CAS-29744-V6F8

Ombudsman's Determination

Applicant	Mr N
Scheme	Ballylumford Power Pension Scheme (**the Scheme**)
Respondents	Trustees of the Ballylumford Power Pension Scheme (**the Trustees**) Prudential

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Trustees or Prudential.

Complaint summary

2. Mr N has complained that his benefits were not correctly increased in the year before he took benefits. He considers that the pension should have been increased by the Retail Prices Index (**RPI**) on a pro rata basis until the date of his retirement.

3. Mr N says that had he known this would not be the case, he would have opted to transfer out of the Scheme or waited until the next revaluation date before taking benefits.

Background information, including submissions from the parties

4. In March 2002, Mr N was made redundant. Under the Scheme Rules he was entitled to take pension benefits from age 50 without actuarial reduction.

5. In May 2002, the Trustees wrote to Mr N with a deferred benefit statement. It confirmed that a deferred annuity would be purchased from Prudential. The statement said:

   "Increases To Benefits In Deferment

   Both your pension and your spouse's pension will be increased in April each year by an uncapped RPI.

   Increases To Benefits In Payment

   Both your pension and your spouse's pension will be increased in April each year by an uncapped RPI.

…

Deferred Scheme Benefits

Your deferred pension and lump sum are extremely valuable benefits, which will be increased annually, normally in line with rises in the cost of living from the date of leaving until you receive the benefit."

6. A document entitled Notes About Your Deferred Pension which accompanied the deferred benefit statement said:

"**Pension Increases**

The pension and lump sum at date of leaving will be increased annually in line with inflation during the whole period of deferment, unless Premier Power Limited resolves that any increase in excess of 10% shall not apply. When the Pension comes into payment it continues to be increased annually."

7. In advance of his 50th birthday, Mr N requested a transfer value. On receipt of the transfer value, Mr N considered whether transferring would be in his best interests and concluded that the option between accepting benefits from the Scheme or transferring were broadly equivalent. He decided to accept the deferred annuity offered by Prudential.

8. On 11 January 2018, when Mr N reached age 50, the pension was put into payment.

9. In April 2018, Mr N's pension was increased by RPI on a pro rata basis between January and April 2018. In the belief that this was incorrect, and that the increase should have been for the full year, April 2017 to April 2018, Mr N questioned the pension increase.

10. Prudential responded explaining that it had applied the pension increase correctly for the period January to April 2018. Following further correspondence, it was established that Mr N's concerns stemmed from the lack of increase for the period April 2017 to January 2018.

11. In October 2018, Prudential provided a response to the complaint confirming that it had administered the pension increase in line with its understanding of the Scheme Rules and the Trustees agreed with that understanding. It was therefore satisfied that there was no error.

12. Mr N the raised this point with the Trustees, highlighting the deferred benefit statement which said the increases would be paid for the whole period of deferment.

13. On 15 November 2018, the Trustees responded confirming that Prudential had administered the pension increases in accordance with the Scheme Rules, specifically Rule 27 and 27.1, dealing with increases in deferment. Rule 27 and 27.1 state:

"27. **Deferred Pension increases**

The amount of each pension and of each lump sum payable to or in respect of a Contributor who leaves Pensionable Service with an entitlement to a deferred pension under the Rules shall be increased on 1 April (or such other date as the Trustees may decide) in the year following the date in which his Pensionable Service ends and in each subsequent year until it becomes payable by an amount equal to the percentage increase in the RPI Index (as defined in Rule 26.6) over the period of 12 months ending at the end of the preceding September (or such other period as the Trustees may decide).

Provided that

27.1 if at the effective date of any increase under this Rule a pension has not been in deferment for twelve months, the increase will be a proportion of the percentage increase referred to in this Rule."

Adjudicator's Opinion

14. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Respondents. The Adjudicator's findings are summarised below:-

- The Scheme Rules take precedence over any potentially incorrect information provided by other sources and Rule 27 was administered correctly. Whilst in deferment, increases are to be applied on 1 April each year until the pension goes into payment. On being put into payment, the rules relating to deferred pensions, such as Rule 27, no longer apply.

- Under Rule 27, a pro rata increase applied in the first year of deferment, but not in the final year of deferment.

- Whilst Mr N might be dissatisfied with the effect of Rule 27, it does not mean the Rule is ineffective.

- Mr N relied upon the deferred benefit statement received following his redundancy, which said:

  > "The pension and lump sum at date of leaving will be increased annually in line with inflation during the whole period of deferment…"

- Although one could understand why Mr N took the stance he did, the information provided was correct. The timing of the increase was "annually", meaning a single increase per year "during the whole period of deferment." The information could have been more specific, but it was technically correct, and the misunderstanding is not an administrative error.

- While Mr N may have waited before taking benefits if he had been informed that the increase would only be applied in April 2018, he had in the meantime received the pension and lump sum for the intervening months. But in any event, Prudential was not required to provide retirement quotes for alternative dates without Mr N requesting them, and there was no requirement for it to have made him aware that the increase would only be applied if he deferred until after April 2018.

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

Ombudsman's decision

16. Mr N contends that his interpretation of the phrase "increased annually in line with inflation during the whole period of deferment" would be the same as that which the majority of the public would reach if presented to them, and he has been misled by it. He highlights that information can be technically correct, but mislead by omission.

17. Additionally, Mr N has said this was the only information he received about increases in deferment. Had this been a personal pension plan, the terms would have been clear. Instead, the terms are not obvious. In particular, the use of "annually" does not suggest only whole years would benefit from the increase. Many other financial products will pay annual interest, and will pay partial interest if the account is closed. If the partial interest is lost in those circumstances, the terms of that product will specify it. No such documentation was provided to Mr N to explain it.

18. Having considered Mr N's arguments and the sentence in question, I accept that it could have been clearer and it is possible to interpret it in the way Mr N has. However, this was a general statement summarising the increases that would be applied and such statements are not intended to deal with every set of circumstances. Although it could have been worded more clearly, I find that it is correct and I do not conclude it was foreseeable that this sentence would be relied upon by members to make decisions on the timing of taking benefits, as Mr N appears to have done. Instead, it merely communicates the general principle of increases in deferment.

19. Further, if Mr N has relied upon this sentence in deciding to take benefits when he says he did, I think it would have been reasonable for him to have checked that his understanding was correct rather than to have relied upon a 16 year old statement.

20. Mr N has challenged the position that the Scheme Rules take precedence over incorrect information from other sources, suggesting this invites financial companies to mislead customers and not honour the incorrect information. I disagree. Pensions are often extremely long term financial instruments. Over time, often multiple iterations of Scheme Booklets and communications will be issued and mistakes do, unfortunately, occur; although as I have said, not in this case. The principle that

Scheme Rules take precedence is therefore integral to ensure fairness and consistency throughout the lifetime of the Scheme. If a Scheme was obliged to honour incorrect information, then this would come at a cost with possibly significant consequences for the other members or a sponsoring employer. If an injustice has occurred arising from an administrative error, I will direct a Scheme to correct it, but the principle of primacy of the Scheme Rules remains the same.

21. Mr N has highlighted the fact that he has a good income, considerable assets with no debt, and therefore had no need to take the pension at the time that he did. Had he known the correct position he would have waited until April, and the 3% increase would have been more advantageous than taking it three months earlier. I appreciate that may be the case, but Prudential was not required to provide an alternative retirement quote based on a later date and it could not have known that his circumstances meant he did not require the pension.

22. Mr N has suggested that a failure to uphold the case would mean Prudential has no obligation to change its method of communication about retirement quotes in future. However, Prudential has made no error in providing the quote that it did and there is no requirement for it to provide the information Mr N believes it should have done..

23. Mr N was entitled to take benefits from age 50. In these circumstances, it was appropriate for Prudential to provide a quote for that birthday. Mr N appears to have made the assumption that an increase for the entire previous year would be applied after he had taken benefits, but that assumption was based on his misunderstanding of a sixteen year old document. I appreciate and sympathise with Mr N's frustration, but I cannot find any error on the part of Prudential or the Trustees.

24. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
8 January 2020