 to 9 of Schedule 7, and

(b) in Part 1 of that Schedule where the person has an opportunity to select an annuity under any rights and options in relation to the death of the member.

(3) The information mentioned in paragraph (2)(a) must be given –

(a) where benefit becomes payable on or after normal pension age before benefit becomes payable, if practicable and in any event within one month after benefit becomes payable or

(b) where benefit becomes payable on a date before normal pension age, within two months of that date.

(4) The information mentioned in paragraph (2)(b) must be given to the person having the opportunity mentioned in that paragraph before benefit becomes payable.