

## Ombudsman's Determination

Applicant	Mr D, Mr McR, Mr Y, Mr W, Mr R, Mr NS and Mr S ( <b>the Applicants</b> )
Scheme	Pilots National Pension Fund ( <b>PNPF</b> )
Respondent	PNPF Trust Company Limited ( <b>the Trustee</b> )

## Outcome

1. I do not uphold the Applicants' complaint and no further action is required by the Trustee.

## Complaint summary

2. The Applicants have said they are unhappy with the Trustee's decision to change their accrual rate for benefits under PNPF from 1/60<sup>th</sup> to 1/70<sup>th</sup>.
3. In particular, the Applicants have complained that:-
  - The Trustee did not consider feedback from PNPF members before changing the accrual rate.
  - The Trustee has acted in favour of higher earners to the detriment of lower earners.
  - They have suffered a loss and they should be compensated with the option to retire at age 60 without any reduction to their benefits.

## Background information, including submissions from the parties

4. The Applicants all joined PNPF before 2002 (**pre-2002 PNPF members**).
5. Between 2000 and 2016, there were a number of changes to PNPF which altered future benefits the members would accrue or receive under it. These changes included: lowering of annual pension increases, lowering of the accrual rate from 1/60<sup>th</sup> to 1/70<sup>th</sup> for post-2002 PNPF members, and increasing normal retirement age (**NRA**) to age 65.
6. The reason these changes were implemented was to address the PNPF deficit.

7. In December 2016, a fund valuation highlighted that higher contributions would be needed from all PNPF members, in order to ensure future benefits could be paid.
8. From late 2017 to early 2018, the Trustee conducted a consultation during which it invited member feedback on proposed contribution increases.
9. On 1 March 2018, employee contributions were raised for all PNPF members.
10. On 20 March 2018, during a Trustee meeting, the recent consultation and new contribution rate were discussed. It was noted that post-2002 members were subsidising the benefits of pre-2002 members, as all members were paying the same contribution rate but post-2002 members were accruing less benefits. This was because post-2002 members were on an accrual rate of  $1/70^{\text{th}}$ , whereas pre-2002 members were on an accrual rate of  $1/60^{\text{th}}$ .
11. In the same meeting, it was also noted that some members were nearing their annual allowance limit and so they might prefer to pay lower contributions. It was agreed that the contribution and accrual rates would be considered further at a later date.
12. On 24 May 2018, during another Trustee meeting, the inconsistency between the benefits accrued by pre-2002 and post-2002 members was raised again. The Trustee said that, during the previous consultation, members had voiced their concerns about this inconsistency and various options to address the inequality had been mentioned.
13. The Minutes of the meeting showed that the Trustee weighed up competing factors when considering this problem, including: the disparity between different members paying the same contribution rate, the legal concerns in reducing benefits, the concern around improving benefits from an underfunded scheme, the annual allowance issues facing a material proportion of members, and the cost and complexity of the different solutions.
14. The Trustee agreed that it would be preferable in terms of cost and logistics to keep all members on the same accrual rate. In order to determine whether this should be an accrual rate of  $1/70^{\text{th}}$  or a blended rate, the Trustee agreed to gather the opinions from ten PNPF members.
15. On 11 September 2018, another Trustee meeting was held. The Minutes evidence that, during this meeting, the Trustee received training on the correct process for decision-making. It also reviewed the comments it had received from members about changing the accrual rate. It was noted that the most frequent concerns among members were the affordability of the contribution rate and the disparity between members in terms of benefits being accrued. The Trustee was also given actuarial advice to move all PNPF members onto an accrual rate of  $1/70^{\text{th}}$ . However, it decided to carry out a full consultation on taking this action, before reaching a final decision.
16. On 1 October 2018, the Trustee wrote to all PNPF members to inform them of the proposal to move pre-2002 members onto an accrual rate of  $1/70^{\text{th}}$ , so that all

members were on the same accrual rate. The Trustee emphasised that this change would result in lower contributions for all members, and it invited feedback.

17. As part of the FAQ document which accompanied the letter, the Trustee highlighted that the changes might be particularly beneficial to those members who were approaching their Lifetime Allowance.
18. From 5 October 2018 to 5 December 2018, the Trustee received feedback on the proposed changes from 32% of post-2002 members and 24% of pre-2002 members. The post-2002 members were broadly supportive of the proposed changes, whereas the pre-2002 members were largely against the proposed changes.
19. On 10 December 2018, the Trustee held a meeting with two members of the UK Maritime Pilots' Association (**UKMPA**) to obtain further comment on the proposed changes.
20. On 11 December 2018, another Trustee meeting was held, during which the member feedback received following the consultation was discussed. It was noted that no concerns or suggestions had been raised which had not already been considered.
21. During this meeting, it was also noted that UKMPA had suggested giving PNPf members a choice of contribution rate. The Minutes of the meeting recorded that the Trustee considered this option but ultimately concluded it was not practical. In particular, the Trustee noted that the contribution rate would be determined by how many members chose a particular option, and so the contribution rate could not be confirmed to members before they had committed to selecting the option. It was ultimately agreed that the Trustee would place all PNPf members on an accrual rate of 1/70<sup>th</sup> with a reduction in contribution rates.
22. On 29 January 2019, the Trustee wrote to all PNPf members confirming the outcome of the recent consultation. It confirmed that pre-2002 members would be moved onto an accrual rate for 1/70<sup>th</sup> for benefits going forward, and it confirmed the new contribution rate which would be applicable to all PNPf members. The Trustee confirmed that this decision had been made for the following reasons:-
  - To ensure consistency between members.
  - To ensure contributions were affordable.
  - To address member feedback from the previous consultation.
23. On 4 March 2019, the Applicants raised a complaint regarding the changes. They complained that the change was unfair because it meant they would no longer accrue the pension benefits they had expected. The Applicants highlighted the series of changes which had been applied to their PNPf benefits dating back to 2000, and said this recent change removed all parity to the benefits they originally signed up for.
24. The Applicants highlighted that they had raised their concerns during the consultation, but these had been ignored.

25. The Applicants also believed the Trustee had made its decision to support those approaching their Lifetime Allowance, and so it had favoured higher earners over lower earners.
26. The Applicants suggested that, as a gesture of goodwill, the Trustee could reduce the NRA to age 60 for them.
27. In responding to the complaint, the Trustee said that it had reached its decision after a consultation with all members, and after considering all relevant factors. It added that the tax benefits for higher earners was not a deciding factor in its final decision. It highlighted that its letter dated 29 January 2019 confirmed what the deciding factors were.
28. In addition, the Trustee said it has the power to change the accrual rate under Section 9 of PNPf rules, which states:

“(1) The [Trustee] shall have the following powers:

(a) after consultation with the actuary, to alter, cancel or add to any of the provisions of the Rules or to adopt an additional set or sets of Rules provided that no such alteration, cancellation, addition or adoption shall be made which would prejudice Registration and that the requirements of section 67 of the 1995 Act shall be satisfied in relation to any such alteration, cancellation, addition or adoption.”
29. The Trustee said it also followed the principles set out in *Edge v Pensions Ombudsman* [2000] Ch. 602, when reaching its decision (**the Edge principles**). The Trustee has provided evidence of the legal advice it received in relation to the Edge principles, which it says it followed.
30. The Trustee has declined to offer the Applicants an NRA of age 60.
31. On 1 April 2019, the changes in question came into effect and the accrual rate for pre-2002 members reduced to 1/70<sup>th</sup>. No benefits accrued before this date were affected.

## Adjudicator's Opinion

32. The Applicants' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-
  - The Pensions Ombudsman's role in such matters is to consider whether the Trustee's decision was reached in a proper manner. In particular, the Adjudicator assessed whether the Trustee had acted in accordance with four criteria which form the Edge principles.
  - Firstly, the Adjudicator was satisfied that the Trustee had directed itself correctly in law. In particular, section 9(1)(a) of the PNPf rules provides the Trustee with the

requisite power to change the accrual rate for members. The rule required the Trustee to seek actuarial advice before exercising this power, and the Trustee did so.

- Importantly, the 1/60<sup>th</sup> accrual rate will still apply to all benefits accrued by the Applicants' before 1 April 2019. As such, the Trustee has not breached section 67 of the Pensions Act 1995.
- Secondly, the Adjudicator was satisfied that the Trustee considered all relevant factors. The Trustee provided Minutes of its relevant meetings, and it was clear that it had discussed all suggestions and comments raised during the consultation process.
- The Adjudicator noted that the changes proposed during the 2018 consultation were specifically aimed at addressing concerns raised during the previous consultation. In particular, PNPF members were frustrated that all members were paying the same contribution rate, and yet some were accruing benefits at a higher rate than others. In addition, many members were concerned about the affordability of contributions.
- In considering the second criterion of the Edge principles further, the Adjudicator noted that the Trustee had not placed weight on any irrelevant factors. Its decision was not based on the potential tax savings its decision would have for higher earners. The Trustee had made it clear that its decision to reduce the accrual rate for pre-2002 members was to address the inconsistency across the contributions being paid and benefits received by different members, and to ensure contributions were affordable.
- Thirdly, the Adjudicator was satisfied that the Trustee asked the right questions. The Adjudicator considered that it was appropriate for the Trustee to consider numerous options first, and then seek feedback on the option which it considered most appropriate as part of a consultation.
- Fourthly, the Adjudicator was satisfied that the Trustee did not reach a decision which was perverse; that is to say, a decision at which no reasonable decision maker would come to in the circumstances. The evidence indicated that the Trustee had considered advice and feedback in relation to the concerns it was specifically looking to address, and the decision made was based on a reasonable way of directly addressing these concerns. This was particularly the case, given the PNPF's deficit.
- Finally, the Adjudicator noted that it is not reasonable for the Applicants to rely on receiving benefits that have not yet been accrued. The Adjudicator was satisfied that the Applicants' accrued benefits had not been reduced, and they had never been promised the ability to continue accruing benefits at the 1/60<sup>th</sup> rate indefinitely.

33. The Applicants did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
34. In particular, the Applicants emphasised that the reduction to their accrual rate removes the final element of parity between the terms they originally signed up to when they joined PNPF, and the terms under which they are now accruing benefits. They believe they should be compensated for this. They say that, unlike the post-2002 members, they did not have a choice about joining the PNPF.
35. The Applicants also emphasised that they would have paid higher contributions in order to be able to continue accruing benefits at the 1/60<sup>th</sup> rate.
36. The Applicants' further comments do not change the outcome. I note their comments but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

37. PNPF is a defined benefit scheme and, as with many defined benefit schemes, it is in deficit. It is the Trustee's responsibility to address such a deficit and take appropriate action. Typically, this results in changes whereby future benefits are accrued at a slower rate, or the relevant section of the scheme is closed to future accrual.
38. It is unfortunate that the Applicants have experienced a number of changes to PNPF during their membership, and I appreciate that each change has resulted in the opportunity for future benefit accrual being lessened. However, there is no evidence that the Applicants were ever guaranteed to accrue benefits at a certain level until they had each retired. Although, they hoped to continue accruing benefits at a 1/60<sup>th</sup> rate, they had no entitlement to do so. As they have not suffered a loss to which they are entitled compensation is not appropriate.
39. I note the Applicants' comment that they were required to join PNPF. Such a requirement would not preclude the Trustee from making future changes to the accrual rate. The Applicants have retained entitlement to the benefits they have accrued up until April 2019. So, it cannot be said that being members of the PNPF prior to April 2019 has led to any injustice to the Applicants.
40. Furthermore, if the Trustee were to offer the Applicants compensation, it would negate one of the two purposes of the decision. Namely, to ensure pre-2002 and post-2002 members pay the same contributions for the same benefits. The Applicants have asked for compensation, but that is akin to requesting that they still receive higher benefits.
41. The Applicants have said that they would be happy to pay higher contributions in order to continue accruing higher benefits. While it appears that this is not an unreasonable suggestion, the Trustee did consider this option but concluded that it would be too difficult to implement. There is no evidence to suggest that the Trustee's consideration of this option was unreasonable.

42. It is not for me to decide whether the Trustee's decision is the right one. The Trustee has a wide level of discretion in the exercise of its powers. The question I have considered is whether the Trustee reached its decision following a reasonable decision-making process.
43. The Applicants' accrued benefits up to April 2019 remain unchanged and the Trustee's decision-making process to reduce the Applicants' future accrual rate was within the Edge principles criteria.
44. I do not uphold the Applicants' complaint.

**Anthony Arter**

Pensions Ombudsman  
17 March 2021