

Misleading or inaccurate information

The Pensions Ombudsman's approach

When the Pensions Ombudsman receives complaints about misleading or inaccurate information being provided, the Ombudsman will look at whether:

- the information given was wrong
- the scheme was to blame for the error
- it was reasonable for someone to have relied on the information.

If the inaccurate information relates to future benefit entitlement, the inaccurate information will not generally give the member any entitlement to an overstated benefit. However, if it was reasonable for the member to have relied on the information and they have suffered loss as a result, the Pensions Ombudsman may compensate them for the loss.

What the Pensions Ombudsman looks at

If the Pensions Ombudsman decides that someone has been given inaccurate information, the Ombudsman will look at how that happened and whether it was reasonable for them not to have noticed an error or checked to see if what they were told was correct.

If it was reasonable for someone to have relied on the inaccurate information the Pensions Ombudsman will then look to see if any loss has been suffered as a result and whether it is fair to compensate them for that loss.

The Pensions Ombudsman will consider whether the member would have acted any differently with the correct information. The Pensions Ombudsman will also consider whether they took reasonable steps to reduce (or "mitigate") any loss when the error came to light.

What happens if the complaint is upheld?

The Pensions Ombudsman may direct the scheme to make payments to compensate for any financial loss that has arisen as a result of the person relying on the inaccurate information.

In some cases, the Pensions Ombudsman may award a sum for the non-financial injustice, such as distress and inconvenience caused by the error.

Public sector schemes

In certain public sector schemes such as the Unified Scheme there are regulations that allow the PSPA to vary entitlement to benefits if the member has been notified of incorrect benefits. However, the member may still make a complaint of maladministration in relation to the distress and inconvenience caused and claim for any financial loss suffered as a result of reasonably relying on the inaccurate information under general negligence principles.

Inaccurate and misleading information – Example 1

Mrs M made a complaint against the Public Sector Pensions Authority (PSPA) that as a result of an inaccurate retirement quote given by the PSPA she accepted a payment under the Mutually Agreed Resignation Scheme (the MARS Payment) offered by the Civil Service Commission. In particular:

- (1) there was maladministration by PSPA resulting in her suffering distress and inconvenience as a result of a substantial reduction to her retirement plans and

- (2) she had suffered loss as a result of her relying on the inaccurate retirement quote as she would not have accepted the MARS Payment and, would have continued working if the inaccurate quote had not been given

The original quote was given before Mrs M made the decision to accept the payment. Mrs M was offered a lump sum of about £142,000 and a residual pension of £16,646 pa. Mrs M was also offered a MARS payment of £45,000. The error was not discovered until several months later when Mrs M had resigned and she was then told the correct pension figures were in fact a lump sum of £132,000 and a residual pension of £15,174 pa. This amounted to a difference of £12,000 lump sum and a reduction in level of pension of £1472 pa.

On discovering the error Mrs M tried to get her old job back but this was not possible as the position was now filled. Mrs M complained and was offered £500 for distress and inconvenience. The PSPA's position was that they could only pay the correct benefits under the rules and she was only entitled to the lower amount and no legal loss resulted from the inaccurate statement.

The Pensions Ombudsman concluded on the evidence that the level of disruption to Mrs M's retirement plans was significant and a distress and inconvenience award of £1000 was appropriate. In relation to the question of whether Mrs M has suffered any legal loss, Mrs M maintained that the difference between the actual retirement pension and lump sum and what she had been offered was sufficiently material for her to have declined the offer of the MARS payment and not taken voluntary retirement. Mrs M was able to provide evidence that she had turned down an earlier lower retirement pension and lump sum offer and MARS payment which demonstrated that the decision to retire was finely balanced. The Pensions Ombudsman concluded that the decision was sufficiently finely balanced that Mrs M would not have resigned and accepted the offer.

The Pensions Ombudsman then had to consider what compensation was appropriate. It is well established that an inaccurate statement of entitlement does not give an entitlement to the misstated benefit. In relation to what is essentially a negligence claim a claimant is entitled to be put in the position they would have been in if the inaccurate statement had not been made.

Mrs M alleged that if the inaccurate statement had not been given she would have continued to work and earn £80,000 and built up further pension entitlement. Mrs M was only able to get a job on a much smaller salary and had managed to earn £26,000 a year so she had potentially sustained a significant financial loss even after discounting the MARS payment which she would not have received if she had carried on working. However, she was not entitled to be put in a better position than she would have been in if the inaccurate statement had not been made.

The solution agreed to compensate Mrs M was for the PSPA to augment her benefits to the level originally promised which was possible with the consent of the Public Services Commission.

Inaccurate and misleading transfer quote - Example 2

In a second case, Mr T made a complaint against the British Regional Airlines Group Pension Scheme about an inaccurate overstated guaranteed cash equivalent retirement quote given in 2017. Mr T argued that BRAL should honour the inaccurate retirement quote or otherwise compensate him for the shortfall. BRAL had already accepted that there had been maladministration and offered to pay the sum of £1500 for distress and inconvenience.

The Pensions Ombudsman was satisfied that there was a breach of the duty of care by the trustees in producing an inaccurate statement. It was also reasonably foreseeable that Mr T

would rely on the statement to his detriment in relation to any decision to transfer out in reliance on that statement. The Pensions Ombudsman was also satisfied that Mr T was not aware of the error. However, Mr T was notified of the error before he transferred out and did not take any irrevocable steps such as giving up his job as a consequence of the inaccurate statement so suffered no financial loss.

Mr T had suffered significant distress and inconvenience as a result of the inaccurate statement and not having been able to retire when expected and having to work longer. However, the proposed award of £1500 for distress and inconvenience (which was still on offer) was in the view of the Pensions Ombudsman sufficient to compensate for the distress and inconvenience and given BRAL had apologised no further award was appropriate.