

Ombudsman's Determination

Applicant	Mr S
Scheme	Sears Group Pension Scheme (the Scheme)
Respondent	Legal & General Assurance Society (L&G)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by L&G.

Complaint summary

2. Mr S complains that:-
 - His pension has not been calculated correctly as it does not include the Guaranteed Minimum Pension (**GMP**) at his date of leaving. He would like L&G to pay him the GMP of £2,500.68 per annum (**p.a.**) in addition to his pension at age 65.
 - He is unhappy that the early retirement factor (**ERF**) was changed from 30% to 46.7%. He says he was never informed by L&G of the change.

Background information, including submissions from the parties

3. Mr S was a Director of Sears Limited and a member of the Scheme until October 1996. The Scheme was contracted-out of the State Earnings Related Pension Scheme (**SERPS**).
4. After Mr S left employment, in December 1996, the Scheme Trustees (the **Trustees**) sent Mr S a statement of his deferred pension entitlement (the **1996 Statement**). This showed:

"Your Scheme pension on leaving is made up of:-

(a) [GMP] of	£ 2,500.68 pa
(b) The pension in excess of the GMP, namely	<u>£13,848.42 pa.</u>
	Total Pension <u>£16,349.10 pa</u>

The pension at (b) will increase each April by the lesser of 5% p.a. or the

rise in the Retail Price Index. Assuming the maximum 5% p.a. uplift applies,
your pension at [NRD] is estimated to be: £31,889.80 pa

(If, however, inflation increases at less than 5% p.a. then a lower rate of
increase will be applied to your pension).

The GMP at (a) will increase by 7% for each complete tax year between
your leaving and attaining State Pension Date. This revaluation will be
added to your Sears Pension at State Pension Date and will increase
it by £ 7,177.04 pa

THE GMP FIGURES ARE SUBJECT TO CONFIRMATION BY THE
DEPARTMENT FOR SOCIAL SECURITY.”

5. In 2001 the Scheme was wound-up, and members were transferred to a buy-out plan with L&G.
6. In 2002, Mr S took early retirement at age 50. A pension of £11,393.80 p.a. was put into payment from July 2002. Subsequently, Mr S enquired about his GMP.
7. On 12 August 2002, L&G wrote to Mr S. It said that it was not able to confirm that his pension would be increased at age 65 by the GMP revaluations, as the Trustees were yet to determine if this was correct. A Trustees meeting was taking place that week and hopefully the point would be clarified.
8. On 16 October 2017, after Mr S reached his state pension age (**SPA**) of 65, L&G wrote to him regarding his pension. It said his pension of £17,552.04 p.a. had been increased by a “Scheme Top-Up” of £7,856.30 p.a. It said this was in respect of the revaluations of his GMP. The annual pension was split as follows:-
 - Pre 88 GMP £ 5,479.64.
 - Post 88 GMP £ 4,877.32.
 - Excess £15,051.46.
 - Total pension (before tax) £25,408.34.
9. In January 2018, Mr S queried the Top-up of his pension. L&G said an explanatory letter would be issued. Having not received a letter, Mr S chased the matter in early February 2018 and was told he would get a call back. Not receiving one, on 16 February 2018, Mr S raised a formal complaint with L&G.
10. On 23 February 2018, L&G replied to Mr S. In summary L&G said:-
 - It apologised to Mr S for the delay in responding to his complaint and for the delay in the payment of his pension from age 65 - for which it offered Mr S £150.

- Mr S' pension of £11,393.80 p.a. had been put into payment from 27 July 2002. This had increased in line with the Retail Prices Index (**RPI**) capped at 5% p.a. to £17,552.04 p.a. at age 65.
 - The retirement quotation confirmed his GMP at age 65 was £10,356.98 p.a. Therefore, the revaluations to his GMP equalled £7,856.80 (£10,356.98. minus his GMP at date of leaving of £2,500.68).
 - His total pension at date of leaving service was £17,102.11 p.a., which should tie up with the 1996 Statement provided by the previous administrator when he left the Scheme.
 - As Mr S retired early, his pension at age 60 was estimated based on the calculations in the contract agreed and signed by the Trustees in October 2008 (**the Contract**¹). This projected pension was reduced by an ERF reflecting the 10 years between age 50 and 60. This resulted in the full pre-tax free cash commutation pension offered at retirement date in option 1 of the quotation of £11,393.50 p.a., which he had selected.
 - So, the GMP at his date of leaving was included in the retirement pension calculation and therefore would not be added again at age 65.
 - The Top-up defined in the Contract, referred only to the revaluations to be awarded at age 65, not the full GMP itself, since the GMP at date of leaving was included in the retirement calculation.
11. In June 2018, Mr S further enquired regarding his GMP as he disagreed with L&G's response. He provided his own calculations.
12. L&G replied to Mr S with its own breakdown of the calculation of his pension:

Pension Element	Value at date of leaving Scheme (£)	Revaluation to date of retirement	Value at date of retirement (£)	Value with ERF applied (£)
Pre 88 GMP	1,565.72	None	1,565.72	731.20
Post 88 GMP	934.96	None	934.96	436.62
Excess Pension (including additional revaluing pension)	14,601.43	In line with the change in the RPI	21,896.53	10,225.68
Total	17,102.11		24,397.20	11.393.50

¹ Relevant sections from the Contract are set out in the Appendix.

13. L&G in summary said:-

- Mr S' total pension at date of leaving was greater than that shown on the 1996 Statement because the figure it had used included an additional amount of revaluing excess pension.
- The GMP of £2,500.68 p.a. was included in the pension payable to Mr S at his date of retirement. Mr S was correct that the GMP was not payable until age 65, and it was for this reason that the pension was treated as non-revaluing up to his date of retirement.
- Once in payment, the GMP was simply treated as Excess Pension and benefited from increases in payment in line in RPI to a maximum of 5%.
- Once Mr S reached his NRD his pension in payment was topped up by an amount equal to the revaluations due to the GMP held at his date of leaving. This meant that his pension was increased by £7,856.30 p.a., which agreed with the figures he had quoted in his email. The GMP in payment was then split from the remaining pension and would receive statutory increases in payment from age 65.

14. In July 2018, Mr S again contacted L&G regarding this matter. He said that:-

- He was seeking a payment of GMP plus interest accrued since 2002 of £51,400.
- His understanding was that the GMP shown on the 1996 Statement (£2,500.68 p.a.) was payable at age 60.
- When the Scheme transferred to L&G, all "Sears pensioners" were assured that the terms and conditions of their pension would remain unchanged.
- His understanding was that the GMP was separate from his pension because it was accruing interest of 7% p.a. to be added at SPA.
- His pension was agreed with L&G in 2002. This pre-dated the signing of the Contract in October 2008. So, L&G's confirmation that the GMP was included in his pension could not be correct.

15. In October 2018, L&G provided Mr S with the calculation of his pre commutation pension at age 50 and Top-up at age 60.

16. From December 2018 until July 2019, there was a further exchange of correspondence between Mr S and L&G regarding his GMP. Mr S referred to the rules that were in place before he left the Scheme and said he believed that his GMP should have been added to his pension at age 60. He said L&G had told him during a telephone conversation in 2002 that the GMP was not included in his pension.

17. In response L&G said to Mr S:-

- It had provided information that confirmed the Trustees had signed off Mr S' pension at his date of leaving service to be £17,102.11 p.a.
- As it insured the pension sometime after Mr S left service, while the Scheme was in the process of winding-up, pre-determined amounts of pension were secured as at his date of leaving, signed off by the Scheme Trustees.
- The pension signed off by the Trustees matched with the 1996 Statement. The "Additional Revaluing Pension at [date of leaving service]" was secured sometime after his date of leaving.
- The Top-up added at age 65 by L&G was more generous than that stated in the 1996 Statement. The 1996 Statement suggested that it was the revaluation to be added at age 65, rather than the full GMP itself, having already been included in the retirement calculation.
- The Contract was signed in October 2008 and was not in place at the time Mr S retired. However, it was provided with the draft agreement to be used until the final version could be agreed.
- Mr S' pension was calculated in line with the draft agreement and matched the final version.

Mr S' position

18. Mr S submits:-

- The GMP at his date of leaving should be paid in addition to his pension at age 65.
- The rules of the Scheme at the time he left promised he would get his GMP at age 65. This was confirmed by his employer before he left employment.
- He is not happy that L&G has now told him that his ERF was changed from 30% to 46.7%, which would have reduced his pension.

L&G's position

19. L&G submits:-

- The ERF was applied to Mr S' pension prior to L&G's take-over.
- The pension calculation was carried out when Mr S retired in 2002. The ERF used would have been on a cost neutral basis.
- The ERF was calculated by the Scheme's Actuary and subject to weekly reviews.
- The retirement quotation it issued was valid for three months as the ERF will change over that period of time.

- The ERF is designed to ensure the cost to the Scheme of providing Mr S' pension does not change regardless of whether he should choose to retire earlier or later.
- The Trustees did not secure any fixed ERF as part of the buy-out.
- It was not provided with any Scheme booklets or literature from the time Mr S joined the Scheme. There is little evidence it can provide prior to its involvement with the Scheme.

Adjudicator's Opinion

20. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by L&G. The Adjudicator's findings are summarised below:-

- Until 1988, members could only contract-out if they were members of a defined occupational benefit pension scheme. The arrangement under SERPS was that an employer and employee were allowed to pay a reduced rate of National Insurance contributions and in return for this, the pension scheme had to promise to at least match the SERPS pension the employee would have built up if they had remained contracted-in. This 'promise' is known as the GMP.
- As its name suggests the GMP is a guaranteed minimum pension. It is not a separate additional pension to a member's scheme pension as Mr S has argued. If the GMP exceeds a member's pension at their SPA, then the scheme is required to provide the difference.
- L&G had a responsibility to apply the terms of the Contract at inception. Even though the Contract was finalised in October 2008, the draft agreement was in place from the date when L&G took over responsibility for the Scheme. The Adjudicator noted that the terms of the draft agreement remained the same until its official finalisation.
- Mr S has not provided the Scheme rules that were in place at the time of his leaving pensionable service. Nonetheless, these no longer applied when L&G took over responsibility for the Scheme.
- L&G has provided Mr S with a breakdown of the calculation of his pension. The total pension at his date of leaving was £17,102.11 p.a., which included the GMP. The GMP was treated as a notional part of the early retirement calculation. The GMP did not become an active part of his pension until age 65.
- When Mr S reached age 65, L&G was required to apply the statutory revaluation that was due on the GMP. Mr S' GMP at date of leaving was £2,500.68 and with statutory revaluations had grown to £10,356.98 by age 65. So, L&G was required to add £7,856.30 p.a. (that is £10,356.98 minus the original GMP of £2500.68) to his existing pension.

- The revised pension at age 65 was £25,408.34 p.a. The Adjudicator was satisfied that L&G's explanation of how it calculated Mr S' pension was in line with the Contract and the relevant pension legislation. So, Mr S was not eligible to receive the GMP at his date of leaving in addition to his pension of £25,408.34 p.a.
- Mr S asserts that his ERF changed while he had been receiving his pension. The Adjudicator did not agree. The ERF was applied at the time that Mr S claimed his early retirement pension. L&G has confirmed that the Contract did not secure any fixed ERF, so L&G applied its standard approach which was to apply an ERF on a cost neutral basis. The Adjudicator did not consider that to be unreasonable. Consequently, it was the Adjudicator's opinion that this complaint should not be upheld.

21. Mr S did not accept the Adjudicator's opinion and in response said in summary:-

- He reiterated original points regarding his entitlement to GMP. He believes his own calculation proves that L&G's calculation is wrong and that he should be paid £2,500 GMP in addition to his current pension.
- He asserts ERF changed while he had been receiving his pension.
- He is claiming financial loss of £51,400 based on loss of GMP since he claimed his pension in 2002.
- If the above figure cannot be paid, he would like £2,500 GMP to be payable from age 65 as indicated in the 1996 Statement.
- He still wants an explanation of L&G's pension calculations and the reason for a change in ERF.
- He believes the employer agreed to pay £2,500 GMP in the beginning and then later this was taken away from him.
- He would not have accepted his pension in 2002 had he known his pension would have been reduced because of fluctuating ERF.
- He disagrees with the Adjudicator that the way ERF was applied, was not unreasonable.

22. As Mr S did not agree with the Adjudicator's Opinion, his complaint was passed to me to consider. I have considered Mr S' further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr S.

Ombudsman's decision

23. The GMP is payable from age 65 which was Mr S' SPA. Mr S has not suffered a financial loss because the GMP was not an additional separate payment he was due to receive at his SPA. It was the value of the pension L&G would have had to pay

him, had his benefits in the Scheme not been sufficient to pay him the GMP or any additional pension.

24. If a member's GMP exceeds their Scheme pension at age 65, then the Scheme is required to provide the difference. This is reflected in the Contract which L&G is obliged to follow. When Mr S reached age 65 his pension exceeded the GMP, consequently the terms of the Contract were satisfied in that he was paid the difference.
25. Mr S has raised concerns about the calculations provided by L&G. Mr S' own calculation being different from L&G's calculations is not sufficient to determine that L&G's calculations are incorrect. If Mr S is dissatisfied with L&G's calculations, he may wish to appoint an actuary to check them.
26. Regarding a change in the ERF, the ERF was applied at the time that Mr S claimed his early retirement pension in 2002. No further ERF would have been applied when Mr S started receiving his pension as the value of his pension, once he started claiming it, would have been fixed, except for the appropriate revaluations.
27. Furthermore, the Contract did not secure any fixed ERF, so L&G applied its standard approach which was to apply an ERF on a cost neutral basis. I do not find this approach to be unreasonable.
28. I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
5 May 2022

Appendix

29. The Contract states:

“The amount of deferred annuity per annum payable from NRD, for male deferred annuitants with a normal retirement age of 60 or 63, is the sum of:

- (i) the amount as listed under the heading “Total Pension at DOLS”;
- (ii) the greater of;
 - a) revaluations on the amounts as listed under the headings “Pre 97 Excess at DOLS”, with revaluations applying for each complete year from DOLS to NRD in line with Occupational pensions (Revaluation) Orders;
or
 - b) scheme revaluations on the amounts listed under the headings “Pre ’97 Excess at DOLS”, “Post ’97 Excess at DOLS” and “Additional Revaluing Pension at DOLS.”

30. The Contract defined the Top-Up calculation as follows:

“For those male deferred annuitants with a normal retirement age of 60 or 63 there will be an additional deferred annuity payable from GPD equal to the revaluations on the sum of the amounts “Pre ’88 GMP at DOLS” and “Post ’88 GMP at DOLS”, with revaluations applying for each complete tax year from DOLS to GPD at the appropriate rate...”