

## Ombudsman's Determination

Applicant	Mr N
Scheme	Trafalgar House Pension Trust ( <b>the Scheme</b> )
Respondents	Trustees of Trafalgar House Pension Trust ( <b>the Trustees</b> )

## Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Trustees.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr N contends that his statement of benefits on leaving employment was legally binding and the Trustees are obliged to honour the figures shown on the statement, backdating any missed payments to date.
4. Mr N highlights that his case is similar to a previous case determined by the Ombudsman, and as such a precedent was set which should be applied to his case.

## Background information, including submissions from the parties

5. On 4 September 1967, Mr N joined Head Wrightson & Co, and on 18 November 1971 he joined the 1971 Pension & Life Assurance Scheme for Staff Employees. This scheme was integrated with the Davy International Staff Pension Life Assurance & Cash Benefit Plan ("**the Davy Staff Scheme**") in April 1981. The Davy Staff Scheme merged with the Scheme on 1 October 1992.
6. On 16 December 1983, the Trustees of the Davy Staff Scheme wrote to Mr N providing a statement of his benefits, as at the date he left employment. It showed a pension of £4,927.20 per annum which was preserved for him until he reached Normal Retirement Age (**NRA**). The statement also showed that the pension included a qualifying pension of £10.03 per annum and made reference to a Guaranteed Minimum Pension (**GMP**). The GMP amount was not shown on the statement but has been confirmed by HMRC as being £301.08 per annum at Mr N's date of leaving, which, revalued to state pension age (**SPA**), amounts to £3,777.80 per annum.

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7. On 12 September 2000, Mr N received a quote from Capita Hartshead, the previous Scheme administrators, showing a pension of £7,062.25 per annum payable at age 65.
8. On 26 July 2011, Trafalgar House Pensions Administration Limited, the current Scheme administrators, sent Mr N an estimate of his benefits payable at age 65. This stated:-  
  
    “Defined Benefits   £3,775.80 pa      Guaranteed Minimum Pension  
  
    Total Pension       £3,775.80 pa”
9. On 4 June 2015, the Trustees wrote to Mr N stating the options available to him from 30 November 2015, when he turned 65. Mr N was provided with two options. He could either choose not to take a lump sum and receive a pension of £3,785.88 per annum, or receive a pension of £3,775.80 per annum, plus a lump sum of £156.12.
10. On 16 October 2015, after Mr N had queried the figures, the Trustees wrote to him and confirmed that the quotation issued to him by Capita Hartshead, in September 2000, had been calculated incorrectly. It said that when Mr N left the Davy Staff Scheme, in November 1983, his benefits were subject to the existing rules prior to January 1985. The Trustees also said pension legislation at that time allowed for the franking of Scheme benefits which unfortunately had not been taken into consideration when the previous Scheme administrators calculated his benefits.
11. On 2 November 2015, Mr N raised a complaint under the Scheme’s internal dispute resolution procedure (**IDRP**).
12. On 22 December 2015, the Trustees wrote to Mr N and confirmed that it had not upheld his complaint. It said it is the Trustees’ responsibility to pay the correct entitlement to each member and that is what it had done.
13. The Trustees have provided this office with a copy of a letter, dated 14 April 1992, from the Scheme, in connection with a member of the Cunard Sea Staff Section, which indicates that benefits under the Davy Staff Scheme were subject to franking.
14. Following this Office’s intervention, the Trustees have agreed to offer Mr N £750 for the distress and inconvenience caused by the provision of incorrect figures and the loss of expectation he has suffered.

## Adjudicator’s Opinion

15. Mr N’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator’s findings are summarised briefly below:-
  - Franking refers to a method adopted by schemes where one tranche of benefits is offset against increases from another. Anti-franking legislation did not come in to

force until 1 January 1985. The legislation prohibited the practice of offsetting increases on the GMP before retirement against the non GMP pension. It became effective on or after 1 January 1985, so it did not apply to scheme members who left prior to this date such as Mr N. Therefore, prior to anti-franking legislation being introduced, the Trustees could legitimately frank the Scheme benefits.

- Section 31(C) (i) of the Scheme rules, states that the pension payable will not be lower than the value of the GMP. There is no explicit reference to the franking of the excess pension over the GMP, however it was common practice by schemes at the time to frank the excess pension in accordance with overriding legislation. The Adjudicator did not believe that a lack of reference to franking in the Scheme rules indicates that the Trustees did not intend for it to be applied.
- Mr N says that the Trustees may have franked benefits for Scheme members but he maintains that his leaving service benefits statement is evidence that franking was not the intended method. However, the Trustees have provided evidence which led the Adjudicator to conclude that benefits under the Davy Staff Scheme were franked. The Trustees had sent correspondence from the Scheme Actuary albeit in relation to a different section of the Scheme, which supported this practice. Although the letter did not relate to the Davy Staff Scheme it did indicate that the Trustees franked Scheme benefits, and on the balance of probabilities, there was likely to have been a Scheme wide practice to frank the benefits for pre 1 January 1985 leavers.
- The Adjudicator was of the view that although Mr N received an incorrect statement, it does not confer on him the right to the incorrectly stated benefits. Mr N is only entitled to the benefits calculated in accordance with the Scheme rules.
- The Adjudicator appreciated that Mr N said he relied on the incorrect statement in question. However, the Ombudsman's approach in cases like this is that members are only entitled to their correct entitlement and not the incorrect benefits quoted in error. Further on 26 July 2011, Mr N was provided with a correct statement of his benefits. This would have would have highlighted to him that he was not entitled to the incorrect figures and he could have questioned it then.
- Mr N contends that the Ombudsman's previous decision should have a bearing on his case. However, the circumstances of that case were different to Mr N's. In that case it was shown that the figures had been relied upon to that individual's detriment which is why an award was warranted. Mr N has not evidenced that he relied on the incorrect benefit statements to his detriment, and so the only loss he has suffered is a loss of expectation.
- The Adjudicator did not believe that Mr N had a justifiable claim for his Scheme pension to be increased to £7,062.25, and for the increase to be backdated to retirement. The Trustees have provided evidence to show that Mr N's pension has been calculated in accordance with the Scheme rules and overriding legislation.

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16. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

### **Ombudsman's decision**

17. Mr N says that he should be entitled to receive the benefit stated in the deferred benefit statement. However, in addition to the reasons given by the Adjudicator in the Opinion, I do not find that the benefit statement in question constitutes a legally binding document.
18. Mr N says that he never received the letter of 26 July 2011 from the Scheme showing his Scheme benefits. However, the letter in question was correctly addressed, so I think it is more likely than not that it was sent. In any event, I note that Mr N was made aware of his correct Scheme entitlement in the Trustees' letter, date 4 June 2015, which he received well in advance of his normal retirement date.
19. Mr N says he wants to receive the correct pension entitlement in accordance with The Davy Staff Scheme. However, from the evidence I have seen Mr N is receiving the correct benefits under the Scheme. As such, except for the incorrect statement issued in September 2000, in respect of which the Trustees have offered Mr N £750, I do not find that there are any grounds for maladministration against the Trustees.
20. It is open to Mr N to accept the Trustees' offer of £750.
21. Therefore, I do not uphold Mr N's complaint.

### **Anthony Arter**

Pensions Ombudsman  
31 October 2017