

Ombudsman's Determination

Applicant	Mr E
Scheme	Unite Pension Scheme (the Scheme)
Respondent	The Trustee of the Unite Pension Scheme (The Trustee)

Outcome

1. I do not uphold Mr E's complaint, and no further action is required by the Trustee.
2. My reasons for reaching this decision are explained in more detail in paragraphs 40 to 52 below.

Complaint summary

3. Mr E has complained that the value of his pension in 2021 should have been increased in line with the Retail Price Index (**RPI**) and not the Consumer Price Index (**CPI**), as the salary increase negotiated for 2022 was backdated to 2021.

Background information, including submissions from the parties

4. On 7 September 2022, Mr E contacted the Trustee. He requested confirmation on whether Unite Union staff were given an increase to their 2021 salary levels together with any backdated payments.
5. On 13 September 2022, the Trustee confirmed that staff had received an increase to their salaries and that this had been paid in the 2021 calendar year.
6. On the same day, Mr E responded to the Trustee. He stated that as staff had received an increase to their 2021 salary, it was self-evident that under the Scheme Rules 2015 (**the Rules**), pension figures should have received an annual increase of 4.8% under RPI, not the CPI rate of 2.3% which had been applied. He requested confirmation that the correct increase would be applied.
7. On the same date, the Trustee replied to Mr E. It apologised for its previous email as it was incorrect. It confirmed that staff had not received a salary increase in the 2021 calendar year. An increase was applied that covered both 2021 and 2022 but that the increase was applied in August 2022.

8. On 26 September 2022, the Trustee contacted Mr E stating that it was consulting with its legal advisor and aimed to provide clarity on the relevant pension increase as soon as possible.
9. On 12 October 2022, Mr E contacted the Trustee regarding the pension increase. In summary he said:-
 - On 26 September 2022, Unite had assured him that clarity on the pension increase would be provided as soon as possible.
 - If his query had been accepted, then he requested a date by which the pension would be increased and back payments made.
 - If his query had been rejected, he requested a copy of the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
10. On 22 October 2022, the Trustee emailed Mr E. In summary it stated that:-
 - Part VI (C)(1)(c) of the Rules stated, "In the calendar year in which Employee salaries are not increased, the rate of increase shall be the increase in Consumer Price Index in the 12-month period to the end of August (as published in September) subject to a maximum of 2.5 per cent per annum" (see Appendix One).
 - For this reason, Mr E's pension benefits were not eligible for an RPI increase.
11. On 25 October 2022, Mr E submitted his formal complaint under stage one of the Scheme's IDRP. He said:-
 - He acknowledged the portion of the Rules which Unite had quoted.
 - The relevant clause that he was claiming should be applied was 1(C)(1) which provided for "an increase to pensions in line with the increase in the Retail Price Index as published in September subject to a capping of 10%."
 - The question to be resolved was what the purpose of the rule was if it did not provide an increase in pension where employee salaries had not received an increase. It was self-evident that if the Union employees had not received an increase in their salary, then pensioners would equally not have received a pension increase.
 - Unite employees were indeed afforded an increase to their 2021 salary as part of the 2022 salary negotiations.
 - The conditions of Rule VI (C)(1) had been met and his pension as applicable in 2021 should have been increase by the RPI of 4.9%.
12. On 16 December 2022, Unite responded to Mr E's complaint under stage one of the Scheme's IDRP. It said:-

- It was obliged to comply with the governing Rules and had to pay benefits and any annual increases in accordance with those Regulations.
 - One condition that had to be met was the rule as stipulated in Part VI, rule 1(C)(1)(c).
 - In the 2021 calendar year, employee salaries were not increased. Instead, a two year pay agreement was reached between the Union and employee representatives in March 2022. Under that agreement, there would be a 2% increase on all elements of pay backdated to 1 January 2021, and a 4.2% increase on all elements of pay backdated to 1 January 2022. Those increases were paid in March 2022.
 - While the salary increase was backdated to 1 January 2021, they were not actually paid in the 2021 calendar year but instead were paid in the 2022 calendar year.
 - As the rate of increase in salary was paid in the 2022 calendar year, the capped rate of CPI at 2.5% was applied to his pension for 2021. It had no discretion on the application of this rule and it was dependant on the Rules which governed the Scheme.
13. On 9 January 2023, Mr E escalated his complaint under stage two of the Scheme's IDRP. He said:-
- He was aware that the Rules provided for a CPI increase and not an RPI increase where staff had not received an increase in the calendar year. However, staff had received an increase in 2021, paid in 2022 accompanied with the appropriate backdating of payments.
 - The logical conclusion of the Trustee's interpretation of the rule in denying a CPI increase to his 2021 pension would mean that if the Union did not reach an agreement to increase salaries until 1 January of a given year, then pensions would not increase by RPI, but by CPI instead. This could never have been the intention of the rule.
 - His conclusion was that as staff had been given an increase to their 2021 salary with appropriate backdating, his 2021 pension should have been increased by RPI.
14. On 8 March 2022, the Trustee informed Mr E that it was unable to provide a response within the 2-month specified response time for stage two IDRP complaints.
15. On 21 April 2023, the Trustee informed Mr E that it had conducted a meeting on 12 April 2023 with a view to reaching a conclusion regarding his complaint. It was agreed that further legal input and additional information was required from the Scheme Administrators. It assured a formal response would be provided as quickly as possible.

16. On 8 June 2023, the Trustee responded to Mr E's complaint under stage two of the Scheme IDR. It said:-

- It directly reiterated its position from the stage one IDR decision but made some additional points.
- It noted Mr E's point that staff effectively did receive an increase in salary in 2021 because of the backdating of the 2% increase to 1 January 2021.
- It stated that there would be occasions on which annual negotiations on pay, terms and conditions would be less straightforward than others, or such as in his case, where a two-year deal was proposed.
- It had no control over when or how agreements might be reached in pay negotiations. It was a matter for the Union and employee representatives.
- All Unite was able to do was apply the result of the negotiations in line with the Rules that govern them. If, as a matter of simple fact, an increase had not been applied in a specific year, then it had no discretion under the Rules to grant a pension increase as anything other than CPI capped at 2.5%. This rule applied even where a salary increase was backdated in the next year.
- It was unable to uphold Mr E's complaint.

Summary of Mr E's position

17. Mr E confirmed that he had no further comments to make. He maintained that his pension should be increased in line with RPI instead of CPI.

Summary of Unite's position

18. Rule 1(C) (Increase of Pensions) of Part VI of the Rules dictated that there were three sub rules within the Rules which were of significance to Mr E's complaint:-

- Condition (a) entitled the member to have the relevant increase applied on their pre-commutation pension therefore providing, on a pound for pound basis, a more generous increase than might otherwise have been applied.
- Condition (b) provided that any increase will not exceed 10%.
- The third condition (c) was that "the default of RPI will not apply in a calendar year in which Employee salaries are not increased," and instead, "the rate of increase shall be the increase in the Consumer Price Index in the 12-month period to the end of August (as published in September) subject to a maximum of 2.5 per cent per annum."

19. Mr E had complained that a CPI of 2.3% was applied to his 2021 pension. CPI for that year was 3.2% and therefore the maximum CPI of 2.5% had been applied.

20. Mr E had also said that his 2022 pension received an increase of 8%. In 2022, salaries were increased within that calendar year so pension increases were implemented in accordance with RPI. RPI for that year was over 10%, so Mr E had received the full 10%.
21. The position remained that while, notionally, salaries were increased in 2021, they were not actually paid in the 2021 calendar year, but in the 2022 calendar year.
22. The Trustee had no control over when or how an agreement may be reached during pay negotiations. That was a matter for the Union and employee representatives.
23. It noted that Mr E had drawn correlation between salary increases and pension increases, stating that the intention of the Rules was that one would follow the other. This was incorrect.
24. In 2022, salary increases were 4.2%, whereas Mr E received a 10% pension increase in line with RPI. Similarly, if no salary increase were awarded, Mr E would still have received a 2.5% pension increase in line with CPI. Conversely, if a certain percentage increase had been applied to salaries, but RPI had not increased that year at all, then Mr E would not have received any uplift to his pension. While it noted the correlation, it confirmed that an increase to one did not dictate a direct increase to the other.
25. It referred to numerous previous Pensions Ombudsman determinations of a similar nature whereby the Rules had been applied in the same manner as the Trustee had.
26. It considered itself to have complied with its responsibilities and obligations under the Regulations; by paying Mr E a pension increases in accordance with the stipulated pension increase rule.

Adjudicator's Opinion

27. Mr E's complaint was considered by one of our Adjudicators who concluded that the Trustee should not be held responsible for any financial loss. The Adjudicators findings are summarised below in paragraph 28 to 37.
28. Mr E complained that the increase applied to his pension for 2021 should have been based on the RPI figure of 4.8% rather than the CPI, which was limited to 2.5%.
29. The Adjudicator emphasised the limitations on my jurisdiction. The Adjudicator explained that my role as the Ombudsman was to ensure that the relevant Rules had been correctly applied, that the standard of service had been adequate, and that the relevant information had been properly considered when decisions were made. I, as the Ombudsman, did not have the authority to instruct the Trustee to act outside the remit of the Rules and applicable legislation.
30. Under part VI, rule 1(C)(1)(c) of the Rules , there was a provision which clearly stated if there was no annual salary increase within a given year, the pension increase

applied would be based on CPI rather than RPI. The Trustee had acted in accordance with the Rules and considered the information appropriately.

31. Mr E's argument focused on the fact that the salary increase paid in 2022 was backdated to 2021, asserting that it effectively constituted a 2021 increase. While that perspective was appreciated, that interpretation did not align with the standard application of the rules. Applying CPI in circumstances such as those was consistent with normal practice.
32. It was acknowledged that the application of CPI may have been disappointing for Mr E, particularly given the impact on his pension benefits arising from the outcome of the salary negotiation. However, it was the role of employee representatives and the Union to understand and communicate the implications of such agreements on pension benefits clearly during negotiations. It may have been beneficial for Mr E to direct further queries regarding the rationale of negotiation outcomes to the Union or the employee representatives involved.
33. The Trustee's role was limited to implementing the negotiated outcomes in accordance with the Regulations. Its responsibility did not extend to assessing or influencing pay negotiations to ensure uniformity of benefit. Fluctuations and variations in salary and pension increases were to be expected year-on-year.
34. Regarding Mr E's assertion that the Rules aimed to directly align salary and pension increases, it was acknowledged that recent trends had indicated that. However, it was important to recognise that the connection was not definitive or prescriptive in individual circumstances. Recent amendments to the Rules introduced CPI increases specifically to provide stability during periods without salary increases, particularly considering the rising cost of living.
35. For example, in 2022, Unite employees received a salary increase of 4.2%, yet the pension increase was substantially higher at 10% based on RPI. Conversely, if there had been no salary increase in any given year, a CPI-based increase would still have been provided, ensuring at least partial alignment with inflationary pressures.
36. The Adjudicator had also reviewed previous determinations by my predecessors involving similar circumstances. A key precedent involved salary increases negotiated in advance for two consecutive years but implemented fully in the first year, resulting in no formal increase in the following year. The Ombudsman's decision focused specifically on the wording of the relevant Regulations, concluding that as the physical increase had not been applied in the second year, the Trustee was not obligated to provide a pension increase. Comparatively, the current Rules provided greater benefit by guaranteeing at least a CPI-linked increase in the absence of a formal salary increase. Following the same logic, it was unlikely that I would find in Mr E's favour.
37. The Adjudicator also noted Mr E's additional point regarding the 2022 pension increase, which he mentioned should have been 8% based on RPI. The 2022 increase was independent of the 2021 adjustment. The Trustee had confirmed that

Mr E received the full RPI increase of 10% for the year 2022, so the basis for his concern regarding the 8% figure was unclear.

38. Mr E did not accept the Adjudicator's Opinion, and, in response, he reiterated his previous position and provided further comments. In summary he said:-

- His case differed significantly from the previously cited case. He noted specifically that, unlike in the cited precedent, Unite staff did subsequently receive a pay award backdated to their original salary review date, applicable to 2021. As salaries received a backdated increase for 2021, the same principle should logically apply to Unite pensioners, justifying an RPI-linked increase for 2021.
- He acknowledged that if I decided in his favour, any CPI increase already applied would necessarily have to be accounted for to prevent duplication.
- Mr E stressed the fundamental principle that pensions should align directly with salary increases, and he maintained that the backdated salary increase effectively constituted a salary increase for the 2021 calendar year.

39. As Mr E did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. I have considered the additional points made by Mr E, but they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

40. Mr E has complained that his pension payments in 2021 should have been increased in line with RPI and not CPI as the salary increase negotiated for 2022 was backdated to 2021.

41. Mr E's pension is payable in respect of contributory service completed before 5 April 1997 and increases to his pension are therefore provided in accordance with Rule 1(C)(1) of the Rules (see Appendix). The issue in this case is as to the correct interpretation of that Rule and its application in the context of back-dated salary increases applied for current employees of Unite.

42. Key provisions of Rule 1(C)(1) are that:

42.1. such pensions (excluding GMP and pensions bought with additional voluntary contributions) are increased by the increase in the Index of Retail Prices in the 12-month period to the end of August (as is published in September);

42.2. The increase shall at no time exceed ten per cent (10%) per annum; and

42.3. "In a calendar year in which Employee salaries are not increased, the rate of increase shall be the increase in the Consumer Prices Index in the 12-month period to the end of August (as is published in September) subject to a maximum of 2.5 per cent per annum".

43. It is the interpretation of the last provision that is in issue. The Courts have given guidance as to the interpretation of pension trust deeds in a series of cases including *Wood v Capita Insurance Ltd* [2017] UKSC 24; AC 1173; *Barnardo's V Buckinghamshire* [2018] UKSC 55 paragraphs 13–18; *Britvic Plc v Britvic Pensions* [2021] EWCA Civ 867 at 29 and 33 (Britvic) and *De La Rue v De La Rue Pension Trustee* [2022] 014 PBLR 46–48.

44. In *Britvic*, Sir Geoffrey Vos MR emphasised the importance in a pensions context of starting with the language used and avoiding, if possible, a strained meaning. He said at [29]:

“As it seems to me, however, the approach indicated by, at least, *Rainy Sky*, *Arnold v Britton*, *Wood v Capita*, and *Barnardo's* is clear. In construing a pension scheme deed, one starts with the language used and identifies its possible meaning or meanings by reference to the admissible context, adopting a unitary process to ascertain what a reasonable person with all the background knowledge reasonably available to the parties at the time would have understood the parties to have meant. If, however, the parties have used unambiguous language, the court must apply it (see Lord Clarke at [19] in *Rainy Sky*), and the context of a pension scheme deed is 'inherently antipathetic to ... [giving] some strained meaning to ... the words used' (Lord Briggs at [22] in *Safeway*, approved by *Barnardo's* at [15])”

and at [33]:

“Moreover, the process of corrective construction adopted, in the alternative, by the judge at [137] is only normally adopted where there really is an obvious mistake on the face of the document. There is no obvious mistake here as there was, for example, in *Mannai* as to the date or in *Doe d. Cox v Roe* as to the name of the public house. The objective observer might well think that the power could have been more felicitously drafted, but that is not enough to allow the court to depart from the clear language, on the unequivocal authority of *Rainy Sky* and the later Supreme Court decisions I have cited. That is particularly so when the rules of a pension scheme are being interpreted.”

Therefore, in interpreting the rule, case law indicates that I should start with the language used in the rule and identify its possible meaning or meanings by reference to admissible context, adopting a unitary process to ascertain what a reasonable person with all the background knowledge reasonably available to the parties at the time would have understood the parties to have meant. If the parties have used unambiguous language the court (or the Ombudsman) must apply that interpretation.

45. I first note that the relationship between the several clauses in Rule 1(C)(1) is not explicit but that it only makes sense to read the provisions of the first paragraph as subject to the provisions of sub-paragraphs (b) and (c) as these apply a cap on the increase otherwise payable. Sub-paragraphs (a), (d) and (e) deal with the scope of application of the increases. The provisions are to be read together.

46. The key issue is then the meaning of the words “In a calendar year in which Employee salaries are not increased” as the remaining provisions of sub-paragraph (c) seem clear in that it applies a cap by reference to the lower of the increase in CPI or 2.5% in such calendar year. In my view, the natural meaning of the words is that the alternative rate of increase of the lower of CPI or 2.5% under sub-paragraph (c) will apply instead of the rate of increase derived from RPI and the 10% cap in sub-paragraph (b) in any period commencing on 1 January and ending on 31 December during which “Employees” receive no increases to their salaries. “Employees” is defined in the Rules as meaning persons in the service of Unite and in the context of the Unite Pension Scheme Rules the reference must be to the salaries they receive from Unite for such service. There may be some ambiguity as to what increases are being referred to. In the context of an inflation protection rule for pensioners in pension scheme rules, it seems reasonably clear that the salary increases that are referred to are general increases or inflation linked increases applicable to such Employees generally and not individual performance-based increases or promotions. Finally, I see no reason to read the words “in a calendar year in which” as requiring consideration of anything other than the application of such a general salary increase during that calendar year. In particular, I see no reason to read it as referring to a calendar year in which an increase is agreed (but not applied) or a calendar year in respect of which an increase is later paid.
47. It is this last point that Mr E particularly contests but I think the words are not seriously ambiguous and cannot easily be read as referring to a year during which no increase is actually made but in respect of which an increase is later made and then paid and calculated by reference to service during that year. This appears to be what occurred. I find that no increase to salaries was made in the 2021 calendar year (i.e. from 1 January to 31 December 2021). Instead, a two year pay agreement was reached between Unite and employee representatives in March 2022; that agreement included a 2% increase on all elements of pay backdated to 1 January 2021, and a 4.2% increase on all elements of pay backdated to 1 January 2022. Those increases were paid in March 2022.
48. There may be some doubt about when salaries are increased: whether this is when the increase is agreed, when it applies or when the increase is actually paid. If I needed to make a finding it would be that a salary is increased when the employee becomes entitled to the increased salary. In this case, however, the point does not appear to be material as no increase was agreed or paid in 2021 and the employees could not become entitled to the increase until it was in fact agreed. Although the salary increase was backdated, the Employees only became entitled to the salary increases and they were only paid in the subsequent calendar year, not during 2021 itself. Consequently, the rules stipulate that CPI should be applied in such circumstances.
49. As such, I find that in the calendar year 2021 “Employee” salaries were not increased and therefore sub-paragraph (c) governs the increase applicable to pensioners under Rule 1(C)(1).

Rules.

50. While I am not bound by previous decisions, and each case is determined on its own merits, it is worth noting that previous determinations are consistent with this interpretation. Specifically, prior cases have highlighted that the timing of actual salary increases rather than negotiation or agreement dates determine when pension increases apply. However, I also note that it is important to interpret any agreement on salary increases independently in order to determine its effect. In the cases cited, Unite and the employee representatives reached a forward-looking two-year agreement whereas in this case they reached a back-dating agreement.
51. I acknowledge Mr E's broader point regarding the alignment between salary and pension increases. However, the Rules do not provide for full alignment between salary and pension increases Rules and the cases cited above do not permit me to adopt a purposive interpretation rather than looking to the language used in the rules. The Rules make it possible for pensioners to receive increases in years when employees do not and to receive higher or lower increases than employees in other years.
52. I do not uphold Mr E's complaint.

Camilla Barry

Deputy Pensions Ombudsman
25 June 2025

Appendix One

Extract from Rule 1(C) of Part VI of the rules of the Unite Pension Scheme

“(C) Increase of Pensions

- (1) In respect of Contributory Service completed on and before 5th April 1997 Pensioners whose pension became payable after 7th January 1974 will, subject to the following conditions, have their basic pensions (i.e. excluding Guaranteed Minimum Pensions (where applicable), which shall be increased in accordance with paragraph 4 of the Appendix , those bought by additional voluntary contributions or those arising by commutation of a lump sum except where otherwise arranged) increased by the increase in the Index of Retail Prices in the 12 month period to the end of August (as is published in September).
- (a) The increase will be calculated by reference to the pension before any reduction by reason of commutation under Rule 11 of this Part.
- (b) The increase shall at no time exceed ten per cent (10%) per annum.
- (c) In a calendar year in which Employee salaries are not increased, the rate of increase shall be the increase in the Consumer Prices Index in the 12-month period to the end of August (as is published in September) subject to a maximum of 2.5 per cent per annum.
- (d) The first increase will not be paid until the next general salary increase following one full year after a pension becomes payable under the provisions of sub-Rule (A) of this Rule. The Board of Trustees may award either a retrospective or a proportionately greater increase having regard to the length of the period which elapses from the end of one full year on pension to the date of the related salary increase.
- (e) Pensions to Beneficiaries will be equally considered and insofar as the Board of Trustees direct accorded increases as near as may be according to the same pattern.