

Ombudsman's Determination

Applicant	Mr N
Scheme	GE Pension Plan (the Plan)
Respondents	GE Pension Trustees Limited (The Trustee), and Aon Hewitt (Aon)

Outcome

1. Mr N's complaint 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, Aon should make a distress and inconvenience award to Mr N.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N says he was not told that less favourable early retirement factors apply to deferred members. Had he known about the difference in factors, he would have retired immediately on opting out of the Plan.

Background information, including submissions from the parties

4. Mr N was formerly a member of the Betz UK Pension Scheme. Mr N's final salary benefits transferred to the Plan in 2008, when the schemes merged (the **Merger**).
5. The Plan is governed by trust deed and rules dated 30 December 2011, as amended by rules made on 8 December 2016 (the **Rules**).
6. Mr N's pension earned between 16 May 1990 and 5 June 1995, (the "**Protected Period**"), is payable unreduced from age 60. The balance of his pension would have been subject to a 4% per annum reduction had he retired early from active status.
7. Rule 16.5: benefits for deferred members, of the Rules states:

"A GE Betz Member may start to receive a pension on or after age 60 under **B Rule 5.5** (*early payment of benefits*) without the consent of the Trustee.

The part of this pension that relates to a Protected Period will only be reduced for early payment on or before age 60. Any other part of the pension will

otherwise be reduced for early payment in respect of the period up to Normal Retirement Date.”

8. The Rules state that a pension paid early under rule 5.5, will be calculated as a preserved pension, and then reduced by an amount that the Trustee with the consent of the Principal Employer decides.
9. Rule 5: benefits for deferred members, details the terms on which active members become deferred members. The rule also sets out the provisions for the payment of benefits to members, who leave the Plan on or after the effective date of the Rules, with a preserved pension. Rule 5.1 says:

“An Active Member will be treated as having left Pensionable Service for the purposes of these Rules on the earliest of the following dates:

...

5.1.4 where the Member opts out of Pensionable Service by giving any period of notice in writing to the Trustee as the Trustee may require, the date specified in the notice; and

5.1.5 the date on which the Member is otherwise treated as if he or she had left Pensionable Service under any other provision in the Rules.

If a Member is treated as having left Pensionable Service, he or she will not be eligible for re-admission to the Plan unless the Principal Employer permits this under **B Rules 1.1** (joining the plan) [original emphasis].”

10. Rule 5.2 of the Rules states that a member will become entitled to deferred benefits if he or she leaves pensionable service before normal retirement age without becoming entitled to immediate pension.
11. The Rules state that benefits in respect of any member who has agreed different benefits with the Principal Employer, and any employer participating in the Plan, will be financed based on those terms.
12. The member booklet (the **Booklet**) in force at the time of the Merger, says:

“LEAVING THE PLAN

...

RETIREMENT OPTIONS

If you have a preserved pension then this will become payable at *Normal Retirement Date*...

...

...If you choose early retirement then your pension will be actuarially reduced by an amount agreed by the *Trustee* with the consent of the *Company* to allow for the longer period of payment.

The amount of such reduction will be determined by the *Trustee* at the time of retirement and may be less favourable than the terms available to active members retiring directly from the *Company's* service.”

13. The Booklet says

“EARLY AND LATE RETIREMENT FOR ACTIVE MEMBERS

CHOOSING EARLY RETIREMENT

...

The amount of reduction that currently applies is 4% for each year and a proportion for a part year from the date of retirement to *Normal Retirement Date*. This reduction amount is not guaranteed. It is subject to review from time to time and the reduction amount applicable to you would be the one in force at the date of retirement.”

14. On 22 March 2016, Mr N had a regular review meeting with his financial adviser (the **Adviser**). Mr N attended a pre retirement seminar, arranged by his employer, around the same time. The same day, Mr N notified Aon that he and his Adviser had some concerns about how close he was to the lifetime allowance (**LTA**). He authorised Aon to discuss his pension with his Adviser.
15. To avoid Mr N further exceeding the standard LTA, Mr N's Adviser suggested that Mr N opt out of the Plan. The Adviser then contacted Aon about the opt out process. He did not discuss with Mr N whether he might draw his pension, or defer it. His main consideration was to prevent any further benefit accrual. The Adviser is certain that his advice would have been for Mr N to postpone taking his pension, unless he had a specific need for the additional income, as his income tax liability would have been significant.
16. Mr N opted out of pensionable service so that he could register with HM Revenue & Customs for Fixed Protection. The notes in his opt out form (the **Form**), dated 30 March 2016, says:
- “Before opting out, we ask that you read the FlexChoice website to understand your pension options and seek financial guidance and the implications of opting out of the defined benefit (DB) pension plan. **You will not be allowed to re-join the defined benefit (DB) pension plan in the future** [original emphasis]”

17. The Form includes the following statement in the declaration:

“I have read and understood the guide **An introduction to FlexChoice** and the information on the **FlexChoice** website with regards to my pension options and have [sought] financial guidance.” [original emphasis]

18. The “FlexChoice” notes that accompanied the Form refers to “Pension Saver”, a defined contribution arrangement, but make no specific reference to the Plan.

19. Members of the Plan are provided with a guide to benefits on joining. An updated version of the guide is made available to members online, or on request. The Trustee’s communication with members signposts them to the Plan’s website. The GE Holdings, (the **Company**), HR portal and flexible benefit website are also available to employees.

20. The guide to the GE Pension Plan (the **Guide**) states:

“Retiring Early

If you are an active member

...

The reduction rate is currently 4% for each complete year between the date you retire and your normal retirement date (with a proportionate reduction for part years). The company and trustee can agree a different reduction rate.

...

If the reason you stop working for your employer is due to redundancy, the trustee and the company may agree that the reduction set out above will not apply...”

21. The Guide says that if Mr N is a deferred member, the amount of the reduction will be decided by the Trustee and agreed by the Company on his retirement. It states that the pension “may be lower than that received by active members who retire directly from employment with GE.”

22. The frequently asked questions (the **FAQ**) on the Plan’s website states:

“Are there any reductions applied for retiring early?”

The early retirement reductions for active members depend on when you joined the GE Pension Plan. Members who joined the Plan prior to December 2006 face a reduction of 4% per annum on retirement before age 60 – no reduction would apply after age 60. Members who joined the Plan after December 2006 face a reduction of 4% per annum on retirement before age 65.

Early retirement pensions for deferred members are generally reduced by revaluing benefits to a [member's] Normal Retirement Date using an assumed revaluation date, then reducing this figure to account for early retirement via a proforma provided to us by the Plan Actuary, if taken before age 65 – However more favourable terms apply for some members who are in legacy sections of the Plan.

Please contact the Plan administrator if you require clarification of the terms that apply to you.

....

What options do I have if I wish to leave the Scheme? I will continue to be an employee.

If you decide that you no longer want to be an active member of the Pension Scheme you can opt out of the Pension Scheme and either leave your benefits in the Pension Scheme as a deferred member, or you can transfer your benefits to another pension provider

If you opt out of the Pension Scheme but remain an employee you will not be able to apply to take your pension benefits from the Pension Scheme until you leave employment.”

23. On 21 April 2016, Mr N emailed Aon. He said:

“Some specific requests I have of you.

1. Now that I have left the pension scheme, can you send me my personal benefit statement as it now stands.

2. Also, I believe I could now begin to take my pension even though I am still working. Therefore, could you confirm this is the case/confirm what lump sum I would be able to take/and what penalties I would incur by taking my pension early.

If there are any other factors you believe I should consider, please feel free to point these out!”

24. Aon replied on 6 May 2016, and informed Mr N that once his final salary and date of leaving the Plan had been confirmed, Aon would write with details of his retirement benefits. Aon said he should advise Aon if he decided not to take immediate retirement and Aon would defer his pension.

25. On 27 May 2016, Mr N was provided with an illustration of early retirement benefits as at 31 March 2016. However, it was incorrectly based on the Plan's early retirement reduction factor for active members (the **May Quote**).

26. Mr N was quoted a full pension of £46,901 per annum, or a tax free lump sum of £234,305 and reduced pension of £35,145 per annum. Aon stated that the figures

were estimates and not guaranteed. It said the actual amounts would be confirmed once he had selected his option and Aon had received all the information required to calculate his benefits.

27. The same day, Mr N received an estimated statement of benefits on leaving the Plan. It showed a total pension of £52,496 per annum. It indicated that the pension would be revalued between 31 March 2016 and his retirement.
28. Aon has since clarified that, other than when exercising its discretion under the Rules in respect of a member leaving service due to redundancy, the Company has not funded any variation to the early retirement factors.
29. On 11 June 2016, Mr N emailed Aon. He said:

“Hi [x], the one piece of information I am still missing is ... if I take my pension early, what is the penalty, [i.e.] if I decide to retire when I am 62 as opposed to 65, what % do I lose per annum...” (the **Enquiry**).
30. On or around mid June 2016, Mr N says he received a telephone call from Aon, confirming that “no changes would apply”, and that the longer he delayed taking his pension, the higher his pension would be (the **Telephone Call**).
31. Neither Aon nor Mr N have a recording or transcript of the Telephone Call. Mr N has provided a copy of an “out of office” automatic email he received from Aon on 16 June 2016, after he chased for a response to his Enquiry.
32. In July 2017, Mr N requested updated retirement figures. Under Option 1, Aon quoted tax free lump sum of £229,233 and reduced pension of £34,385 per annum. Under option 2, Mr N was quoted an annual pension of £45,353 (the **July Quote**).
33. On 25 July 2017, Mr N complained to Aon. He explained that at the time of receiving the May Quote, he saw no reason to take the pension early. Consequently, he decided to wait and benefit from a lower reduction on early retirement. He said he expected his pension would only increase, due to inflation, and because he had delayed his retirement. He now wanted to take his pension because his circumstances had changed. He queried why the less favourable early retirement reduction for leavers had not been highlighted to him at the time.
34. In its formal response of 14 August 2017, The Trustee informed Mr N that, as he was still in active service at the time Aon prepared the retirement figures as at 31 March 2016, Aon had calculated his benefits assuming he was retiring from [active] service.
35. On 22 January 2018, Aon informed Mr N’s Representative at the Pensions Advisory Service (**TPAS**) that:

“In [regard] to the statement sent in May 2016, which was based on retirement from active service, I can confirm your understanding that, at the time, the member was still eligible to retire from active service and based on the terms offered to active members. The Plan does allow members who have left the

Plan three months [sic] to draw their benefits from active service, and we would quote on this basis in practice as, broadly speaking, the terms for retirement from active service are more beneficial than those for members retiring as a deferred member.”

36. Aon has since clarified that, the practice of allowing three months applies where there is a short break between a member leaving the Plan and benefits on immediate retirement from active service coming into payment. For example, where there is a delay in setting up benefits. There is no practice in place, or provisions in the Rules, which permits members who have opted out of the Plan to take pension retrospectively.
37. Mr N has explained that, he did not want to take his pension immediately as he was approaching age 61, also drawing his pension would have resulted in high [income] tax charges. However, as he did not intend to work until age 65, he made specific enquiries to Aon. He was not provided with a copy of the Guide or links to the member website. Aon should have reference these in communication exchanged with him before he opted out.
38. Mr N has further explained that, his reason for making the Enquiry was because the impact of the 4% reduction in his case was closer to 2.6%, due to his pension in respect of the Protected Period. He wanted to be certain that those terms would not change. Aon went through the calculation with him, explained the 4% reduction per annum. When he asked whether there were any other considerations he should be aware of, he was told that there were not, and that the longer he delayed taking his pension, the lower the early retirement factor would be. He considered that his “terms were fixed.” Namely, the pension would revalue, and further increase by taking it later due to lower early retirement penalties.
39. Mr N’s further comments are set out below.
 - Several of his colleagues, in an identical position to him, accepted their pension on the favourable active early retirement basis.
 - As he had a “global role” in the Company, he did not receive communications from [UK] HR department about the Plan.
 - It is reasonable to expect that the material difference in the factors would be pointed out. “Hence it should [have been] black/white advice to encourage [him] to take his pension immediately in April 2016...” None of the correspondence he received mentioned any change in early retirement factors.
 - Despite his several exchanges with Aon concerning early retirement, he is surprised that Aon did not mention that the calculation of his benefits would depend on whether he was an active or deferred member.
 - While information on the Plan is available on [the Company’s] website, it does not explicitly say “that terms may be less favourable”. He therefore considers that he

acted appropriately by asking Aon specific questions relevant to his circumstances. Rather than informing him that it does not give advice, or signposting him to the [Plan's] website, Aon instead responded to his enquiries both verbally and in writing. On both occasions, Aon withheld details and gave incorrect information, which he based his decisions on.

- Aon informed TPAS that he was eligible to retire based on the terms offered to active members within three months of leaving the Plan. The May Quote would not therefore have been requoted, as it was “protected” for the 3 month period that Aon confirmed was “custom and practice”.
 - After some delay, and four “attempts”, he eventually received Aon’s response to his complaint. However, the letter was incorrect and in draft format with changes marked up.
40. Aon accepts that its response to Mr N’s email of 21 April 2016, and to his subsequent enquiries, did not explicitly state that the reduction on early retirement from deferred status would be 8% per annum. Aon has also acknowledged that there were several occasions when the retirement process could have been better communicated.
41. The Trustee has highlighted that the Pensions Ombudsman has previously determined that there is no general legal duty on trustees, or employers, to advise members about their pension rights. To the extent that the Trustee owed any duty to Mr N to provide information about his early retirement options, the Trustee is satisfied that such information was made available.
42. Mr N took his pension from the Plan in September 2018.
43. Because he postponed his retirement, Mr N says he lost out on pension income of £46,000 as at July 2017. He also received £5,000 less in retirement lump sum. Furthermore, the lower pension means he will suffer an additional loss of income of £20,000 over the next 20 years.
44. Mr N says if his benefits are recalculated using the basis that applies to active members, it would put the matter right.

Adjudicator’s Opinion

45. Mr N’s complaint was considered by one of our Adjudicators who concluded that further action was required by Aon. The Adjudicator’s findings are summarised below:
- The Booklet indicated that the reduction on early retirement from deferred status, may be less favourable than the terms available to active members retiring directly from Company service. The Guide also confirmed the position. It is more likely, than not, that these were made available to members.
 - A body not regulated by the Financial Conduct Authority, should avoid providing financial advice to members. This includes advice specific to his or her personal

circumstances and selected retirement option. For these reasons, the Adjudicator was unable to agree that Aon acted improperly by failing to provide specific advice encouraging Mr N to take his pension immediately on opting out.

- The Adjudicator considered that enquiries should have been made concerning the possible implications of opting out before Mr N did so.
- M N was already a deferred member by the time he contacted Aon on 21 April 2016. He therefore would not have been eligible to take his pension on the same terms as an active member in any case.
- Contrary to what Aon previously indicated, the Adjudicator was not persuaded that the Plan's custom and practice was to grant the active early retirement factor to members who had opted out of the Plan.
- Aon's increased offer of £2,000 is comparable with what an Ombudsman would award in similar cases.

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

Ombudsman's decision

47. Mr N maintains that Aon's "multiple false communications", led him to make wrong decisions. The May Quote was issued to him within three months of him leaving the Plan, so he could therefore have accepted it. However, he did not apply to take it because Aon indicated that his "terms" would not change. The Adjudicator considered that the May Quote should have been on terms that apply to deferred members. This, in his view, is further example of "error and inconsistency" on the part of Aon, which Aon has not acknowledged to date.
48. Mr N has reiterated that he was in very frequent communication with Aon. At the time, he was very concerned about advice from Aon and had been speaking with Aon before opting out. However, the earliest email he has been able to find was sent to Aon on 21 April 2016. As he no longer has access to his work computer, he is unable to research further.
49. The Company is not a party to this complaint. Consequently, any issues relating to its involvement falls outside the scope of this complaint and I do not comment on those issues or make any findings in relation to the Company.
50. The general position is, in the absence of a valid legal claim, a pension scheme member is only entitled to benefits calculated in accordance with the relevant scheme rules or regulations.

51. I am satisfied that the information that would likely have been available to Mr N confirmed the position. I am also satisfied that no promise was made to Mr N that entitles him to have his retirement benefits recalculated on the terms that applies to active members.
52. The Booklet and Guide are sufficiently clear that the early retirement factors for deferred members are determined by the Trustee with consent from the Principal Employer. I note that Mr N had access to the Plan's website. He therefore also had access to the FAQ.
53. Neither Aon, nor the Trustee, had a responsibility to provide Mr N with advice on the benefits of taking immediate pension based on his personal circumstances, or otherwise.
54. I acknowledge that, at the time of issuing the May Quote, Aon did not highlight that less favourable early retirement terms would apply on Mr N's retirement from deferred status. I also accept that the position was not clarified in Aon's subsequent communications. However, I am not convinced that this materially changes the outcome.
55. The Rules are clear that, an active member who has given notice to the Trustee that he or she wishes to opt out of the Plan, will be treated as having left pensionable service for the purpose of Rule 5. Rule 5.2 states that a member leaving pensionable service before normal retirement date without becoming entitled to an immediate pension will be entitled to a preserved pension.
56. I can find no evidence which supports that, prior to opting out of the Plan Mr N was given an expectation that his pension, on his early retirement at a later date, would be calculated on the more advantageous terms that applies to active members.
57. Turning to the telephone call Aon allegedly made to Mr N in June 2016, without independent evidence of what was discussed, and confirmed to Mr N, I am unable to determine that Aon made a clear and unequivocal statement on which Mr N could reasonably rely. I cannot interpret with any clarity what 'no changes will apply' meant. It has to be understood in the context of the question which Mr N had previously asked, which was "if I decide to retire when I am 62 as opposed to 65, what % do I lose per annum..." Plainly some changes would apply in the sense that on any view he would not receive at 62 what he would at 65. The answer does not appear to convey any clear and unequivocal meaning about whether the percentage per annum reduction was the same from active and deferred service.
58. In conclusion, once Mr N had withdrawn from the Plan, it would not have been possible for him to reverse his opt out and retire from active status. Nor would he have been entitled to the more beneficial early retirement factor available to active members. Any subsequent misstatements by Aon does not alter the position.

PO-21294

59. Mr N's complaint should be upheld to the extent that Aon made serious administrative errors. Having considered the individual circumstances of Mr N's complaint, I agree that £2,000 is justified and broadly comparable with awards I would direct for serious non-financial injustice in similar cases.
60. I partly uphold Mr N's complaint.

Direction

61. Within 21 days of the date of this Determination, Aon shall make a total award of £2,000 to Mr N.

Karen Johnston

Deputy Pensions Ombudsman
29 March 2019