

Ombudsman's Determination

Applicant	Mrs S
Scheme	Indesit Company UK Ltd Pension Scheme (the Scheme)
Respondents	JLT Benefit Solutions Limited (JLT) The Scheme Trustees (the Trustees)

Outcome

1. Mrs S' complaint is upheld and to put matters right the Trustees shall pay Mrs S £7,345, comprising: £4,845 for legal costs, £1,000 for IFA costs and £1,500 for distress and inconvenience caused.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs S' complaint is about the miscalculation of her ex-husband's pension which was used in the consideration of a Pension Sharing Order (**PSO**).

Background information, including submissions from the parties

4. In September 2012, JLT quoted a cash equivalent transfer value (**CETV**) for Mr S of £989,971. The quotation included two disclaimers:
 - i. "Please note this valuation is for information only. Upon receipt of the Pension Sharing Order the valuation will be re-calculated and will differ to the amount above."
 - ii. "In preparing this statement, care has been taken to reflect the most accurate and up to date information available at the time of preparation. The final benefits payable will always be subject to the Trust Deed and Rules of the pension arrangement, any discretion exercisable by the Trustees, all prevailing legislation, up to date earnings information and, where relevant, any restrictions necessary to comply with State pension requirements (such as the amount of tax free cash sum).

Importantly, if any part of the benefits is dependent on financial conditions at the time benefits are actually payable (such as investment market conditions and annuity rates), it should be recognised that the final benefits could be reduced

from those shown. If irrevocable financial decisions are to be made on the basis of this illustration you should seek clarification as to the extent to which the details shown could change.”

5. The CETV was utilised in a report commissioned by Mrs S and Mr S from Actuaries for Lawyers in respect of pension rights and pension sharing options. Part of the report recommended the PSO to achieve equality of income provision for Mrs S and Mr S at age 60.
6. The pension share was embodied in a Pension Sharing Annex dated 15 March 2013, which awarded Mrs S 61.6% of Mr S' CETV in respect of his pension rights in the Scheme and directed by consent subject to decree absolute:
 - the sale of the matrimonial home; and
 - each party to drawdown the maximum lump sum from their respective pensions and for Mrs S to pay Mr S such balancing lump sum as required to ensure that each party recovered 50% of the aggregate lump sums.
7. Prior to the Court Order Mrs S had given notice to leave her School Assistant position.
8. During the process of implementing the PSO JLT realised that the pension payable from age 60 to Mr S was incorrect on its records and consequently the CETV quoted in September 2012, had been overstated.
9. In December 2013, JLT completed the implementation of the PSO, paying to an income drawdown plan that Mrs S had set up with Scottish Life £426,056. The sum comprised 61.6% of Mr S' corrected CETV less charges of £1,320. The pension credit was approximately £186,000 less than Mrs S had been expecting to receive. Mrs S took an immediate lump sum payment of £106,514 from her plan.
10. The PSO was subsequently revisited and the award to Mrs S was increased to 68.6% of Mr S' CETV. In December 2014, JLT paid to Scottish Life a further £51,867. No charge was deducted by JLT.
11. In February 2015, Mrs S complained to JLT:-
 - As a result of the significant reduction in the sum paid to Scottish Life the objective of sharing Mr S' pension to obtain equal income had not been achieved and the lump sum that she had budgeted for was some £32,770 less than anticipated.
 - The outlay for the actuarial report (£1,000) now seemed a pointless cost.
 - It had taken 12 months to correct the miscalculation of Mr S' CETV and implement a further pension share.
 - As she had been told by JLT that the pension share would be completed in December 2014, in anticipation of receiving a pension income by then, she had

tendered her resignation as a school assistant. But she found herself in a position where it could not commence until the final pension transfer was made. This resulted in her spending her capital and £8,159 in lost earnings.

- Their family home had been sold but as the finances were unable to be settled she had been unable to buy another property. She had to move in with her daughter and put her furniture in storage for 12 months at a cost of £1,776.
- Her financial adviser had billed her £5,565 for time spent establishing the error, calculating the correction needed and chasing the matter through.
- Her solicitor (Clifton Ingram LLP) had billed her £4,498 for additional time and work specifically relating to correcting the error and she had already paid £700*.
- Her total losses amounted to £20,698. She sought an immediate compensation payment from JLT for this sum.

12. On 23 March 2015, JLT rejected Mrs S' complaint. It said:-

- The September 2012 CETV was based on incorrect data supplied by the previous administrator for the Scheme.
- It had implemented the PSO based on the corrected level of Mr S' benefits.
- As the December 2013 payment to Scottish Life had not been returned it saw no reason why benefits to Mrs S could not have been paid at that time
- It was required to pay benefits in accordance with the Trust Deed and Rules. It could only pay out the correct entitlement.
- While it acknowledged the impact of the reduction in the original value of Mrs S' share of the CETV in the PSO, her entitlement had then been increased following an agreement between her and Mr S and their solicitors.
- It processed the revised PSO without passing on its additional costs to either Mrs S or Mr S.

** Clifton Ingram has confirmed the correct total amount billed was £5584.60, split: £4845.40 for implementation of the Consent Order and £739.20 for investigating a possible professional negligence claim (by a dispute resolution lawyer). It appears the latter amount is the £700 Mrs S informed JLT she had paid.*

13. Mrs S replied:-

- While the Scheme's previous administrator may have supplied incorrect data, JLT was responsible for the data being correct.
- Until final figures were made available she had been unable to move forward with a property purchase as she did not know how much money she would receive. With the final figures it became apparent that the basis of the divorce settlement had changed from that expected because of the error and she was now not able to purchase the property that was initially intended.
- JLT (and associated parties) had taken a significant period of time to correct the calculation error. This had caused her inconvenience and to incur costs.
- In June 2015, JLT informed Mrs S that it had referred the matter to the Trustees. The next month JLT advised Mrs S that the Trustees had discussed the matter and had requested that she write direct to the Chair of the Trustees stating the reasons for her complaint. Mrs S did so on 11 December 2015.

14. On 11 March 2016, JLT replied on behalf of the Trustees:-

- As Mrs S was aware that the transfer would not be completed until December 2014, the Trustees did not believe they could be held accountable if Mr S and Mrs S had sold their property before then.
- The initial share of the transfer was paid to Scottish Life in December 2013. The second payment was made in December 2014, which indicated that the pension share had been finalised within the timescale indicated by JLT. At that point the Trustees believed it should have been possible for Mrs S' pension to commence with Scottish Life thereby mitigating her claimed loss of earnings and the necessity to spend her capital.

15. In the same letter JLT said the Trustees could not comment on the fees that Mrs S had incurred for financial and legal advice. It asked Mrs S to obtain from each adviser a breakdown of the additional work undertaken so it could compare each with its own records to determine whether any of the work was as a result of delays within its (JLT's) control.

16. In July 2016, Mrs S informed JLT that she had asked her IFA to act on her behalf and that she was expecting JLT to pay for his services.

17. In November 2016, Mrs S complained to the Financial Ombudsman Service (**FOS**) that she felt JLT were using delaying tactics. FOS referred her to the Pensions Advisory Service (**TPAS**), who subsequently advised her to complain direct to the Pensions Ombudsman (**TPO**) as the three years window for submitting her complaint to TPO may have expired.

18. JLT says:-

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- Its letters of 23 March 2015, and 11 March 2016 (the latter on behalf of the Trustees), stand as its formal response to the matter.
- In addition it relies on the two disclaimers contained in the original September 2012 CETV quotation.
- In the intervening period between the September 2012 CETV quotation and the pension share being processed a question arose in respect of another member who was in the same category as Mr S in the Scheme. This led to JLT reviewing the Scheme benefit structure in conjunction with the Scheme Actuary and amending its records to accurately reflect the benefit basis. As a result Mr S' benefits were valued correctly and Mrs S' pension share settled accordingly.

19. Mrs S says:-

- Regarding her employment. She had worked in a school with special needs children. Her contract stipulated that she had to give at least one terms notice. As the original hearing was scheduled for 17 December 2012, working her notice would have taken her through Christmas leaving her to start the new year drawing down in the pension sharing order and preparing herself for the upheaval of moving and job hunting. Unfortunately, another court hearing had to be made in January 2013, where the Order was made for 15 March 2013. Once she realised she was now out of work and with no form of income to support herself she signed on to an agency where she was able to pick up some hours per week to help support herself.
- Mrs S says the lump sum she took in December 2013, was to pay bills that she had incurred with her financial adviser and Solicitor, storage of her furniture and cost of living bills as she was staying with her daughter while she looked for alternative accommodation.
- She did not drawdown on the first pension credit to her Scottish Life plan as it "was my great fear that until the mess was sorted I would only incur great debt should I use any of it".
- The sale of the matrimonial home was completed on 28 May 2014.

20. Mrs S is now age 61.

21. The Invoice from Mrs S' IFA for £5,565 says:

"Corrective actions taken as a result of the mistake made by JLT on calculations of the Indesit CE. Includes establishing error, a total of 35 emails, 4 letters, 23 telephone calls and calculations to produce a recommended further pension share"

22. Clifton Ingram has confirmed that none of the work it carried out was duplicated by Mrs S' IFA or by the dispute resolution lawyer (the £739.20 invoice for investigating a possible professional negligence claim).

The Pensions Ombudsman's position on the provision of incorrect information

23. The basic principle for negligent misstatement (in the absence of any additional legal claim) is that a scheme is not bound to follow incorrect information, e.g. retirement quotes, transfer values or early retirement. A member is only entitled to receive the benefits provided for under the scheme rules, i.e. those based on correct information accurately reflecting the scheme rules.
24. Broadly, the Ombudsman will provide redress if it can be shown that financial loss or non-financial injustice has flowed from incorrect information given. For example, the member may have taken a decision in the expectation of receiving the higher benefits which they would not otherwise have done, such as retiring early. The Ombudsman will also consider whether it is more likely than not that a member relied on the incorrect information to their detriment and that it was reasonable for them to do so. An example of this is where the member had already decided to take early retirement before receiving the incorrect information. In this case it is unlikely that any claim for financial loss would be upheld on that basis alone.
25. Paragraphs 23 and 24 above set out the Ombudsman's views very generally on the application of, negligent misstatement. It is for guidance only; each case will turn on its own facts.

Adjudicator's Opinion

26. Mrs S' complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:-
 - Clearly, the provision of the incorrect CETV amounts to maladministration. The responsibility for providing the information rests with the Trustees. JLT is employed by the Trustees to carry out administrative tasks, but the Trustees are responsible for ensuring that correct information is provided. The Trustees have a duty of care.
 - JLT says the incorrect data was supplied by the Scheme's previous administrator and was revealed when a question arose in respect of another member who was in the same category as Mr S. This led to it reviewing the Scheme's benefit structure in conjunction with the Scheme Actuary and amending its records to accurately reflect the benefit basis.
 - The Trustees are responsible for maintaining correct Scheme data. In effect the Trustees accepted the risk of the Scheme data being incorrect if it was not reviewed from time to time.

- The September 2012 CETV was not guaranteed and included disclaimers. Nevertheless, the quotation should have been based on correct data. A disclaimer did not provide for figures to be incorrect by as much as they were – 30 per cent.
- The provision of the overstated CETV amounts to negligent misstatement by the Trustees. While the pension credit was subsequently corrected it is necessary to consider whether the provision of the incorrect information caused Mrs S injustice.
- Mrs S is seeking the reimbursement of costs incurred over the 12 months to December 2014, which she says she incurred as a direct result of the negligent misstatement. In total Mrs S is seeking the reimbursement of £21,784. The sum comprises: storage costs (£1,776), lost earnings from resigning her position as a School Assistant (£8,159), IFA costs (£5,565) and legal costs (£5,584). For this to succeed, certain circumstances must be satisfied:-
 - The party providing the information (in this case the Trustees via JLT) had a duty of care and it was reasonably foreseeable that the recipient would rely on the information.
 - The claimant must have acted in good faith; that is, he or she must not have been aware of the error. In cases where it was obvious that something was amiss or it would have been possible for the claimant to have discovered the mistake by making reasonable enquiries, a claim is unlikely to succeed.
 - There must be a causal link between the incorrect information and the loss claimed; that is, the claimant must have taken action he would not otherwise have done but for the incorrect information.
 - It must be reasonable for the claimant to have relied on the information provided.
 - The claimant has acted to his or her detriment in reliance on the incorrect information.
- It would have been reasonably foreseeable that Mr S and Mrs S would rely on the incorrect CETV provided; and given the nature of the error, there was no reason for either to suspect that it had been overstated.
- In February 2015, Mrs S wrote to JLT seeking the reimbursement of the aforementioned costs. She said she had been told by JLT that the pension share would be completed in December 2014 and in anticipation of receiving a pension income by then, she had tendered her resignation as a School Assistant.
- It seems evident that Mrs S meant December 2013, not December 2014, as she resigned from her job prior to the original Court Order and the first pension credit was paid to her Scottish Life plan in December 2013.

- Mrs S says she found herself in a position where her pension could not commence until the final pension transfer was made. This resulted in her spending her capital and £8,159 in lost earnings. But it was Mrs S' choice not to drawdown her pension after the first pension credit was made to Scottish Life.
- Mrs S says she tendered her resignation before the PSO was made as she had to give at least one terms notice. Mrs S says working her notice would have taken her through Christmas leaving her to start, in 2014, drawing down her share of the PSO and preparing herself for moving and job hunting.
- As it seems Mrs S always intended to return to work sometime in 2014, it could not be concluded that Mrs S would not have resigned from her job when she did.
- The sale of the matrimonial home was part of the divorce settlement. Completion of the sale occurred after the implementation of the original PSO.
- Mrs S says until final figures were available she was unable to move forward with a property purchase as she did not know how much money she would receive. She says with the final figures it became apparent that she was unable to purchase the property that she had initially intended. But this does not amount to a financial loss, rather a loss of expectation. If the PSO had been based on the correct CETV Mrs S would still not have been able to purchase the property.
- Mrs S says she incurred storage costs for her furniture of £1,776 while waiting for the correction of the error. But it was her choice to do that.
- After the first pension credit payment Mrs S chose to engage her IFA. Referring to the IFA's invoice, his costs of £5,565 are described as:

“Corrective actions taken as a result of the mistake made by JLT on calculations of the Indesit CE. Includes establishing error, a total of 35 emails, 4 letters, 23 telephone calls and calculations to produce a recommended further pension share”

Mrs S could equally have engaged the free services of **TPAS** and referred back to Actuaries for Lawyers to rejig the capital split with Mr S. Based on the cost of the original commissioned report this would have cost £1,000.

- Mrs S' legal costs are broken down as £4,845 for work done on implementing the new Order and £739 for a possible professional negligence claim. The former sum is a reasonable expense incurred as a direct result of the negligent misstatement. Consequently, Mrs S is entitled to be reimbursed for it. But the latter amount the Trustees are not liable to pay to Mrs S as it was Mrs S' choice to seek legal advice on the possibility of a professional negligence claim.
- The process to correct and implement a further pension share took over 12 months. Inevitably this caused Mrs S significant distress and inconvenience. In my opinion £1,500 is merited for that.

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- To put matters right the Trustees should pay Mrs S £7,345. That is 4,845 plus £1,000 plus £1,500.

27. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her 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 Mrs S for completeness.

Ombudsman's decision

28. Mrs S says she feels JLT has been very clever in its handling of the whole affair, always taking its time to extend everything right to the last time limit. The Order was made in March 2013 just weeks before Mr S' 60th birthday and date of retirement. But JLT "strung it out" before it made the wrong payment in December 2013.
29. I do not agree. The correct payment was made in December 2013. But it was less than Mrs S had been expecting because during the process of implementing the PSO JLT realised that the pension payable from age 60 to Mr S was incorrect, consequently the CETV, quoted in September 2012, had been overstated.
30. Mrs S says it was always her intention to take early retirement on receiving the pension based on the original figures. She says this would have given her enough income to afford a small mortgage when the marital home was sold. I do not doubt what Mrs S says. But Mrs S may only receive her correct entitlement from the pension share. Mrs S has not said she would not have retired based on her correct entitlement.
31. Mrs S says she did not drawdown her pension after the first pension credit because she did not want to be in considerable debt if JLT asked for the money to be returned. But that was Mrs S' choice to do that.
32. Mrs S says JLT's comment that it waived the additional costs for processing the second PSO is derisory, as it had previously charged for work it had carried out based on the "so called wrong figures". Nevertheless, what is relevant is that Mrs S was only charged once by JLT for the processing of the PSO and the amount it charged would have been the same if the second PSO had not been required.
33. Mrs S questions JLT's explanation why Mr S' CETV was adjusted downwards prior to the implementation of the first PSO. However, I have no reason to doubt what JLT has said on the matter.
34. Mrs S says she stored her furniture out of necessity so she would not have had to refurnish a place she could afford at extra cost. Again, that was Mrs S' choice to do that.

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35. Ms S says she was not told about the free service of TPAS and she was led by her IFA and Solicitor. The free service of TPAS is, and was at the time, widely known. Mrs S chose to engage her IFA and Solicitor and follow their respective advice.
36. Therefore, I agree with the Adjudicator's Opinion.

Directions

37. To put matters right the Trustees shall pay Mrs Moores within 14 days of the date of this Determination:
- (i) £4,845 in respect of her legal costs;
 - (ii) £1,000 in respect of her IFA costs; and
 - (iii) £1,500 in respect of the significant distress and inconvenience she has suffered.

Anthony Arter

Pensions Ombudsman
29 August 2018