CAS-60778-N6P9

Ombudsman's Determination

Applicant	Mr N
Scheme	Deloitte UK Pension Scheme (**the Scheme**)
Respondents	D&T Pension Trustees Limited (**the Trustee**)

Outcome

1. Mr N's complaint against the Trustee is partially upheld. To put matters right, the Trustee shall pay Mr N £1,000 for the serious distress and inconvenience he has experienced.

2. My reasons for reaching this decision are explained in more detail in paragraphs 45 to 53 below.

Complaint summary

3. Mr N complained that the Trustee provided him with incorrect pension figures for several years. He said that he based his decision to close his accountancy practice in the knowledge that his Lump Sum would supplement the loss of earnings.

4. Mr N also stated that had he been provided with accurate figures, he would have continued to operate his accountancy practice.

Background information, including submissions from the parties

5. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge there were other exchanges of information between all the parties.

6. On 1 April 1981, Mr N became an active member of the Scheme.

7. On 8 August 1986, Mr N left pensionable employment and became a deferred member of the Scheme.

8. On 15 April 2014, Mr N received a benefit statement showing his estimated benefits in the Scheme if he retired at age 65. The information showed:-

- Pension was £7,048.44.

- Lump Sum was £31,372.28.

- Reduced Pension was £4,995.28.
- The estimated rate of inflation used to calculate the benefits was 2%.

9. On 14 November 2018, Mr N received a benefit statement showing his estimated benefits in the Scheme if he retired at age 65. The information showed:-

- Pension was £6,971.88.
- Lump Sum was £33,646.73.
- Reduced Pension was £5,047.01.

10. On 6 March 2020, Mr N received a benefit illustration estimating his benefits in the Scheme, accounting for actuarial factors, if he retired at 65. The information showed:-

- Pension was £6,991.61.
- Lump Sum was £33,719.26.
- Reduced Pension was £5,057.89.

11. On 9 April 2020, the Trustee contacted Mr N and confirmed that it had made an error when calculating his pension options. Following a reassessment of his pension benefits, Mr N's Lump Sum was valued at £18,851.50.

12. On 3 May 2020, Mr N submitted his complaint under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said:-

- He was given incorrect information relating to his Lump Sum, based upon which, he made irreversible lifestyle commitments.
- As far back as 2014 he had been advised that he should expect a Lump Sum of over £31,000. In 2018 and 2020 he was advised this would be approximately £33,500.
- Based on the consistent projections, he returned the retirement election forms, advised his clients to find a new accountant and let his professional qualifications lapse.
- It was a shock to receive a letter informing him that the basis of calculating the figures have been incorrectly applied.
- The revised figure was £18,851.50 which was £14,750.00 less than he had expected.
- Given his age and irreversible business decisions, he had no means to replace the lost funds.

13. On 30 June 2020, the Trustee responded to Mr N under stage one of the Scheme's IDRP. It said:-

- The projections in the incorrect statements were overstated due to a revaluation calculation error. Incorrect statements did not change Mr N's entitlement under the Scheme Rules.

- The mistakes were made in non-legally binding statements.

- The Trustee could only pay benefits in accordance with the Scheme Rules.

- Mr N had received accurate benefit statements on 17 June 1992, 8 December 1993, and 25 September 1998.

- It offered a payment of £500 in recognition of the distress and inconvenience he had experienced.

14. On 24 July 2020, Mr N requested that his complaint be reconsidered under stage two of the Scheme's IDRP. He said:-

- It was reasonable for him to have relied on the incorrect benefit statements that were sent to him. The benefit statements did not make it clear that the numbers given could be so far out as to be totally meaningless.

- He had made the life changing decision to wind down his accountancy practice from 2019 in reliance on the sums set out in the inaccurate statements.

- It was unfair to expect him to compare statements from between 22 and 28 years prior to more recent ones when he naturally expected a significant increase after some 20 years.

- He had based the decision to wind down his accountancy practice solely on the information he had available to him.

15. On 9 September 2020, the Trustee responded under stage two of the Scheme's IDRP. It said:-

- It acknowledged and apologised for the incorrect statements it had sent Mr N.

- It was only able to pay the benefits that he was entitled to under the Scheme Rules.

- Since Mr N was receiving the benefits to which he was entitled, nothing further could be paid to him for financial damages.

- It had also considered whether Mr N was owed any compensation for non-financial injustice. It had considered three questions:-

    1. Had there been negligent misstatement.

    2. Was it reasonable for Mr N to rely on the misstatement.

    3. Was the loss he had claimed, a direct result of his reliance on the misstatement.

- While the incorrect statements were materially wrong, it was stated that the numbers were estimates and subject to change.
- He had received accurate benefit statements on 17 June 1992, 8 December 1993, and 25 September 1998. It considered it reasonable to have expected Mr N to have kept these benefit statements and questioned the discrepancy in the figures.
- The incorrect benefits statements were also materially different. For example, the Lump Sum in the 2014 statement was £31,372.00 whereas the 2018 statement was £33,646.00.
- Mr N had stated a financial loss of £5,000 per month or £60,000 for the year. The reduction to his Lump Sum was between £12,000 and £14,000. It seemed likely that his decision to wind down his business in 2019 was also because of other external factors.
- Given Mr N's financial background it believed he had other savings which influenced his decision to close his business.
- It maintained its offer of £500 but without any admission of liability.

Mr N's position

16. The reason he had closed his accountancy practice only one year prior to his date of retirement was because of the tax-free implications of his lump sum. The tax-free sum he had expected to receive of £33,500.00 would have left him in a similar financial situation to having continued in practice for a further year.
17. The accurate statements from 1992 and 1998 did not contain information related to his Lump Sum and were not relevant information which affected him.
18. By April 2020, the accountancy practice was no longer an asset of any significant value as his clients had already made alternative arrangements by then.

The Trustee's position

19. The incorrect statements specifically stated that the figures contained within them were either not guaranteed or subject to change.
20. The Trustee was bound to pay the correct benefits in accordance with the Scheme's Trust Deed and Rules.
21. It was reasonable to assume that an accountant would make some further prudent provision for his retirement.
22. It noted that Mr N's Lump Sum was approximately £14,000 less than that estimated in the incorrect statements. Given his career, it was unlikely that the amount was sufficiently large as to make a material difference to the timing of his decision to wind down his accountancy practice.

23. As an accountant Mr N should have a good understanding of financial matters and an eye for details. This would include him understanding that the figures provided were not guaranteed.

24. It maintained its offer of £500 as redress for the distress and inconvenience Mr N may have suffered.

Adjudicator's Opinion

25. Mr N's complaint was considered by one of our Adjudicators who concluded that the Trustee should pay £1,000 for the serious distress and inconvenience caused. The Adjudicators findings are summarised in paragraphs 26 to 42 below.

26. The Trustee had agreed that it provided Mr N with incorrect information in several pension benefit estimates and illustrations. So, there was no dispute that there had been maladministration, and that Mr N had been disadvantaged as a result.

27. The Adjudicator stated that a complaint of negligent misstatement must be based upon an inaccurate statement, usually called a 'representation'. That representation was usually made by spoken or written words, but it could have also been made by conduct. The representation must have been a statement of past or present fact or, in some circumstances, of the law. It must also have been clear and unequivocal.

28. The representation must have been made by a person who owed a duty of care to the applicant and must have been something that could not have been made by someone exercising reasonable care. The representation must have been relied upon by the applicant and it must have been reasonable for them to do so, in the circumstances.

29. The applicant must also be in a worse position than they would have been in if the representation had not been made and the cause of the applicant's worse position must be the representation. The loss caused by the representation must have been reasonably foreseeable.

30. The loss caused had to be of a kind within the scope of the duty of care that was owed to the applicant. If these facts are satisfied, the aim would be to put the applicant into the position they would have been had the incorrect representation not been made.

31. Where a negligent misstatement has been made, financial compensation may be payable for the loss suffered by the applicant.

32. There had been a clear representation or promise of benefits made to Mr N. On 6 March 2020, the Trustee provided Mr N with a pension benefits illustration accounting for actuarial factors. Pension illustrations or quotations are different to pension estimates. Pension estimates are generally automated and do not account for actuarial factors and therefore would not have been considered safe to rely on when making financial decisions. Pension illustrations did account for actuarial factors and

were not automated, therefore, they were accompanied by the expectation of increased reliability. The information within illustrations should have reasonably been considered fact.

33. The representations in the benefit illustration were made by people who owed a relevant duty of care to Mr N and that the information supplied had come within the extent of their duties towards Mr N.

34. For a claim of negligent misstatement to be successful, Mr N must have reasonably relied on the misstatement and the claimed loss must have been as a direct result of the misstatement.

35. The Adjudicator considered that there had been a negligent misstatement, and that Mr N had experienced a loss of expectation as a result. It was clarified that the negligent misstatement occurred on 6 March 2020, when Mr N was provided with a benefit illustration and not at any point before that. This was because each statement received prior to 6 March 2020, was an estimate and it was not considered reasonable to rely solely on the information contained within them. This did not excuse any misinformation that had occurred within each incorrect benefit statement but they would not have constituted negligent misstatement.

36. The Adjudicator concluded that Mr N made the decision to begin closing his accountancy practice in 2019, following the pension estimate he had received on 14 November 2018. The event of negligent misstatement occurred on 6 March 2020, but the financial decision made by Mr N predated that event. So, the negligent misstatement was not the direct cause of the alleged financial loss.

37. The pension estimate dated 14 November 2018 contained information warning Mr N that the figures provided were not guaranteed and that they were subject to change. It was not reasonable to make financial decisions based solely on estimates and there was no evidence of Mr N making this decision in conjunction with any other information.

38. While negligent misstatement had occurred, the Adjudicator did not attribute the cause of the alleged loss directly to the negligent misstatement and was of the view that the Trustee should not pay the inflated figures stated on 6 March 2020.

39. Mr N had been misinformed about the Lump Sum he would receive when he retired. However, in the Adjudicator’s opinion, as Mr N should not have made financial decisions based on the estimates, the Trustee was not liable to pay the inflated amount in respect of misinformation.

40. The Adjudicator also considered whether the incorrect information constituted maladministration which had resulted in any non-financial injustice, such as distress and inconvenience.

41. The Trustee had provided Mr N with a poor level of service because:-

- It provided Mr N inaccurate information for several years.

- The information supplied on 6 March 2020 was a negligent misstatement.
- It was unreasonable to expect Mr N to have kept statements dating as far back as 1998 and that he would compare these to information received nearly 25 years later.
- It was unfair and dismissive to suggest that Mr N's annual earnings would have meant he had significant savings and that these savings meant he could wind down his accountancy practice without consideration of the information provided.
- The quality of responses and explanations were not satisfactory, nor did the Trustee acknowledge the impact the incorrect information may have had on Mr N. In addition, the Trustee failed to accept liability for the misinformation despite clear maladministration.

42. The Trustee's consistently inaccurate information and poor quality of responses would have caused Mr N serious distress and inconvenience, so, in the Adjudicator's view, an award of £1,000 would be in keeping with The Pensions Omudsman's guidance on non-financial injustice.

43. Mr N did not accept the Adjudicator's Opinion, and, in response, he reiterated his previous position and provided the following further comments. In summary he said:-

- He understood that it was not considered reasonable for him to rely upon the pension estimate letter dated 14 November 2018 because the letter "warned" him that the figures provided were not guaranteed and that they were subject to change.
- The benefit options provided in the letter stated that the benefit options at 65 were produced using three specific criteria.
    1. The Scheme's current actuarial factors
    2. Current statutory revaluation order
    3. An estimated future rate of inflation of 0%
- If the amounts in the letter had been widely different, then he would have had cause for query however this was not the case and the statements remained fairly consistent over an extended period of time. Mr N stated that the estimates provided on 15 April 2014 and 14 November 2018, in substance, had all the weight of a benefits illustration, and that it constituted negligent misstatement.

44. I have considered the additional points made by Mr N, but they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman’s decision

45. Mr N complained that the Trustee provided him with incorrect pension figures for several years and that these were the basis for his decision to close his accountancy practice.

46. I note that the Adjudicator addressed Mr N’s complaint in depth. I agree with the comments made by the Adjudicator, that Mr N could not have reasonably based his decision to wind down his accountancy practice in 2019, based on the illustration he received on 6 March 2020. As it was the 6 March 2020 illustration which constituted negligent misstatement, I find that Mr N’s perceived loss of earnings was not a direct result of the negligent misstatement.

47. I also note that because the estimates received prior to the financial decision made in 2019, carried warnings that the figures might vary it was unreasonable for Mr N to have relied on those estimates.

48. Mr N has stated that the information contained within the benefit statements, namely the statement issued on 14 November 2018, were in substance, the same as an illustration, and should therefore be considered as a further negligent misstatement.

49. While I appreciate that the figures provided may have aligned with what Mr N had expected, the industry standard remains that it is unreasonable to rely solely on a pension estimate when making financial decisions. This provision is designed for the financial safety of both the Scheme and its members because estimates are automated, and for a variety of reasons, actuarial factors, or statutory revaluation orders can sometimes be applied incorrectly.

50. In addition, the estimate specifically states that the options were produced using the Scheme’s “current” actuarial factors and “current” statutory revaluation orders. Since Mr N was not due to retire for two more years following the 14 November 2018 estimate, he would not have had reasonable assurance that either of those factors would remain the same. Mr N assumed that the factors would remain the same. It is equally unreasonable to make financial decisions based on an assumption that could clearly change before the date of his retirement. I consider that it was unreasonable for Mr N to rely on the estimates and that his circumstances do not satisfy the criteria for negligent misstatement.

51. While I do not find that it was reasonable for Mr N to have relied on the incorrect information, I accept that he has suffered a loss of expectation in that he thought that his retirement benefits would be higher than is actually the case.

52. I have also reviewed the poor level of service provided to Mr N by the Trustee. The period of time over which he was provided with incorrect information in conjunction with the poor quality of responses provided, will have undoubtedly caused Mr N serious distress and inconvenience. I find that a payment of £1,000 is appropriate recognition of this.

53. I uphold the complaint in part.

Directions

54. Within 28 of the date of the date if the Determination, the Trustee shall pay £1,000 to Mr N for the serious distress and inconvenience he has experienced.

Anthony Arter CBE

Deputy Pensions Ombudsman
20 May 2024