

Ombudsman's Determination

Applicant	Mr R
Scheme	British Transport Police Force Superannuation Fund (the Fund)
Respondent	Railpen Limited (Railpen)

Outcome

1. I do not uphold Mr R's complaint and no further action is required by Railpen.

Complaint summary

2. Mr R has complained that Railpen, the Fund's administrator, provided insufficient information at the time of his retirement, causing him to select an inappropriate option, resulting in financial detriment.

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. Section 2 of the Pensions (Increase) Act 1971 (**the 1971 Act**) states:

“(1) Subject to the provisions of this section, the Minister for the Civil Service, as soon as may be after 31st March in the year 1973 and every second year thereafter, shall review the rates of official pensions against any rise there may have been in the cost of living during the review period, that is to say, the two years ending with that date; and if it is found that in the review period the cost of living has risen by four per cent, or more, then the Minister shall by order provide that the annual rate of an official pension may, if a qualifying condition is satisfied, be increased in accordance with the order in respect of any period beginning on or after 1st September next following the review period.”
5. The Fund is governed by the Trust Deed and Rules of the British Transport Police Force Superannuation Fund dated 30 December 1974 (**the Fund Rules**). Extracts of Rule 20 (**Fund Rule 20**) and Rule 27 (**Fund Rule 27**) from the Fund Rules are set out in the Appendix.

6. On 4 October 1976, Mr R joined the Fund, having commenced employment with British Transport Police (**the Employer**).
7. Mr R has said that around 1998, he attended a seminar (**the seminar**) hosted by Railpen, during which a booklet (**the seminar booklet**) was handed out to members as a guide on the matters for discussion.
8. The information provided in the seminar booklet included several calculations to illustrate the way in which retirement benefits could be established and various retirement options. During the seminar, Railpen also gave members the opportunity to raise any questions they may have had.
9. On 10 January 2007, Railpen sent Mr R pension claim forms with two retirement quotations for benefits from 2 April 2007. The first quotation (**the First 2007 Quotation**) set out options including:-

A maximum pension commencement lump sum (**PCLS**) of £166,898.67 plus a residual pension of £25,034.80 a year or

Flexible pension options

A PCLS of £166,898.67 plus a yearly pension to the State Pension Age (the **SPA**) of £27,472.83 at which point the pension would decrease to £20,901.33 per year (**the decreasing flexible option**).

or

A PCLS of £166,898.67 plus a yearly pension to the SPA of £22,596.77 at which point the pension increases to of £29,168.27 per year (**the increasing flexible option**).
10. Guidance notes provided in the First 2007 Quotation (**the 2007 Guidance**) included that:-

“The pension from the [Fund] will be paid in addition to any UK [State Pension] entitlement and will increase each year in line with price inflation. After [the SPA] part of this increase may be paid with your State pension. From [the SPA] it may be necessary to increase the [Fund] pension to meet the minimum required.”
11. The second quotation (**the Second 2007 Quotation**) set out benefits based on a PCLS of £100,000 plus residual pension options similar to those set out in the First 2007 Quotation, and the 2007 Guidance was also provided.
12. On 26 January 2007, Mr R elected to take the decreasing flexible option quoted in the First 2007 Quotation, having signed a declaration in the related pension claim form confirming ‘I understand the options available to me and apply for my benefits as shown on this form...’.
13. Mr R did not complete Section D of the pension claim form and claim free independent financial advice from a company called Origen, which had been selected

by the Fund's trustee, The Railways Pension Trustee Company Limited (**the Trustee**), to support members with their retirement options.

14. On 20 March 2007, Railpen wrote to Mr R confirming his retirement claim had been processed for payment with effect from 1 April 2007. Railpen said he would receive a PCLS of £167,064.85 plus a yearly pension (**the Pre-SPA Pension**) of £27,497.70 paid in four-weekly instalments of £2,108.45 up to the SPA. A yearly pension of £20,926.26 paid in four-weekly instalments of £1,604.57 was due from the SPA (**the Post-SPA Pension**).
15. Attached to the letter was a copy of the Fund's 2005 member guide 'A Guide to Your Pension Payment' (**the 2005 Member Guide**) which stated:-

"Level pension

This may be known to you as a 'flexible' pension.

When you retired you chose to take a level pension. This meant that you chose to have a higher railway pension before you reached [the SPA] and a smaller railway pension after.

[...]

The railway pension you will now receive has been adjusted because of the level pension. It includes all increases paid since you retired."

16. On 28 April 2008, Railpen wrote to Mr R (**the 2008 Increase Letter**) confirming he would receive a benefits increase from 2 May 2008. From that date the Pre-SPA Pension would increase to £2,190.68 and the Post-SPA Pension would be £1,667.15 per four weeks from 1 June 2018.
17. On 1 May 2008, Mr R wrote to Railpen and said:-
 - Based on the figures quoted in the 2008 Increase Letter, there was disparity between the level of increase applied to the Pre-SPA Pension when compared to that added to the Post-SPA Pension.
 - There had been a difference between the yearly Pre-SPA Pension and the yearly Post-SPA Pension (**the Post-SPA Differential**) of only £6,571.44 at retirement. Based on the 2008 Increase Letter, the Post-SPA Differential had increased to £6,805.89. So, his overall retirement benefits from the SPA would decrease.
 - He had not previously been told that different levels of annual increases would be applied to the Pre-SPA Pension and the Post-SPA Pension. Having elected to take the decreasing flexible option at retirement, he had expected annual increases to be applied equally to the whole of his pension.
18. On 19 May 2008, Railpen wrote to Mr R and said that the State Pension would increase in line with inflation in April each year at "approximately" the same rate as the difference between the Pre-SPA Pension and the Post-SPA Pension changed.

19. On 29 April 2012, Mr R wrote to Railpen and said:-

- He had previously received no documentation confirming that there would be a deduction from his State Pension due to being contracted-out of the State Pension while he was a member of the Fund.
- The letter dated 19 May 2008 had confirmed that the State Pension would increase in line with inflation in April each year at “approximately” the same rate as the difference between the Pre-SPA Pension and the Post-SPA Pension changed.
- He had calculated that at the SPA his total pension from the Fund would reduce to approximately £140 per week. However, increases in the State Pension would not offset that reduction.
- He would not have elected to take the flexible decreasing pension option, had he been aware that he would not subsequently receive level overall retirement benefits after the SPA.

20. On 29 May 2012, Railpen wrote to Mr R and said the retirement quotations he had received in 2007 showed the retirement options that were available. His pension had been in payment for several years, so it would not be possible to change his retirement option. With regard to Mr R’s pension claim form Railpen also said:-

“As we are a pensions administrator we are unable to give financial advice to members however we do offer the services of Origen for independent financial advice and this was available to you, however you did not indicate that you would like to be contacted by Origen on your form.”

20. On 14 June 2012, Mr R wrote to Railpen complaining that it had not addressed the points raised in his letter dated 29 April 2012.

21. On 20 July 2012, Railpen wrote to Mr R and said:-

- The Pre-SPA Pension and the Post-SPA Pension were both initially calculated at the time of his retirement. Both portions of his benefits were subsequently increased according to inflation in April each year. No further payment adjustments would be made at the SPA.
- He had been contracted-out during his membership of the Fund, which meant that he paid reduced National Insurance Contributions in return for a Guaranteed Minimum Pension (**GMP**) from the Fund at the State Pension age. The GMP needed to be at least equal to the corresponding deduction from the State Pension.
- At the time of his retirement, it was not possible to project the value of his benefits from the Fund or the State Pension to the SPA. Both of these benefits increased in line with inflation and the rate of those increases were not known in advance.

Consequently, the value of his benefits from the Fund and the State Pension in 2018 was unclear at the time of his retirement.

- A decreasing flexible pension was intended to achieve approximately level income at the SPA by considering a member's reduced benefits from the Fund added to their State Pension.

22. On 14 June 2018, Mr R telephoned Railpen and reiterated his complaints of 29 April 2012 and 14 June 2012.

23. On 20 June 2018, Railpen wrote to Mr R and said:-

- He had completed and signed a pension claim form in January 2007 confirming "Yes, I would like to take the maximum pension up to State Pension with a reduced pension after State Pension age".
- The 2007 Quotation had confirmed that the decreasing flexible pension option he took would result in a pension reduction from the Fund at State Pension age, rather than level total benefits from retirement.
- His benefits including the Post-SPA Pension, had increased in April each year in accordance with the 1971 Act.

24. On 27 June 2018, Mr R wrote to Railpen querying its approach to providing a "level pension" and complained that:-

- From age 65 his overall benefits from the Fund and the State Pension had reduced by about £21 per week. During the 30 plus years since joining the Fund, he had received no communications suggesting that the State Pension would not offset the pension reduction from the Fund at age 65.
- If the reduction from the Fund remained only £6,571.44 at age 65, he would receive an overall benefits increase because the State Pension was £7,180 per year. However, he would not even receive level overall retirement income based on the letter dated 20 July 2012.

25. On 25 July 2018, Railpen wrote to Mr R and said:-

- The State Pension at age 65 could be different to that at a member's retirement date. Consequently, some members could benefit from a higher State Pension, while others like him could experience reduced total income.
- The Post-SPA Pension had initially been calculated at his retirement date in accordance with the Fund Rules and was subsequently held until the SPA. Since his retirement, yearly inflation increases had been applied to the Post-SPA Pension at the same rate as the Pre-SPA Pension. So, the Post-SPA Differential automatically increased.

- There was no guarantee that a member would either benefit or suffer financially by electing to take the flexible pension option due to differing circumstances. So, independent financial advice was recommended for a member when selecting their retirement option. Railpen was not qualified to provide financial advice including any “labelling” or risk warning on the available retirement options.
- His GMP, as confirmed by the Department of Work & Pensions, had been compared with the benefits from the Fund on 20 May 2018. This established that the benefits from the Fund at the SPA were higher than those quoted by the DWP. So, no pension uplift from the Fund was required to comply with the GMP.

26. On 22 November 2018, Mr R complained under stage one of the Fund’s Internal Dispute Resolution Procedure (**IDRP**) and said:-

- The retirement quotations provided in 2007 had suggested that the projected benefits at the SPA had been a “forecast”, as it was not possible to take an option that reduced the pension below a minimum level. No other information was provided regarding the benefits payable from the SPA. So, he elected to take the decreasing flexible pension option with the maximum PCLS.
- Even after applying inflation increases each year, the difference between the total benefits from the Fund and the State Pension would continuously diverge and had already increased above the initial Post-SPA differential of £6,571.44 per year. Railpen’s letter dated 19 May 2008 had suggested that the annual increases on the State Pension would offset any difference between the Pre-SPA Pension and the Post-SPA Pension.
- Railpen’s responses to his concerns from 2008 regarding a possible income reduction at the SPA caused him to consider that those concerns had not been understood. He suffered an overall income reduction after reaching the SPA In 2018, since increases on the State Pension did not offset the reduction in benefits from the Fund. Had he been aware of this outcome at retirement, he would not have elected to take the decreasing flexible pension option.
- The letter dated 25 July 2018 had stated that some members would benefit from a higher State Pension, while others like him would suffer an overall reduction in income at age 65. However, his State Pension was proportionately reduced at the time of his retirement due to having been contracted-out. This information should have been considered in the calculation of the Post-SPA Pension and not caused him an overall income reduction at age 65.
- The decreasing flexible option was provided for under Fund Rule 20, which did not support the way in which Railpen had calculated his benefits. It was also unclear how the initial Post-SPA Differential had been calculated. Paragraph (4) of Fund Rule 20 provided that the pension reduction at retirement could not be greater than 1.5 times the value of the State Pension and it was ‘not subject to inflation increases.’

27. On 11 December 2018, Railpen wrote to Mr R in response having considered the matter as a formal complaint rather than at stage one of the IDRP and said:-

- His benefits had been paid correctly in accordance with the Fund Rules as set out in figures provided in the letter. These figures showed the difference between the Pre-SPA Pension and the Post-SPA Pension when his retirement benefits became payable was £6,571.44. That sum was 1.5 times the value of the State Pension which was £4,381 at the time.
- Paragraph (4) of Fund Rule 20 had also been satisfied since the reduction at age 65 was not in excess of the level permitted. The Post-SPA Pension was considered a pension in payment even though the benefits were not payable until age 65. So, that part of the benefits was subject to pension increases in accordance with the 1971 Act.

28. On 19 December 2018, Mr R wrote to Railpen complaining that his complaint had not been considered under the IDRP; his letter dated 22 November 2018 should have been taken as his application under that process. In summary he would like to add that:-

- Railpen had determined that the Post-SPA Pension should be subject to inflation increases from his retirement date based on the 1971 Act. However, that legislation required inflation increases to be applied to a pension in payment and the Post-SPA Pension was not payable until he reached the SPA.
- Fund Rule 20 required calculation of the pension reduction at the SPA to rely on knowing the value of the normal pension from the Fund at State Pension age, which would only become clear at the SPA. So, the final value of the Post-SPA pension could only be established in 2018 rather than at retirement.
- Railpen had suggested that he could have taken financial advice before electing to take the flexible pension option. But Railpen was, in any event, required to provide detailed information at the time, especially with regard to the effects of applying annual inflation increases to the Post-SPA Pension.

29. On 14 February 2019, Railpen wrote to Mr R in response to his complaint under stage one of the IDRP and said:-

- Fund Rule 27 covered increases to pensions in payment and meant that the Post-SPA Pension had been correctly increased each year from his retirement as per figures provided in the letter. So, that Rule needed to be considered in addition to Fund Rule 20.
- In order to maintain a difference of 1.5 times the value of the State Pension between the Pre-SPA Pension and the Post-SPA Pension it would have been necessary to increase the Post-SPA Pension by a higher percentage than the Pre-SPA Pension. Instead, all the pension increases were correctly processed in accordance with the 1971 Act.

- The initial Post-SPA Pension figure at retirement was correctly calculated in accordance with Fund Rule 20 Paragraph (4) Part (A). There was no provision in that Fund Rule requiring a difference of 1.5 times the value of the State Pension to be maintained between the Pre-SPA Pension and the Post-SPA Pension following each annual inflation increase. There had been no errors in calculating his retirement benefits from the Fund.

30. On 16 February 2019, Mr R appealed under stage two of the IDRP and said:-

- While Fund Rule 27 provided for pension increases, the provisions regarding calculation of a pension reduction in the flexible pension option were contained in Fund Rule 20 Paragraph (4) Part (A)(I). This required the pension reduction at retirement to be a maximum of 1.5 times the value of the State Pension, without application of Fund Rule 27. So, the maximum reduction ought to have been determined at retirement and maintained up to age 65 for use in calculating the benefits payable from the Fund.
- Fund Rule 27 was irrelevant in establishing his retirement benefit entitlements relating to the flexible pension option. It was unclear why Railpen had failed to calculate the pension reduction at age 65 in accordance with his understanding of Fund Rule 20 Paragraph (4) Part (A)(I). Railpen had also failed to explain why it applied annual inflation increases to the Post-SPA Pension when there was no provision for this under Fund Rule 20 Paragraph (4) Part (A)(I).

31. On 31 May 2019, Railpen wrote to Mr R in response and said:-

- He was correct in concluding that Fund Rule 27 was irrelevant in establishing the maximum reduction between the Pre-SPA Pension and the Post-SPA Pension in calculating the benefits payable at age 65. The maximum reduction under Fund Rule 20 Paragraph (4) Part (A)(I) at retirement was £6,571.44.
- Fund Rule 20 Paragraph (1) Part (ii)(I)(b) and Paragraph (1) Part (ii)(I)(c) gave rise to figures that needed to be used as a multiplier and a divisor. He had used £35,836.66 as the multiplier relating to Fund Rule 20 Paragraph (1) Part (ii)(I)(b) and £37,214.80 as the divisor under Fund Rule 20 Paragraph (1) Part (ii)(I)(c).
- The Fund's Actuary (**the Actuary**) had established that the correct methodology in calculating the pension reduction at the SPA was, in fact, to use £43,147.70 as a multiplier and £32,999.85 as a divisor. So, the full calculation was £6,571.44 multiplied by £43,147.70 divided by £32,999.85. This resulted in a reduction to £27,361.29 per year, which was the value of the Post-SPA Pension payable from the SPA.

Railpen's position

32. Legal and actuarial advice had been sought to check that Mr R's reduced pension from the SPA was calculated correctly. The letter dated 31 May 2019 included a full

explanation and breakdown to clarify why Mr R's pension reduced by £8,592.24 at the SPA.

33. There had initially been an over emphasis on Fund Rule 20(1) Part (ii)(1)(a) and the limit of the reduction permitted under Fund Rule 20 in some communications sent to Mr R. The legal advice received included guidance on how Fund Rule 20 Paragraph (1) Part (ii)(1)(b) and Fund Rule 20 Paragraph (1) Part (ii)(1)(c) impacted the calculation on how the pension should be reduced.
34. The seminar booklet set out the methodology used in calculating a "basic" PCLS plus some of the options available at retirement. This was supported by examples of the information that could be included in a retirement quotation. Mr R could have requested other retirement quotations before submitting a pension claim. He also had access to Scheme Guides and the Fund Rules to rely on in selecting a retirement option.

Mr R's position

35. At the time of joining the Fund in 1976, he was provided with a copy of the Superannuation Fund - 1970 Section Trust Deed and Rules, which governed the Fund at the time and included provisions for the flexible pension option. But a contracted-out deduction from the SPA was not mentioned.
36. He had started to consider his retirement options in 2007 during a period of ill health. At that time, he expected to receive sufficient pension from the Fund for around 11 years up to age 65 and beyond.
37. He had expected an increase in total income at the SPA due to annual increases applied to the State Pension after his retirement. Especially as the 2007 Quotation was based on a Post-SPA Differential of 1.5 times the State Pension or £6,571.44 at his retirement date. Railpen had provided no pre-retirement communications suggesting that the Post-SPA Differential could increase to over £8,400 per year at the SPA.
38. The contracted-out status of the Fund caused him an overall financial loss. No allowance was made for this in the calculation of his benefits from the Fund. There was nothing he could do to mitigate this "adverse impact", since it was a condition of joining the Fund to be a contracted-out member.
39. The income reduction at that time has been mitigated due to his wife's pension. However, he had previously anticipated receiving additional income of £1,297.05 per year to fund a comfortable lifestyle.
40. The flexible pension options were explained at the seminar but no information regarding an overall benefits reduction at age 65 was provided. Examples provided in the seminar booklet showed "linear" changes in total income to the SPA and beyond. That message would have been "difficult to misinterpret."

41. At the seminar, Railpen made it clear that members could select their own retirement options, providing that they had received “accurate, timely and comprehensive” information on which to base those decisions. So, there was no need to seek financial advice.

Adjudicator’s Opinion

42. Mr R’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Railpen. The Adjudicator’s findings are summarised below:-
- The Fund Rules included detailed provisions regarding the way in which a member’s retirement benefits should be calculated. Railpen was required to act in accordance with the Fund Rules. In that regard the Actuary had confirmed that Mr R’s pension in payment had been correctly calculated in accordance with the Fund Rules. So, in the Adjudicator’s opinion there was no evidence that Mr R had suffered financial detriment resulting from Railpen miscalculating his pension.
 - Neither the Fund Rules nor the First 2007 Quotation guaranteed that the Post-SPA Differential would remain £6,571.44 when Mr R reached the SPA. It was Railpen’s stated aim to provide “level” benefits throughout a pensioner member’s retirement following an election to claim the decreasing flexible option. However, the 2005 Scheme Guide and the First 2007 Quotation confirmed that there would be a reduced pension from the Fund after reaching the SPA if a member selected that option.
 - The seminar booklet referred to the decreasing flexible option and provided no guarantee that a member’s overall benefits, including the State Pension, would not reduce at the SPA. In the Adjudicator’s view, the seminar and the seminar booklet were not intended to provide individually tailored guidance. Railpen’s intention was simply to provide a simplified overview of common themes that members approaching retirement should consider. However, Mr R had the opportunity to raise any questions he may have had.
 - In the Adjudicator’s opinion, Mr R ought to have relied on the Fund Rules rather than the seminar booklet when choosing his retirement option. The Fund Rules overrode any other correspondence regarding the calculation of benefits from the Fund. But the Fund Rules regarding the flexible pension options were complex. So, Mr R could have sought independent financial advice if he was unclear regarding those provisions.
 - Mr R’s pension claim form had confirmed that free independent financial advice was available, but Mr R chose not to claim it. Rather Mr R confirmed that he understood the available retirement options when he signed the pension claim form in 2007. Railpen could not send any unsolicited additional personalised information to Mr R regarding the decreasing flexible option at the time, as this

could be considered financial advice, which Railpen was not authorised to provide.

- In the Adjudicator's view Railpen could not be held responsible if Mr R did not obtain sufficient information before his retirement. Further, Mr R had acknowledged that being contracted-out was a condition of joining the Fund. So, he would automatically have been subject to a contracted-out deduction from the State Pension. However, his contracted-out status entitled Mr R to a GMP that was payable from the Fund and Railpen had confirmed the related portion of benefits in payment were greater than the GMP. Consequently, there was no evidence that Mr R had suffered financial detriment as a result of being contracted-out.
- Railpen had no control over the State Pension or the yearly inflation increases applied to it. So, in the Adjudicator's opinion it would not have been possible for Railpen to accurately project the value of Mr R's State Pension from the SPA at the time of his retirement.
- Neither could Railpen have accurately projected the value of the Post-SPA Pension from the SPA when Mr R retired, since that value was also subject to unknown yearly inflation increases between Mr R's retirement date and the SPA. However, Mr R could have sought guidance on these points from Railpen before his retirement if they were unclear.
- It was regrettable that Mr R had suffered ill-health for several years. However, in the Adjudicator's view Railpen could not increase his benefits in excess of the correctly calculated level under the Fund Rules, even after considering those circumstances.

43. Railpen accepted the Adjudicator's Opinion, Mr R did not, and the complaint was passed to me to consider. Mr R 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 R.

Mr R's additional comments

44. More than one version of the seminar booklet was provided over several years. He had also received versions of the rules governing the Fund other than the Fund Rules, which were also unhelpful in understanding the flexible pension options.
45. He had, in any case, relied on the retirement quotations provided by Railpen in January 2007 while electing to claim the decreasing flexible pension. He considered all other sources of retirement information to be "additional reading" because the First 2007 Quotation and the Second 2007 Quotation were personalised.
46. The Fund Rules did not make it clear that his benefits would be considered in two parts as a Pre-SPA Pension and a Post-SPA Pension on which the annual increases

would be applied separately. This shows the confusing way in which Railpen conducted its responsibility as administrator of the Fund.

47. Railpen provided no documentation that suggested a level pension was only a “stated aim”. He could only be guided by the normal meaning of the words ‘level pension’, which were used by Railpen at the time of his retirement. If Railpen was unsure regarding its intentions in providing a level pension, this should have been made clear.
48. The level pension option offered “linear” payment progression. It was unclear how Railpen could have no responsibility to comply with this, regardless of any conflicting provisions in the Fund Rules. Any failure to provide the stated benefits could be considered “mis-selling or even worse.”
49. Section D of the pension claim form related to free financial advice on post-retirement investments and money management. His pension claim form did not include any guidance suggesting that he should seek financial advice before submitting the form to Railpen.
50. However, he accepts that it was his responsibility to seek pre-retirement advice but only to the extent of any concerns or questions resulting from what he already knew at the time. The pre-retirement information he received did not prompt him to seek any additional guidance.
51. There would have been no point in seeking guidance from Railpen regarding the Post-SPA Pension if it could not provide an accurate projection at the time he retired. It was also unclear why the retirement quotations provided by Railpen in 2007 were not in accordance with the Fund Rules.
52. It was only following his retirement that he obtained a full copy of the Fund Rules, which were more comprehensive than the 1976 version of the Fund Rules. He was unaware of the Fund Rules in 2007 and it was unrealistic to assume that a financial advisor would have known anything more about those rules at the time.
53. He had always been aware that his benefits from the Fund would reduce at the SPA but not by more than the value of the State Pension. Neither the Fund Rules nor the First 2007 Quotation suggested that the Post-SPA Differential could increase in excess of £6,571.44 at the SPA. He had never been unclear on any retirement option.
54. At the time of joining the Fund he was unaware that there would be a contracted-out deduction from the State Pension. If the contracted-out deduction had not been considered in calculating the Fund’s benefits that were linked to the State Pension, this could cause a financial loss.

Ombudsman's decision

55. As noted above, the Fund is governed by the Fund Rules. The seminar booklet, the 2007 Guidance, the 2005 Member Guide and other documents provided were not expressed as overriding the Fund Rules and I do not find that they were intended to override the Fund Rules or create new legal entitlements. The seminar booklet in particular and information provided at the seminar were clearly intended as information or guidance only. The 2007 Quotations were expressed as estimates and the covering letter of 10 January 2007 warned that the estimates should not be relied on as a guarantee of benefits. There is nothing to suggest these were contractual documents intended to create new legal relations and in respect of Mr R provided some new payment or consideration. They were explanatory of the options under the Fund or provided individual estimates of the benefits Mr R might expect under various options available to him under the Fund Rules.
56. The Fund Rules included provision at Fund Rule 20 (see extracts included in the Appendix) for members to be able to opt to have a lower or higher rate of pension until SPA, subject to a number of conditions. While the option for a higher initial pension with a lower pension from SPA may have been referred to in the documents provided to Mr R as the "level pension option" because it would in principle allow a member to have a broadly level income before and after SPA assuming he became entitled to payment of the State Pension at SPA, nothing in the Fund Rules provides or guarantees that the member's pension before and after SPA, taking account of their State Pension would be level and remain level.
57. Mr R has said that he relied on the retirement quotations he received in 2007, rather than the seminar booklet in selecting his retirement option. He considered any documents other than those retirement quotations to be "additional reading". Having reviewed the First 2007 Quotation and the Second 2007 Quotation, I note that neither of those documents referred to a "level pension". Rather Railpen stated that there were "flexible pension options". They are stated to be estimates and the covering letter accompanying the First 2007 Quotation emphasises that they should not be relied on as a guarantee of benefits. I also note that the 2005 Member Guide referred to "level pension" as being an alternative way of describing a flexible pension, with no guarantee that there would not be a reduction in overall retirement benefits at the SPA.
58. Given that the State Pension is subject to change and increases outside the control of Railpen and the Trustee, and given that a member's Fund pension was required to increase as provided under the Fund Rules with a possible adjustment in respect of the GMP at GMP age (which for some members might not coincide with SPA), having regard to the different rate at which the GMP is revalued before GMP age or increased after GMP age under legislation, it might have been difficult to achieve a level pension throughout retirement inclusive of the State Pension. In any event, nothing in the Fund Rules, including the flexible pension option at Fund Rule 20, provided for a level pension in that sense.

59. So, I find that, under the Fund Rules, Mr R had no right to a pension calculated on a basis that would result in his income from the Fund and his State Pension remaining level throughout his retirement. He had a right to a pension calculated in accordance with the Fund Rules, including increases while in payment and inclusive of a GMP and he had the option to choose a pension of a lower or higher initial amount with a step change at SPA subject to the conditions in Fund Rule 20. Fund Rule 20 provided no guarantee that the Post-SPA differential would remain at £6,571.44 based on the annual increases.
60. I find that none of the other documents provided to Mr R, including the 2007 Quotations, were intended to create contractual relations or override the Fund Rules. The 2007 Quotations were provided pursuant to Fund Rule 20 and were estimates of the benefits he might receive under Fund Rule 20 and subject to other provisions of the Fund Rules including the annual pension increase provisions. Both 2007 Quotations stated that the flexible pension options were subject to two levels of benefits covering the periods before reaching the SPA, and after the SPA. I find that this was consistent with Fund Rule 20.
61. I have also considered whether Railpen made any negligent or unequivocal misstatement to Mr R regarding the level pension option which he was reasonably expected to rely on and relied on to his detriment such that Mr R ought to be compensated in some way. The information provided in the seminar booklet and guides and the 2007 Quotations and covering letter do not include any unequivocal statements that he would receive “level” overall benefits, including the State Pension from the SPA or “linear” pension increases from the Fund. There is also insufficient evidence to conclude that the 2007 Quotations were not accurate at the time Railpen sent them to Mr R. So, I find Railpen did not provide Mr R with an unequivocal statement or negligent misstatement that he would receive level overall benefits throughout his retirement.
62. Finally, I have considered whether Railpen provided Mr R with sufficient information about his options to enable him to exercise his options. I find that they did. The information provided in the seminar booklet, the 2005 Member Guide and the 2007 Quotations was sufficient to make him aware of his options and to enable him to choose between them and to exercise his option. It may not have explained the full implications of the two levels of pension, or the way in which annual increases would be applied, before signing his pension claim form. However, Railpen and the Trustee were not under any obligation to provide more information or indeed to provide advice (which might have been unauthorised financial advice). Mr R was encouraged to seek independent financial advice and, according to Railpen’s letter dated 29 May 2012, free financial advice regarding retirement options was, in fact, available to Mr R in 2007 via his pension claim form.
63. So, while it appears that Railpen’s “stated aim” was to provide level overall benefits from retirement when providing flexible pension options, this was not something that could be assured by the Fund or Railpen as Railpen had no control over the value of the State Pension or any increases applied to it. I also find that Mr R did not acquire

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any right to level overall benefits under the Fund Rules or otherwise. And that Railpen provided reasonable information to Mr R about his options, and did not mislead or make any unequivocal or actionable negligent misstatements to Mr R.

64. I do not uphold Mr R's complaint.

Camilla Barry

Deputy Pensions Ombudsman
26 March 2025

Appendix

20 Flexible Pension Option

(1) A person about to become a Pensioner who on the date his pension becomes payable is under State Pension Age may elect before his pension becomes payable and subject to the provisions of this rule to reorganise his pension so that

(i) until State Pension Age he receives a pension which is

(I) greater or

(II) smaller than his pension but for this rule and

(ii) at State Pension Age his pension but for rules 28 and 29

(I) reduces, if sub-rule (1)(i)(I) applies or

(II) increases, if sub-rule (1)(i)(II) applies by

(a) subject to sub-rule (4), an amount specified by the person when making the election multiplied by

(b) his Normal Pension at State Pension Age and divided by

(c) his Basic Pension

[...]

(4)

(A) If sub-rule (1)(i)(I) applies, item (a) in sub-rule (1)(ii) shall be:

(I) in respect of a person who made an election prior to 2 July 2007, subject to a maximum of one and one half times the State Flat-Rate Pension in force on the date his pension becomes payable and shall be further reduced as necessary to ensure that the pension receivable after State Pension Age but for rules 28 and 29 and ignoring any application of rule 27 after the election is made is not less than whichever is the greater:

(a) half his pension but for this rule and rules 28 and 29; or

(b) the aggregate of

(i) his State Graduated Retirement Benefit; and

(ii) whichever is the lesser on the date his pension becomes payable:

(A) his Contracted-Out Pension or

(B) his Forecast Guaranteed Minimum Pension"

27 Pension Increases

Subject to the provisions of this rule, every time official pensions are increased under the Pensions (Increase) Act 1971, each pension being paid from the 1970 Section except pensions payable under Appendix 5B to or in respect of a former Member and except pensions payable under Appendix 10 (Pension Sharing on Divorce) in respect of an Ex-Spouse Participant shall be increased in the same proportion as an official pension which began for the purposes of Section 8(2) of the said Act on whichever was the earlier

- (A) the date the former Member ceased to be in Contributory Membership
- or
- (B) the date the former Member attained Maximum Pension Age.