

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Allianz Retirement and Death Benefits Fund ( <b>the Scheme</b> )
Respondents	Allianz Pension Fund Trustees Limited ( <b>the Trustee</b> ) Aon UK Limited ( <b>Aon</b> )

## Outcome

1. Mr Y's complaint against the Trustee and Aon is partly upheld, but there is a part of the complaint I do not agree with. To put matters right for the part that is upheld the Trustee shall pay Mr Y £1,000 in recognition of the significant distress and inconvenience which he has suffered in dealing with this matter.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr Y complains that the Trustee and Aon, the Scheme administrator, improperly changed his Normal Retirement Age (**NRA**) in the Scheme from 60 to 63.

## Background information, including submissions from the parties

4. When Mr Y commenced working for AGF in April 1980, he became a member of the AGF Pension and Life Assurance Scheme (**the AGF Scheme**) and had the right to retire from active service with unreduced benefits at age 60.
5. His employment with AGF was transferred in December 1999 to Allianz Cornhill (**Cornhill**) under the Transfer of Undertakings (Protection of Employment) Regulations (**TUPE**).
6. In 2000, Mr Y was given the opportunity to transfer his accrued benefits in the AGF Scheme to the Scheme, which has a NRA of 63, for a service credit.
7. The Trustee says that:-
  - Mr Y should have received from them in good time before the transfer occurred: (a) a personal benefit statement, (b) a document setting out the differences between the two pension schemes and (c) a transfer option form

(the Form) which he had to sign and return to receive a service credit in the Scheme (relevant paragraphs from all three of these documents are reproduced in the Appendix below);

- an allowance for unreduced benefits being payable to Mr Y from age 60 in the AGF Scheme would have been made in the calculation of the transfer value used to determine the service credit of equivalent value in the Scheme; and
- following the transfer, Mr Y's membership in the AGF Scheme ceased and his benefits in the Scheme actuarially reduced if he retired earlier than NRA 63

8. When Mr Y was made redundant by Cornhill in April 2004, he became a deferred pensioner in the Scheme. He received a letter in June 2004 from Cornhill's Human Resources (HR) Department on behalf of the Trustee showing that he would be entitled to a deferred pension from the Scheme payable from his Normal Retirement Date (NRD), 30 June 2017, at age 60. His deferred pension calculated at date of leaving (DOL) was £15,411 pa consisting of a Guaranteed Minimum Pension (GMP) of £2,074.28 pa and an excess over GMP pension of £13,336.72 pa.
9. Mr Y says that he began planning for retirement at age 60 in 2012 and consequently asked Aon to provide him with current details of the benefits available to him from the Scheme at age 60. In September 2012 Aon sent Mr Y an illustration showing the retirement benefits available at age 60 to be as follows:-

Excluding His AVCs

A pension of £24,376.56 pa, or a maximum tax free lump sum of £124,100.95, plus a reduced pension of £18,615.14 pa.

Including His AVCs of £28,595.99

A lump sum AVC payment of £28,595.99, plus a pension of £24,376.56 pa, or a maximum tax free lump sum of £130,859.63, plus a reduced pension of £19,628.94 pa.

10. In its letter dated 28 February 2017 to Mr Y, Aon said that:

"We are unsure who advised you that you could retire unreduced from age 60 but I can confirm that your NRD is 30 June 2020, age 63. This is in line with the Scheme Rules...the benefits quoted as at 30 June 2017 have been reduced for early payment..."

11. Aon added in its letter dated 17 March 2017 to Mr Y that:

"Unfortunately, there has in the past been a misunderstanding over the NRA of ex AGF members like yourself.

Under the Scheme Rules, members who joined Cornhill prior to 1 December 1990 have the right to early retire unreduced from age 60. This does not apply

to people who joined AGF prior to 1 December 1990 and we believe that this was where the misunderstanding occurred. For all members who joined after 1 December 1990, the Rules are clear that they have a NRA of 63 with actuarial reduction application on retiring early.

Our records show that you joined Cornhill on 1 December 1999 thus meaning you fall into the category of members which have a NRA of 63”.

12. In his letter dated 27 March 2017 to the Trustee, Mr Y said that he had relied on the incorrect information\* provided in 2004 and 2012 to his financial detriment as follows:
- he had purchased a retirement property;
  - he made investment decisions which he would not have done in preparation for his retirement at age 60; and
  - he did not apply for promotion in 2014 and 2015 with his employer which, if he had been successful, would have increased his earnings.

\*During my investigation, Mr Y supplied voluminous evidence to support his detrimental reliance claim which the Trustee did not uphold.

13. At Stage One of the Scheme’s Internal Dispute Resolution Procedure (**IDRP**) in May 2017, the Trustee acknowledged that Mr Y had been given incorrect information in both June 2004 and September 2012, which did not correctly take into account the transfer of his pension rights from the AGF Scheme to the Scheme. They informed him that the incorrect NRA 60 used to calculate his benefits had most probably been caused by “the date joined company” field in Aon’s records for him having been filled in by mistake with his date of joining AGF, 28 April 1980, instead of with his date of joining the Scheme, 1 December 1999.

14. Mr Y was dissatisfied with this response and replied on 4 July 2017 as follows:

“In relation to the TUPE transfer you enclosed with your letter three documents, two of which were generic and one headed a personal statement. I have checked my records and cannot locate a copy of any of these documents and I have no recollection of ever receiving them.

Upon enquiry of your office in relation to the Form, I asked for a copy of the signed document and was advised that it could not be located. I was further asked to note that “it would not have been possible to transfer your AGF service to the Scheme without this.”

I am less than convinced I ever received these as usually I keep copies of important documents. Given your admitted errors to date I have little confidence in the assumptions you are making in this regard.

I have relied upon the letter from Allianz of 24 June 2004 and Aon of 12 September 2012, which are clear and unambiguous and state that my NRA was my 60<sup>th</sup> birthday...in making the financial decisions I have in preparation

for my retirement, particularly in the last 5 years, why would I have any cause to question the information you provided and not rely upon the information in those letters?

The only evidence available supports my contention that I am entitled to access my pension at age 60 unreduced.

...I have made life changing decisions based upon the information provided by Allianz and Aon which have had a financial impact upon me and my family.”

15. At Stage Two IDR in August 2017, the Trustee wrote:

“In 2000, the member announcement, including the Form, and a personal statement were sent to you at the time of transfer. These documents set out both the change in NRA from 65 to 63 and the fact that an early retirement reduction factor would apply should you choose to retire before age 63.

You were granted a service credit in the Scheme in respect of your AGF Scheme benefits. This would not have been possible without a signed and returned Form from you stating you wished to transfer your AGF Scheme benefits. The signed returned Forms were not retained as they were no longer required after completion of the transfer exercise.

Had you not completed a Form, you would not have been granted a service credit for your AGF benefits in the Scheme. Instead, you would have remained as a deferred member of the AGF Scheme and you would be entitled to a deferred pension from the AGF Scheme payable from age 65 without reduction as per your personal statement.

I acknowledge that you were given incorrect information and assurances in communications from Allianz and Aon and that you made lifestyle changes based on the misinformation you received. However, the Trustees are obliged to administer the Scheme so that all members only receive the benefits they are entitled to in accordance with the Scheme Rules. We are not permitted to use Scheme assets to knowingly pay benefits higher than a member's entitlement even when a member has been given incorrect information that he had relied upon.

After you transferred employment from AGF to Cornhill on 1 December 1999 you ceased to be in active employment with AGF and no longer had the right to take your AGF Scheme benefits from age 60 without reduction.

After joining Cornhill, you became a member of the Scheme. Under the Scheme Rules, for members who joined the Scheme after 1 December 1990 like you, the NRA is age 63. This is therefore the age from which you could take your Scheme benefits and your transferred in AGF Scheme benefits without reduction.”

16. Aon says that:

“We have been clear...that we administered Mr P’s benefits in strict accordance with the data available to us and the Trust Deed and Rules. All calculations completed were done so correctly based on this data. The overstated benefits were caused by an error within the data provided to Aon at the onset of our administration.”

**Mr Y’s position**

17. His employment with AGF was transferred to Cornhill under TUPE without him having to sign and return the Form to the Trustee. The basis upon which he agreed to the transfer was that he would have continuous employment with Cornhill from April 1980 and therefore entitled to the benefits available to a Cornhill employee who joined the Scheme on that date.

18. He is unsure how Cornhill and the Trustee would have dealt with this situation. The Trustee, however, could have exercised its discretion to accept members into the Scheme on special terms which is what he believes has happened in his case.

19. He disagrees with the view that it was unreasonable for him to have relied upon the June 2004 and September 2012 letters because that was unfairly putting the onus on him “to check information provided by a professional body.”

20. He says that:

“I would in any event argue that I did check the information as to my NRD, first when leaving the employ of Allianz in 2004, and again in 2012. I received confirmation, which was communicated in a positive assertive manner, that my NRD was age 60.

If the Employer...was content to accept the recorded information in relation to my NRD being age 60 and not question it, send out a letter confirming that to be the NRD, and which is subsequently underpinned by Fund Administrators reaffirming it, then just how many times is someone supposed to ask if the information provided was correct, particularly when it accords with their understanding as to the terms of their transfer?

I believe that there are 3 parties involved in this matter, the Trustees, Aon & Allianz as Administrators and Allianz as the Employer and for that reason I believe that there is a clear conflict of interest between Allianz as Administrator and Employer.

...I believe that the Trust should have met my pension as from age 60 and that any loss...be made good by Allianz and/or Aon as the Administrator or Allianz as the Employer. If it remains the view that the Trust should not meet my pension from age 60 then Aon and/or Allianz (either as Administrator or

Employer) should meet either my pension loss from age 60 to 63, or my detrimental reliance claim in full.”

**The Trustee’s position**

21. It is not legally possible for Cornhill to have authorised the transfer of Mr Y’s AGF Scheme benefits to the Scheme.
22. Mr Y was not accepted on special terms by the Trustee into the Scheme. He did not have the right to retire with unreduced pension benefits at age 60.
23. The terms of the announcement to members, dated 7 April 2000, and the transfer deed, dated 6 June 2000 (relevant paragraphs have been reproduced in the Appendix below), clearly show that members could only be transferred with their consent by signing and returning the Form to the Trustee.
24. There is no basis for Mr Y’s misunderstanding that the terms of the transfer allowed him to retire at age 60 with unreduced benefits in the Scheme which “runs contrary to the legal and factual background”.
25. Generous actuarial assumptions applied to Mr Y’s AGF Scheme benefits in calculating the additional pensionable service available to him in the Scheme meant that he would be better off than he might otherwise have been in the Scheme. If as Mr Y believes he can retire at age 60 with an unreduced pension in the Scheme, then this assumption would have been incorrectly allowed for twice in the calculation of his benefits.
26. There is no conflict of interest between the Trustee and Cornhill as the principal employer of the Scheme. The incorrect Scheme information was provided on behalf of the Trustee by Cornhill’s in-house pension administration department. There is also no conflict of interest between Cornhill as principal employer and administrator. Ultimately, Cornhill is responsible for funding any associated costs of Mr Y’s pension in the Scheme.
27. Mr Y has not provided any irrefutable evidence to demonstrate that the decisions which he made can be attributed to the incorrect information that he received in 2004 and 2012. He could not therefore have reasonably relied on the incorrect information provided about his NRA in 2004 and 2012 and has not suffered any actual financial loss.
28. Following the Adjudicator’s investigation into Mr Y’s complaint, they now accept that Mr Y has suffered significant distress and inconvenience dealing with this matter and in recognition of this are willing to offer him £500 as a gesture of goodwill.

## Adjudicator's Opinion

29. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee. The Adjudicator's findings are summarised below:-

- A complaint of negligent misstatement must be based upon a false statement, usually called a 'representation'. That statement is usually made by spoken or written words, but it can also be made by conduct. The representation must be a statement of past or present fact or, in some circumstances, of the law. It must be clear and unequivocal.
- In this case, the following representations were made:
  - a) Mr Y received letters from Cornhill's HR Department on behalf of the Trustee and Aon in June 2004 and September 2012, respectively showing that his NRA was 60 and therefore entitled to unreduced Scheme benefits at this age.
- This was a statement about Mr Y's pension entitlement.
- The representations were clear and unequivocal because the figures shown in the letters, sent in June 2004 and September 2012, were not qualified as being illustrative or estimates.
- The representations were made by people who owed a relevant duty to Mr Y. Both the Trustee and Aon, in its capacity as Scheme Administrator, owe a duty to ensure that any information provided to Mr Y concerning the accuracy of the benefits available to him from the Scheme.
- To bring a complaint of negligent misstatement, the representation must be false and not something that could have been made by somebody who was exercising reasonable care. In this case, the representations identified above were false because the correct NRA for Mr Y is 63 and not 60.
- Mr Y should have been given the correct information and the failure to do so is clearly maladministration on the part of the Trustee and Aon.
- The representation must have been reasonably relied upon by the applicant. In this case, it was unreasonable for Mr Y to have relied upon the representations because;
  - a) it is inconceivable that Mr Y could have transferred his pension rights from the AGF Scheme to the Scheme without having received the relevant documentation concerning the transfer including the Form which he had to sign and return to the Trustee prior to the transfer;

- b) if as Mr Y contends, he never received this documentation and consequently did not sign and return the Form, he would have remained a deferred pensioner in the AGF Scheme for past service benefits;
  - c) it is unfortunate that the Trustee has not retained Mr Y's signed Form but since it was no longer required after completing the transfer, it was reasonable for them not to keep it indefinitely;
  - d) there is no legal requirement for the Trustee to have retained the Form for 18 years and given the passage of time, it is not surprising that only copies of some documents relating to the transfer are still available such as Mr Y's personal benefit statement;
  - e) on the balance of probabilities, Mr Y most likely had failed to save or mislaid a copy of the Form which he completed and the accompanying documents which clearly showed that his correct NRA in the Scheme is 63 and not 60;
  - f) Recital E of the Transfer Deed dated 6 June 2000, and the definition of "Consenting Members" (the relevant paragraph has been reproduced in the Appendix), supports the view that it would have been necessary for him to have given his consent for the transfer to have occurred;
  - g) the Trustee had therefore made Mr Y sufficiently aware at the time of the transfer in 2000 that his NRA was 63; and
  - h) it was consequently most regrettable that Mr Y had failed to notice the mistake made about his NRA in both June 2004 and September 2012, by the Trustee and Aon respectively.
- As Mr Y had acted to his detriment based on an unreasonable belief that the figures calculated using a NRA of 60 were correct, he has not suffered any actual financial loss for which he should be compensated because of the financial decisions which he made, as summarised in paragraph 12 above.
  - Broadly speaking, 'estoppel by representation' is an argument which can be raised by either side in a dispute. If an applicant is clearly told something by a respondent, it is reasonably foreseeable that they will rely upon what they were told, and they do in fact rely on it to their detriment, the applicant may be entitled to receive the benefit they were promised.
  - As with the negligent misstatement argument, although Mr Y had relied on the representation, it was not reasonable for him to have done so. The Trustee and Aon are therefore not estopped from paying the correct benefits in accordance with the Scheme rules and ignoring the incorrect statements.
  - It was evident however that Mr Y has suffered clear distress and inconvenience because of the maladministration identified and, in recognition of this, the Trustee



offered him £500 during the Adjudicator's investigation which, in his opinion, was adequate given Mr Y's circumstances.

30. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y 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 Y for completeness.

**Ombudsman's decision**

31. Where an applicant brings a complaint based upon having been given incorrect information, I will usually consider two legal concepts: 'negligent misstatement' and 'estoppel'. I will also consider whether there has been 'maladministration'.
32. The starting point where incorrect information has been provided is that a scheme is not generally bound to follow incorrect information, a member is only entitled to receive the benefits provided for under the scheme rules. For example, if trustees have given inaccurate early retirement quotes, these will not generally be binding.
33. Broadly, I will provide redress following incorrect information if it can be shown that financial loss has flowed from the incorrect information given. For example, the member may have acted differently in the expectation of receiving the higher benefits, such as retiring early.
34. With regard to estoppel, I will not allow either party to rely on a fact contrary to that which they have previously represented, or contrary to a common assumption that something is true, if it would not be fair to do so. This may mean that a respondent will be prevented from arguing that something they said before was wrong and will, instead, have to give benefits as though what was said were true.
35. In addition to, or instead of, financial compensation, I may make an award for distress and inconvenience if what was done amounted to maladministration. Maladministration covers different types of problems, or failings, in how a scheme is administered, or how members are dealt with.
36. In Mr Y's case, there is no dispute that the Trustee and Aon incorrectly informed Mr Y, in June 2004 and September 2012, respectively, that his NRA was 60 and he was therefore entitled to receive unreduced retirement benefits at this age. Mr Y should have been given the correct information and the failure to do so is clearly maladministration on the part of the Trustee and Aon.
37. Although Mr Y received incorrect details as to his entitlement, it does not confer on him an absolute right to the benefits erroneously stated. However, if he acted to his detriment based on the reasonable belief that the figures were correct, then he may be compensated for the loss incurred.
38. But I do not believe it was reasonable for Mr Y to completely rely on the benefit information he received in June 2004 and September 2012, in order to make a

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decision to retire on his 60th birthday. This is essentially for the same reasons given by the Adjudicator in his Opinion. Therefore, I do not find that the Trustee and Aon are estopped from paying Mr Y's retirement benefits in accordance with the rules of the Scheme.

39. Consequently, I do not consider that the Trustee and Aon should compensate Mr Y for any actual financial loss because of the incorrect information given.
40. It is evident however that Mr Y has suffered serious distress and inconvenience because of the maladministration identified and, in recognition of this, I note that the Trustee has now offered him £500. I consider this amount to be lower than what I would award. In my view, a payment of £1,000 is warranted for the level of non-financial injustice which Mr Y has suffered.
41. It is therefore my decision that this complaint is partly upheld against the Trustee and Aon and I make the appropriate direction below.

### **Directions**

42. Within 21 days of the date of this Determination the Trustee shall pay Mr Y £1,000 in recognition of the significant distress and inconvenience which he has suffered in dealing with this matter.

### **Anthony Arter**

Pensions Ombudsman  
10 January 2019

## APPENDIX

### Deed of Transfer dated 6 June 2000

#### Recitals

(E) Eligible Transferring Employees were offered membership of the Cornhill Fund for future service. Those who accepted such offers and who remained in pensionable service under the Cornhill Fund on 7 April 2000...were, on that date, sent letters offering them favourable terms for transferring their accrued rights and benefits under the AGF Scheme to the Cornhill Fund, such offer to be accepted by 5 May 2000. In this deed, Transferring Employee Members who consent to the aforesaid transfer (including those who later die or leave the service of Cornhill but excluding any who withdraw their request before the transfer is made) are called the "Consenting Members"

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#### Cornhill Retirement and Death Benefits Fund

##### Personal Statement for Mr Y

Date of Birth: 6<sup>th</sup> June 1957

Normal Retirement Date (NRD): 30<sup>th</sup> June 2020

AGF Pensionable Service from 28<sup>th</sup> April 1980

Date of joining Cornhill: 1<sup>st</sup> December 1999

**If you do not transfer** your benefits from the AGF Scheme, then you will be entitled to an estimated deferred pension payable from age 65 of...

**If you transfer** your benefits from the AGF Scheme to the Cornhill Fund, you are offered 20.6989 years of additional pensionable service in the Cornhill Fund.

To give you some idea of how your options compare, the following table sets out your prospective AGF Scheme pension...with your Cornhill pension...Both pensions assume retirement age 63...This also assumes that your benefit from the AGF Scheme would not have been reduced for early payment...

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#### Announcement to Members of the AGF Pension and Life Assurance Scheme

This announcement is to former employees of AGF who were earning benefits in the AGF Scheme and have transferred to the employment of Cornhill either under TUPE or otherwise by accepting a position with Cornhill.

The policy of the Cornhill Insurance Group is to make standard pension and related benefits available to all employees through the Cornhill Fund.

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Accordingly, with effect from the date you joined Cornhill employment, you were eligible to join the Cornhill Fund, and for **future** service you will then earn benefit on the scales applying under the Cornhill Fund...

This notice gives a summary of the new arrangements and the choices and special terms open to you with regard to the benefits you have already earned in the AGF Scheme for your **past** service.

The main features of the Cornhill Fund benefits are summarised below, and are compared to the AGF Scheme with any major differences noted...

NRA under the Cornhill Fund is your 63<sup>rd</sup> birthday. This compares with your 65<sup>th</sup> birthday under the AGF Scheme.

If you retire before NRA, your pension will be actuarially reduced to reflect its early payment. If you retire from active service in the AGF Scheme, with consent, between the ages of 60 and 65, your pension will be unreduced. If you retire early from deferred status in the AGF Scheme, your pension will be actuarially reduced to reflect its early payment.

Your options are summarised below.

### **Option 1**

You can transfer your rights for service with AGF to the Cornhill Fund and be granted a service credit in the Cornhill Fund on the terms outlined in this notice.

If you want this option, you should complete part (i) of the Transfer Option Form.

### **Option 2**

If you do not transfer your accrued rights, you will be granted a deferred pension according to AGF Scheme rules...

If you want this option, you should complete part (ii) of the Transfer Option Form

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### **Transfer Option Form (the Form)**

I acknowledge receipt of the Notice dated 7<sup>th</sup> April 2000 and, having noted the details of the transfer offer:

- i) I request that the value of my benefits for and in respect of my membership of the AGF Scheme shall be transferred to the Cornhill Fund to provide pensionable service and resulting benefits under that Fund in accordance with the Notice.
- ii) I have decided not to accept the offer. I understand that I will be entitled only to leaving service benefits under the AGF Scheme rules.  
I understand that the offer of transfer to the Cornhill Fund for a pensionable service credit on this basis will not be available again.