

Ombudsman's Determination

Applicant	Mr N
Scheme	Thales UK Pension Scheme (the Scheme)
Respondent	Thales Pension Trustees Limited (the Trustee)

Outcome

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

Complaint summary

2. Mr N's complaint is that his early retirement pension benefits have been incorrectly calculated. Specifically:
 - his deferred pension in excess of Guaranteed Minimum Pension (**GMP**) has been revalued using the Consumer Prices Index (**CPI**) rather than the Retail Prices Index (**RPI**);
 - bonus, car allowance and medical benefit payments have wrongly been excluded from his Final Pensionable Salary (**FPS**); and
 - the Early Retirement Factors (**ERF**) used were new and not previously advised to scheme members. All past illustrations he received used a 4% per annum inverse compound ERF.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mr N's employment switched between companies within the Racal group¹. As a result he accrued pensionable service in the Racal-Decca Staff Pension and Life Assurance

¹ Mr N says the history of his employment within the group is:-

- The Decca Navigator Company Ltd – 3 December 1979 to 31 August 1984
- The Racal-Decca Advanced Development Ltd (a Decca legacy company) - 1 September 1984 to 31 May 1992.
- Racal Research Ltd (a Racal Company) – 1 June 1992 to 29 April 2001.

Scheme (the **RD Scheme**) and the Racal-Group Staff Pension and Life Assurance Scheme (the **RG Scheme**). His pensionable service across the two schemes was from 1 August 1985 to 30 September 2007.

5. In respect of Mr N's membership of the RD Scheme, the relevant rules are contained in the Deed of Variation dated 29 May 1987 (as amended) (the **1987 RD Scheme Deed**). Relevant extracts are provided in Appendix 1.
6. In respect of Mr N's membership of the RG Scheme, the relevant rules are contained in the Deed of Variation dated 29 May 1987 (as amended) (the **1987 RG Scheme Deed**). Relevant extracts are provided in Appendix 1.
7. In 2008, the RD Scheme and RG Scheme, together with seven other schemes, merged creating the Scheme. The Scheme is administered by Equinity.
8. Mr N took early retirement in February 2019.
9. Mr N complained to Equinity about the calculation of his pension. Dissatisfied with Equinity's response, Mr N invoked the Scheme's Internal Dispute Resolution Procedure (**IDRP**). Mr N said:-
 - Records incorrectly showed that he was a member of the RD Scheme from 1 July 2003 to 30 September 2007. He was then a member of the RG Scheme.
 - The calculation of his FPS was understated. Bonus, car allowance and medical benefit payments should have been included in the calculation.
 - His deferred pension in excess of GMP had been incorrectly revalued by CPI. RPI should apply.
 - Wrong ERF had been used. An ERF of 4% per year should have been applied, as the latest statement published to Scheme members said that the factors were not changing.
10. At Stage One IDRP, the Secretary to the Trustee did not uphold Mr N's complaint. He said:-
 - The records it had inherited showed that he was a member of:
 - the RD Scheme from 1 April 1985 to 31 May 1992;
 - the RG Scheme from 1 June 1992 to 30 April 2001; and
 - the RD Scheme from 1 May 2001 to 30 September 2007.

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- Thales Avionics Ltd (A Decca legacy company) – 30 April 2001 to 30 June 2003.
 - Thales Communications Ltd (a Racal legacy company) – 1 July 2003 to 30 September 2007.

- On leaving service, Mr N's pension had been calculated based on his pensionable service of 22 years and 6 months.
- The definition of Pensionable Salary (**PS**) was the same for the RD Scheme and the RG Scheme. So, the calculation of Mr N's pension under the separate schemes would have been the same.
- Car allowance and medical benefit had never been deemed PS.
- It was at the discretion of the employer whether a bonus and or commission was deemed PS.
- The PS figure supplied each year by his employer did not include a calculation breakdown, so they did not know whether each figure was simply Basic Salary (**BS**) or included anything else. Generally, if there were other earnings deemed pensionable by the employer (such as a bonus or commission) it would have been included in the PS figure supplied.
- Mr N paid pension contributions based on the figures supplied by his employer and were shown on each year's annual benefit statement issued to him. Also, Mr N's FPS was shown on his 2007 leaving service statement. There was no reason why the FPS used in the calculation of Mr N's benefits was incorrect.
- In 2010, the Government changed the statutory index for revaluation from RPI to CPI. This change automatically applied to most occupational pension schemes, including the RD Scheme and the RG Scheme. Members were notified in the Annual Newsletter dated December 2010², which was posted to all active and deferred members at the time and was also available on the Scheme's website.
- An ERF of 4% per year formerly applied to members who retired from active service only and applied to the pension revalued to the date of retirement only. Specific ERF for deferred members were not referenced in the Racal Explanatory Booklet. A different basis had always applied for deferred members and current factors dated from 2006. They were not just applied to the pension revalued to retirement date, but to a higher figure projected to Normal Retirement Age.
- It was unclear how Mr N had arrived at his retirement figures as they disagreed with the points made in his appeal application.

² The Newsletter, under the section heading 'Statutory increases – government announcement on move from RPI to CPI said:

"...the way in which deferred pension benefits are revalued to normal retirement age after leaving employment with the Thales group is expected to change automatically due to the Government's new approach. In this case, revaluation is generally expected to follow CPI (subject to certain caps) going forward. Note: There will be some specific exceptions to these general expectations for certain legacy schemes."

- For these reasons he found that Equiniti had correctly calculated Mr N's pension and that his complaint was unfounded.
11. Unhappy with the outcome, Mr N requested that his appeal be considered at Stage Two IDRPs.
 12. In August 2009, the Scheme's 'Operations Sub-Committee' turned down Mr N's appeal. It said the responses at Stage One were complete and there was "no additional historical data" that would lead it to conclude that either an error had occurred in the calculation of Mr N's pension in payment, or that the rules and procedures had been applied improperly by Equiniti.
 13. The Trustee is represented by Gowling WLG (UK) LLP (**Gowling WLG**).

Mr N's position

14. Mr N says:-
 - It was common practice for employees to move between pension schemes as they moved between companies within the Thales group.
 - Equiniti held incorrect data records for him. He joined the Decca Navigator Company Ltd on 3 December 1979 and the RD Scheme on 1 April 1985. He moved from a Decca legacy company to a Racal legacy company on 1 July 2003 and therefore either moved, or should have moved, from the RD Scheme to the RG Scheme³ at that time.
 - He does not contest the definition of BS. Rather, his issue is with the definitions of PS and FPS. The October 1989 'Your Guide to the Racal Group Staff Pension and Life Assurance Scheme' (the **Guide**) uses the word 'bonus' in the pensionable earnings section. So, how can it be omitted from the calculation of PS? The final pensionable earnings section of the same document states "including any other earnings which are deemed to be pensionable". A car allowance and medical benefit were due to be based on his grade and were included in his contract of employment as part of his salary. So, they are pensionable⁴.
 - "The information made available to myself and to other members of the scheme did not specify the authority who had the power to deem what other earnings were

³ Mr N has provided an RG Scheme pension consent form that he signed in March 2004 in relation to a January 2004 members Announcement. It says: "By signing the form below, I confirm that I have read and understand the information pack, including the Announcement and Q & As." Option 1 is signed and dated by Mr N.

⁴ Mr N has provided an extract from the Guide and ringed the sections: "**Pensionable Earnings:** are adjusted at 1st April each year and are your annual rate of basic pay at the date including any other earnings which are deemed pensionable, **PLUS** the average of the previous tax years' commission/bonus payment" and "Final Pensionable Earnings: are the greater of 1) the yearly average of your last 36 months' basic earnings including any other earnings which are deemed pensionable OR..."

or weren't pensionable. I had presumed until now that it was defined in law which I believe was the reasonable thing to do. I did not realise that the Principal Employer was the authority here. If a few extra words '... by the Principal Employer' had been included in the information distributed to members of the scheme, this particular issue would have been nipped in the bud. Indeed now I'm wondering under what conditions the Principal Employer would deem any other earnings pensionable and wonder why this statement is there at all. Regardless, and also with reference to the same attachment, there is a clear statement about bonus payments being included in Pensionable Earnings."

- Gowling WLG has attempted to argue that the applicable index was not specified, so the Trustee had the right to change from RPI to CPI. That is incorrect. The term RPI is hard-wired into the text of the 1991 RG Scheme Member Booklet⁵ and the June 2009 Scheme Member Booklet⁶.
- He has a whole file of pensions information and illustrations supplied by Thales over more than 25 years. None state different ERF apply to deferred members. Nor does the Scheme website. The last information he received on this was an illustration that used 4% per annum inverse compound. So, these are the ERF that should be used in the calculation of his pension.
- His requests for the supporting calculation sheets for his pension have been ignored.

15. Mr N has provided:-

- A statement of terms and conditions of employment with Thales Communications Ltd dated 3 June 2003 and a covering letter. The letter states that he would be additionally provided with a company car, his membership of the pension scheme remained unaffected by the transfer and his membership of the private healthcare scheme would continue or, if he was not a member, he was eligible to join.
- A November 2004 letter, notifying Mr N that his car allowance had been increased.
- Two extracts from the Racal 'Questions and Answers' document on equalisation - see Appendix 2.
- Two slides from a Racal presentation on equalisation – see Appendix 2.

16. Mr N has confirmed that:-

⁵ The Booklet states under 'Leaving Service': "if you leave service after 1st January 1991 and you are entitled to a "Preserved" Pension, then the whole of the pension in excess of the Guaranteed Minimum Pension will be increased by 5% a year compound (or the rise in the Retail Prices Index if less) from the date of leaving the Scheme until Normal Retirement Age."

⁶ The Booklet states under 'Revalued Pensionable Salary': "Your Pensionable Salary revalued each year by the rise in the Retail Prices Index up to a maximum of 8% compound per annum."

- He does not have any document that specifically states his car allowance, medical benefit or bonuses paid count as pensionable earnings.
- When employed he did not have a salary sacrifice agreement.
- He does not have a breakdown of the calculation of his employee pension contributions, but the amounts paid were based on his BS only.

The Trustee's position presented by Gowling WLG

17. Mr N had three periods of pension accrual. Namely:-

- From 1 April 1985 to 31 May 1992, he was a member of the RD Scheme.
- From 1 June 1992 to 30 April 2001, he was a member of the RG Scheme.
- From 1 May 2001 to 30 September 2007, he was again a member of the RD Scheme.

18. Mr N was a Specified Member of both schemes.

19. On the RD Scheme:-

- Rules 12(a) and (j) of the 1987 RD Scheme Deed permit Mr N to take his deferred pension before his normal retirement age. Part IV of the Schedule to the rules provides that the pension is the relevant fraction of his FPS. FPS, PS and BS are defined in Part I of the Schedule.
- Having regard to these provisions, none of bonus, car allowance or medical benefit payments is pensionable.
- Mr N's entitlement to the revaluation of his deferred benefit in excess of his Guaranteed Minimum Pension (**GMP**) is based on legislative provisions in The Pensions Act 1993 (the **Act**). Following a statement by the Minister of State for Pensions in July 2010, the index used was changed from the RPI to the CPI with the Orders made from 2011 onwards, so the schemes have provided CPI-based revaluation from then.
- Proviso (A) to rule 12(j) provides for the benefit taken early to be reduced by an amount determined by the scheme actuary as reasonable as provided for in rule 10(a). The ERF previously advised by the scheme actuary for deferred members continue to apply, have not been altered and therefore were correctly applied in the calculation of Mr N's pension.

20. On the RG Scheme:-

- The 1987 RG Scheme Deed is substantially the same as the 1987 RD Scheme Deed and the benefit entitlements at issue are in virtually identical terms to the RD Scheme.

- Rules 12(a) and (j) permit Mr N to take his deferred pension before his normal retirement age. Part IV of the Schedule to the rules provides that the pension is the relevant fraction of his FPS. FPS, current PS and BS are defined in Part I of the Schedule.
- Having regard to these provisions, none of bonuses, car allowance or medical benefit payments is pensionable. They were also not separately prescribed for the earnings figures provided to the Trustee by Mr N's employer.
- The position on the use of CPI and the ERF is the same as for the RD Scheme.

Adjudicator's Opinion

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

On RPI to CPI

- Under the Act deferred pension rights must be revalued in line with prices, capped at 5% for service to 5 April 2009, and at 2.5% for service thereafter. The minimum annual increases were provided for in an annual order. The applicable index for prices was not specified in the Act.
- Historically the index used was RPI, but in 2012 the Coalition Government switched to CPI as the measure of prices used for setting the statutory minimum increase each year. However, many schemes had RPI written in their rules and could not change this.
- Mr N highlighted that the 1991 RG Scheme Member Booklet and the 2009 Scheme Member Booklet both reference RPI as the applicable index. But the Booklets reflected the position at that time and did not override the scheme rules.
- Under the rules of the RD Scheme and the RG Scheme, a pension in deferment "is revalued to the extent required by the revaluation provisions of the Pension Schemes Act 1993"⁷. So, the revaluation provisions in the rules of both schemes relied on the requirements of pensions legislation. As no specific reference was made to RPI, RPI was not entrenched as the only reference index that should be used. Consequently, the change of reference index from RPI to CPI was consistent with both schemes' rules and Mr N's deferred pension was correctly revalued.

On the calculation of Mr N's FPS

- The Trustee said the records it inherited for Mr N showed that:

⁷ Part IV of the Schedule to the rules.

- from 1 April 1985 to 31 May 1992, he was a member of the RD Scheme;
 - from 1 June 1992 to 30 April 2001, he was a member of the RG Scheme; and
 - from 1 May 2001 to 30 September 2007, he was again a member of the RD Scheme.
- Mr N disputed his final period of pension employment. He said from 1 July 2003 to 30 September 2007 he was working for a legacy Racal company and so he was a member of the RG Scheme. To support this, Mr N had provided a copy of a pension consent form he signed in early March 2004 to continue membership of the RG Scheme. Mr N said his earnings included bonus, car allowance and medical benefit payments. So, these earnings should have been included in the calculation of his PS and FPS.
 - On behalf of the Trustee, Gowling WLG said under the RG Scheme none of these were specified as pensionable, and they were not separately prescribed as pensionable earnings in the figures provided to the Trustee by Mr N's employer. So, they did not fall to be taken into account in calculating Mr N's FPS.
 - The rules of the RG Scheme specify that PS and FPS includes fluctuating emoluments if prescribed by the Principal Employer as pensionable. So, the default position was that bonus, car allowance and medical benefit payments, which qualify as fluctuating emoluments, were not pensionable unless stated by the Principal Employer to be so.
 - The onus was on Mr N to submit evidence that showed, more likely than not, that his bonus, car allowance and medical benefit payments counted as pensionable earnings. Unfortunately, none of the documents that Mr N had provided specifically stated that. The extract from the Guide merely supported the RG Scheme's definitions of PS and FPS.
 - Additionally, Mr N was a Specified Member. The contribution rate for Specified Members of the RG Scheme was defined as a percentage of the year's current PS. Mr N said he paid member contributions based on his BS only. So, his BS was his current PS. The RG Scheme's definition of BS excludes bonuses, commission, overtime, and any other fluctuating emoluments.
 - The definitions of PS and FPS under the RD Scheme mirrored those under the RG Scheme but excluded fluctuating emoluments. So, as Mr N's bonus, car allowance and medical benefit payments did not count as pensionable earnings, it made no difference whether Mr N's last pensionable service was under the RD Scheme or the RG Scheme as the calculation of his FPS was the same.
 - Consequently, Mr N's FPS had been correctly calculated.

On ERF

- Mr N said he had a whole file of pensions information and illustrations supplied by Thales over more than 25 years. He said none stated different ERF applied to deferred members, nor did the Scheme's website.
- The Trustee said an ERF of 4% per year formerly applied to members who retired from active service only. A different basis had always applied for deferred members and current factors date from 2006.
- The rules of the RD Scheme and the RG Scheme each stipulate that deferred pension benefits taken early will be "reduced at a rate determined by the Actuary..."
- It was not uncommon for different ERF to apply to active and deferred members of an occupational pension scheme. Indeed, trustees can treat different classes of member differently. There was nothing in the rules of either the RD Scheme or the RG Scheme which said that the ERF for active and deferred members were or must be the same.
- Moreover, the Adjudicator had seen no evidence that the factors provided by the Actuary had been misapplied in the calculation of Mr N's pension. The documents that Mr N had submitted in support of his position related to immediate early retirement rather than early retirement from deferred status.

22. 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 which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr N.

Mr N's further comments

23. Mr N says:-

On his PS

- The definition of pensionable earnings in the Guide clearly states that bonus is included.
- Regardless of whether car allowance and medical benefit previously had or had not been deemed pensionable earnings, according to the information supplied to scheme members by the company it should have been
- He has all his payslips from day 1. He can provide a breakdown of all his pension, bonus, car allowance and medical benefit payments if necessary.
- He trusted the company at the time to deduct the correct contributions from his salary in accordance with the scheme rules.

On RPI to CPI

- His 2007 leaving service statement states that benefits in excess of GMP are linked to RPI.
- Scheme members have been misinformed. There is no statement in the Booklets indicating that the specified index (RPI) is subject to change or that it is based on current legislation.
- Members were not categorically informed of the change from RPI to CPI. The December 2010 Newsletter is ambiguous.
- Furthermore, two letters distributed by The Trustee to scheme members, respectively dated 13 February and 6 June 2017⁸, advised that it was not legally possible for the company to change from RPI to CPI.

On ERF

- The last information made available to scheme members on ERF was 4% per year. It was not specified that the rate did not apply to deferred members or that it only applied to retirement from active service.
- The Adjudicator's view is that the documents he has submitted in support of his position relate to immediate early retirement rather than early retirement from deferred status. But none explicitly state that.

General comment

- He has supplied evidence that Thales:-
 - Held incorrect personal data for him and failed to correct it.
 - Failed to inform scheme members about rule changes that adversely affected their benefits.
 - Supplied misinformation to scheme members that, it would appear, exaggerated members benefits.

Ombudsman's decision

On PS

24. Firstly, the Guide is just that a guide. It does not replace or override the rules which govern the RG Scheme. If there is a difference between the two then the rules prevail. Nonetheless, the Guide's statement on pensionable earnings is not inconsistent with the RG Scheme's definition of PS.

⁸ Both letters concern pension increases in the course of payment.

25. The default position under the rules of the RG Scheme, and the rules of the RD Scheme, is that bonus, car allowance and medical benefit payments, which qualify as fluctuating emoluments, are not deemed pensionable unless stated by the Principal Employer to be so.
26. The documents that Mr N has provided do not state that his bonus, car allowance and medical benefit payments count as pensionable earnings.
27. Mr N has confirmed that he paid member contributions based on his BS only. So, his PS and FPS is correctly based on his BS.

On RPI TO CPI

28. The Trustee's letters to scheme members dated 13 February and 6 June 2017 concern increases to pensions in payment and not the revaluation of preserved benefits in excess of GMP.
29. I agree with the Adjudicator, that the Booklets reflect the position at the time that RPI was the applicable index for the RG Scheme. As does Mr N's 2007 leaving service statement.
30. As the Adjudicator explained, in 2010, the then government changed the statutory index for revaluation from RPI to CPI. I do not consider that the December 2010 Newsletter's announcement of this is ambiguous. It clearly says that as a result of the government's change, while there will be some exceptions for certain legacy schemes, the revaluation of deferred pension benefits to normal retirement age is expected to follow CPI going forward.
31. Under the rules of the RD Scheme and the RG Scheme, a pension in deferment "is revalued to the extent required by the revaluation provisions of the Pension Schemes Act 1993". So, the revaluation provisions for both schemes are subject to the legislation. As no specific reference is made to RPI, the reference index is not restricted to RPI. Consequently, the change from RPI to CPI is consistent with both schemes' rules.

On ERF

32. The documents that Mr N has provided to support his position (see Appendix 2) clearly concern immediate early retirement rather than early retirement from deferred status. Hence there is no reference to the ERF for deferred members.
33. Under the rules of the RD Scheme and the RG Scheme deferred pension benefits taken early will be "reduced at a rate determined by the Actuary..."
34. The Trustee has confirmed that ERF of 4% per year formerly applied to members who retired from active service only and that a different basis has always applied for deferred members and current factors date from 2006.
35. As the Adjudicator explained, it is not uncommon for different ERF to apply to active and deferred members of an occupational pension scheme and there is nothing in the

rules of either scheme which stipulates that the ERF used for active and deferred members must be the same.

On Mr N's General Comments

36. Mr N says the Trustee held wrong personal data for him and failed to correct it on request.
37. The Trustee explained to Mr N, at Stage One IDRPs, that the records it held for him were inherited. Nonetheless, there is no dispute that Mr N's combined pensionable service, as a member of the RD Scheme and the RG Scheme, is from 1 August 1985 to 30 September 2007. Moreover, the calculation of his pension benefits under the two schemes is the same. So, Mr N's movement between the two schemes had no effect on his pension entitlement.
38. I can only consider the merits of Mr N's case; not how other members may have been affected. From the documents submitted, I have found no evidence that Mr N was misinformed. More importantly I have found no evidence that his retirement benefits were miscalculated.
39. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
2 March 2022

Appendix 1

Racal Decca Staff Pension and Life Assurance Scheme

Relevant extracts from the Deed of Variation dated 29 May 1987 (as amended)

40. As relevant, Rule 10, 'Retirement Before Normal Pension Date', provides:

"(a) With the consent of the Trustees and of an Employer an immediate pension may be granted in lieu of the benefit to which he would otherwise be entitled under Rule 12 to a Member who elects to retire from Service...prior to Normal Pensions Date but at or after his 50th birthday...on grounds other than incapacity...he will be entitled to receive as from the relevant Pension Payment Date a pension at a reduced rate determined by the Actuary as being equivalent on a reasonable basis to that part of the Short Service Benefit consisting of pension payable to him which has accrued up to such Pensions Payment Date or a pension of such higher rate as the Employer with the consent of the Trustees shall decide."

41. As relevant, Rule 12, Leaving Service, provides:

"(a) ...in the event of a Qualifying Member leaving Service before Normal Pension Date for any reason except death there shall be provided in respect of him Short Service Benefit of an amount or amounts as appropriate calculated in such manner as shall have been notified to him...

...

(j) Subject to the consent of the Trustees, a Member in respect of whom benefits have been provided under sub-rule (a)...of this Rule may, at any date prior to Normal Pension Date at which an immediate pension could have been granted under Rule 10 had he previously left service, elect that in lieu of such benefits reduced benefits shall become payable as if that date were his Normal Pension Date.

PROVIDED THAT

A. Such reduced benefits shall be calculated insofar as they consist of pension payable to the Member by a method similar to the method stipulated in sub-rule (a) of Rule 10..."

42. Part I of the Schedule to the Rules – 'Definitions':-

- Final Pensionable Salary:

"shall mean the greater of

- (i) the annual average of the Member's basic earnings and commission prescribed by the Principal Employer to be pensionable received during the thirty-six months ending on Normal Pension Date (or earlier date of death or leaving Service),

- (ii) the average of the three highest consecutive Current Pensionable Salary determinations in the ten years ending on Normal Pension Date (or earlier date of death or leaving Service).”
- Current Pensionable Salary:

“shall be determined on each Entry Date for the Plan Year commencing on that date and shall mean

 - (i) before 1st April 1986, Basic Salary, and
 - (ii) on and after 1st April 1986 the aggregate of (a) Basic Salary and (b) the average annual amount of commission payments (if any) received during the preceding three years.”
- Basic Salary:

“shall mean

 - (i) the basic annual salary or wages of a Member (excluding bonuses, commission, overtime and any other fluctuating emoluments) at the relevant date; ...”
- Qualifying Member:

“shall mean a Member who has completed not less than two years Qualifying Service.”
- Post 88 Member:

““Post 88 Member” shall mean a Member who became an Employee on or after 1 January 1988...”
- Pre 88 Equalised Member:

““Pre 88 Equalised Member” shall mean a Member who became an Employee before 1 January 1988 and was in Service on 1 April 1996...”
- Specified Member:

““Specified Member” shall mean a Member who at the date of his admission to the Plan or, if he has been admitted to membership more than once, the date of his last admission, was eligible for membership in accordance with the proviso to sub-rule (a) of Rule 2, and shall include any other Member who has been notified (whether under Rule 4 or otherwise) of the benefits payable to and in respect of him from the Plan and such benefits are described in Parts III or IV of the Schedule to the Rules.

43. As relevant, Part III of the Schedule to the Rules, provides

“...a Specified Member shall contribute in each Plan Year at the following rate of the Member’s Current Pensionable Salary...”

44. Part IV of the Schedule to the Rules – Leaving Service Benefits of Specified Members, provides:

“Rule 12(a) SHORT SERVICE BENEFIT

In accordance with Rule 12(a) a Qualifying Member who leaves Service before Normal Pension Date for any reason except death shall be provided with the following benefits.

Member’s pension at Normal Pension Date

On retirement at Normal Pension Date the Qualifying Member shall be paid a pension of an initial annual amount equal to:

- (1) In respect of Pensionable Service before 1 April 1986:

$$1.5\% \times N \times \text{FPS}$$

- (2) In respect of Pensionable Service on and after 1 April 1986:

$$\frac{N}{60} \times \text{FPS}$$

where:

- (a) “N” is the number of complete years of Pensionable Service with a proportionate amount for any odd complete months of Pensionable Service completed by the Member up to the date of leaving Pensionable Service; and

- (b) “FPS” is Final Pensionable Salary.

Notes:

...

2. In the case of a Post 88 Member, the pension calculated as above shall be revalued to the extent required by the revaluation provisions of the Pension Schemes Act 1993.
3. In the case of a Pre 88 Equalised Member, the pension calculated in accordance with this paragraph is subject to the following adjustments:

- (a) to the extent that the pension is attributable to the Member's period of Pensionable Service before 1 May 1990, it shall be appropriately adjusted (see Note 4) in the same way as it would have been if the Member's Normal Pension Date were deemed to be the Member's 65th birthday (if male) or 60th birthday (if female);
 - (b) to the extent that the pension is attributable to the Member's period of Pensionable Service between 1 May 1990 and 31 March 1996, it shall be appropriately adjusted (see Note 4) in the same way as it would have been if the Member's Normal Pension Date were deemed to be his or her 60th birthday; and
 - (c) to the extent that the pension is attributable to the Member's period of Pensionable Service on or after 31 March 1996, it shall be revalued to the extent required by the revaluation provisions of the Pensions Act 1993.
4. For the purpose of Note 3, "appropriately adjusted" means adjusted as follows by reference to the deemed Normal Pension Date referred to in the relevant paragraph of Note 3:
- (a) Revalued to the extent required by the revaluation provisions of the Pension Schemes Act 1993 in respect of any period between leaving Pensionable Service and the deemed Normal Pension Date;
 - (b) Increased by a late retirement factor determined by the Actuary as reasonable in respect of any period from the later of the Member's deemed Normal Pension Date and the date the Member left Pensionable Service to the Member's Pension Payment Date (where the Pension Payment Date is later than the deemed Normal Pension Date); and
 - (c) Reduced by an early retirement factor determined by the Actuary as reasonable in respect of any period from the Member's Pension Payment Date to the Member's deemed Normal Pension Date (where the Pension Payment Date is earlier than the deemed Normal Pension Date.)

Racal Group Scheme

Relevant extracts from the Deed of Variation dated 29 May 1987 (as amended)

45. As relevant, Rule 10, 'Retirement Before Normal Pension Date', provides:

- "(a) With the consent of the Trustees and of an Employer an immediate pension may be granted in lieu of the benefit to which he would otherwise be entitled under

Rule 12 to a Member who elects to retire from Service...prior to Normal Pensions Date but at or after his 50th birthday...on grounds other than incapacity...he will be entitled to receive as from the relevant Pension Payment Date a pension at a reduced rate determined by the Actuary as being equivalent on a reasonable basis to that part of the Short Service Benefit consisting of pension payable to him which has accrued up to such Pensions Payment Date or a pension of such higher rate as the Employer with the consent of the Trustees shall decide.”

46. As relevant, Rule 12, Leaving Service, provides:

“(a) ...in the event of a Qualifying Member leaving Service before Normal Pension Date for any reason except death there shall be provided in respect of him Short Service Benefit of an amount or amounts as appropriate calculated in such manner as shall have been notified to him...

...

(j) Subject to the consent of the Trustees, a Member in respect of whom benefits have been provided under sub-rule (a)...of this Rule may, at any date prior to Normal Pension Date at which an immediate pension could have been granted under Rule 10 had he previously left service, elect that in lieu of such benefits reduced benefits shall become payable as if that date were his Normal Pension Date.

PROVIDED THAT

B. Such reduced benefits shall be calculated insofar as they consist of pension payable to the Member by a method similar to the method stipulated in sub-rule (a) of Rule 10...”

47. Part 1 of the Schedule to the Rules – ‘Definitions’:-

- Final Pensionable Salary:

“shall mean the greater of

- (i) the annual average of the Member’s basic earnings, commission and any other fluctuating remuneration prescribed by the Principal Employer to be pensionable received during the thirty-six months ending on Normal Pension Date (or earlier date of death or leaving Service),
- (ii) the average of the three highest consecutive Current Pensionable Salary determinations in the ten years ending on Normal Pension Date (or earlier date of death or leaving Service).”

- Current Pensionable Salary:

“shall be determined on each Entry Date for the Plan Year commencing on that date and shall mean Basic Salary together with the average annual amount of

commission and other fluctuating payments prescribed by the Principal Employer to be pensionable received during the preceding three years, provided that if a Member joins the Plan other than on an Entry Date his Current Pensionable Salary shall be determined on the date of joining for the remainder of that Plan Year.

- Basic Salary:

“shall mean the basic annual salary or wages of a Member (excluding bonuses, commission, overtime and any other fluctuating emoluments) at the relevant date;..”

- Qualifying Member:

“shall mean a Member who has completed not less than two years Qualifying Service.”

- Post 88 Member:

““Post 88 Member” shall mean a Member who became an Employee on or after 1 January 1988...”

- Pre 88 Equalised Member:

““Pre 88 Equalised Member” shall mean a Member who became an Employee before 1 January 1988 and was in Service on 1 April 1996...”

- Specified Member:

““Specified Member” shall mean a Member who at the date of his admission to the Plan or, if he has been admitted to membership more than once, the date of his last admission, was eligible for membership in accordance with the proviso to sub-rule (a) of Rule 2, and shall include any other Member who has been notified (whether under Rule 4 or otherwise) of the benefits payable to and in respect of him from the Plan and such benefits are described in Parts III or IV of the Schedule to the Rules.

48. As relevant, Part III of the Schedule to the Rules, provides

“...a Specified Member shall contribute in each Plan Year at the following rate of the Member’s Current Pensionable Salary...”

49. Part IV of the Schedule to the Rules – Leaving Service Benefits of Specified Members, provides:

“Rule 12(a) SHORT SERVICE BENEFIT

In accordance with Rule 12(a) a Qualifying Member who leaves Service before Normal Pension Date for any reason except death shall be provided with the following benefits.

Member's pension at Normal Pension Date

On retirement at Normal Pension Date the Qualifying Member shall be paid a pension of an initial annual amount equal to:

$$\frac{N}{60} \times \text{FPS}$$

where:

- (a) "N" is the number of complete years of Pensionable Service during which the member paid contributions...with a proportionate amount for any odd complete months of such Pensionable Service completed by the Member up to the date of leaving Pensionable Service; and
- (b) "FPS" is Final Pensionable Salary.

...

Notes:

1. In the case of a Post 88 Member, the pension calculated as above shall be revalued to the extent required by the revaluation provisions of the Pension Schemes Act 1993.
2. In the case of a Pre 88 Equalised Member, the pension calculated in accordance with this paragraph is subject to the following adjustments:
 - (a) to the extent that the pension is attributable to the Member's period of Pensionable Service before 1 May 1990, it shall be appropriately adjusted (see Note 3) in the same way as it would have been if the Member's Normal Pension Date were deemed to be the Member's 65th birthday (if male) or 60th birthday (if female);
 - (b) to the extent that the pension is attributable to the Member's period of Pensionable Service between 1 May 1990 and 31 March 1996, it shall be appropriately adjusted (see Note 3) in the same way as it would have been if the Member's Normal Pension Date were deemed to be his or her 60th birthday; and
 - (c) to the extent that the pension is attributable to the Member's period of Pensionable Service on or after 31 March 1996, it shall be revalued to the extent required by the revaluation provisions of the Pensions Act 1993.

3. For the purpose of Note 2, “appropriately adjusted” means adjusted as follows by reference to the deemed Normal Pension Date referred to in the relevant paragraph of Note 2:
 - (a) revalued to the extent required by the revaluation provisions of the Pension Schemes Act 1993 in respect of any period between leaving Pensionable Service and the deemed Normal Pension Date;
 - (b) increased by a late retirement factor determined by the Actuary as reasonable in respect of any period from the later of the Member’s deemed Normal Pension Date and the date the Member left Pensionable Service to the Member’s Pension Payment Date (where the Pension Payment Date is later than the deemed Normal Pension Date); and
 - (c) reduced by an early retirement factor determined by the Actuary as reasonable in respect of any period from the Member’s Pension Payment Date to the Member’s deemed Normal Pension Date (where the Pension Payment Date is earlier than the deemed Normal Pension Date.”

Appendix 2

Racal 'Questions and Answers' document on equalisation

50. In the first extract, Mr N has ringed part of Q2 which says "(ERF) is nominally 4% for each year early". In full Q2 asks:

"The present Early Retirement Factor (ERF) is nominally 4% for each year early. Will this change at any time in the future? If so (a) under what circumstances? and (b) to what extent?"

A2 explains that ERFs are:-

- Decided by the Trustee, subject to advice from the actuary.
- Presently calculated on a cost neutral basis.
- Different for a salary linked pension compared to a fixed pension (e.g. from a predecessor scheme, insured scheme or transfer-in).

An example explains why. In case a) a member requests immediate early retirement after 20 years' service and in case b) the early payment of a fixed pension. It says for a) had the member stayed through to normal retirement age (**NRA**) their 20/60ths FPS would have increased with salary and the scheme has been funded to achieve this. So, the ERF applied includes allowance for these future salary increases. For b) the entitlement is fixed to NRA and does not increase with salary, so the ERF does not include a salary increase allowance. Consequently, factors used for b) are different to those for a) to maintain cost neutrality, approximately 11.5% per annum reduction as opposed to 4% per annum.

- Not guaranteed and could change.

51. The second extract is from the 'Leaving Service' section. Q20 asks: "How does choice of NRA affect the transfer value I receive If I leave service?"

A20 explains it depends on the member's age at leaving, the balance between pre and post April 1996 service and prevailing interest rates at the date the transfer value is paid. It goes onto to say while an NRA of 60 would produce the highest transfer value and an NRA of 65 the lowest, it would not expect the value of the leaving service benefit should be a major factor in a member deciding their NRA and explains why.

Q21 asks: If I select NRA = 65, leave the Company at some date in the future, can I then come back at age 60 and ask for a deferred pension to be paid early?

A21 explains a) that early retirement on or after age 50 is subject to Trustee consent, albeit it is not usually withheld where cost neutral early retirement factors are applied; and b) an early retirement pension at age 60, having selected an NRA of 65 would be lower than if a member had elected an NRA of 60.

Racal presentation on equalisation

52. The first slide gives a calculated example of a male selecting an NRA of 65 and then retiring early at age 60. Mr N has highlighted that an early retirement factor of 17.6% is applied.
53. The second slide is a table showing that an ERF reduces a pension for the fact it is paid longer. The example is a pension of £10,000 payable at NRA 65. Mr N as highlighted the 'Reduction' column, nil at age 65, 17.6% at age 60 and 32.1% at age 55.