

Ombudsman's Determination

Applicant	Mr S
Scheme	British Steel Pension Scheme (the Scheme)
Respondent	British Steel Pension Fund Trustee Limited (the Trustee)

Outcome

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

Complaint summary

2. Mr S has complained that his pension has not received any annual increases since 2018. Mr S has said that the information provided prior to his transfer from the Old British Steel Pension Scheme (**OBSPS**) led him to believe that part of his pension would still attract an increase annually.

Background information, including submissions from the parties

3. In December 1966, Mr S joined the Steel Company of Wales pension scheme which became the OBSPS.
4. In December 2011, Mr S retired and received his pension benefits from OBSPS. His pension benefits consisted mainly of Guaranteed Minimum Pension (**GMP**) accrued before 1988 plus a small element of excess pension built up prior to April 1997.
5. In August 2017, Mr S was sent a Time to Choose booklet which said that he had to choose between two options:
 - Switch to the Scheme which provided the same benefits as the OBSPS but with lower future increases; or
 - Remain in the OBSPS but this would move into the Pension Protection Fund (**PPF**)
6. On 2 October 2017, Mr S was sent a further letter regarding Time to Choose which included an option form for him to complete.
7. Mr S completed the option form to indicate that he wished to switch to the Scheme.

8. On 28 March 2018, Mr S' switch to the Scheme took place.
9. On 18 May 2019, Mr S sent an email to the Scheme Administrator and said:
 - He did not believe that the Scheme had complied with the information he had been previously supplied. He had not had an increase in two years, and this was contrary to his expectations.
 - There was a large pension fund so how was it not managed it to make a profit for the members.
 - He tried to transfer out of the OBSPS in 2011 but the Trustee would not allow him to leave and transfer his fund to a different provider. He believed as the Trustee refused to release him it needed to uphold the terms of the Scheme.
10. On 3 June 2019, the Trustee sent a response under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). It said:-
 - The communications issued by the Trustee of the OBSPS during the Time to Choose exercise had made clear that future increases to pensions would be at a lower rate than had previously applied. An explicit explanation of the increases which would be applied in the Scheme was contained within the Time to Choose pack:

Part of your pension	Increases with the Scheme	Increases with the PPF
GMP built up between 1978 and 1988	None	None
GMP built up between 1988 and 1997	Consumer Price Index (CPI) capped at 3% a year	None
Excess pension over GMP built up to 1997	None	None

- Mr S' Time to Choose option form contained the following disclaimer:

“By choosing the Scheme you understand and agree that:

 - My benefits in the Scheme as described in this pack will replace all of the benefits I had in the current scheme.
 - ...
 - The rules of the current scheme are being changed so that I can switch to the Scheme as described in the pack.”
- Mr S' GMP was not subject to indexation under the Rules of the Scheme which was unchanged from the Rules of the OBSPS.

- The balance of Mr S’ pension was excess pension built up prior to April 1997 which was increasable under the Rules of the OBSPS but not under the Rules of the Scheme.
- Since transferring to the Scheme Mr S’ pension had been subject to the correct level of annual increases.
- The Rules of the Scheme determined Mr S’ entitlement to pension benefits not the investment return.

11. On 7 June 2019, Mr S sent an email to the Trustee and said:-

- He received a letter in in March 2018 stating that his annual pension was £1,346.88 and it would remain at that level from 1 April 2018. He then received a letter in March 2019 which notified his annual pension would again be £1,346.88.
- The Trustee has said that there would be a reduced pension increase but did not say that there would be no increase. His pension is now decreasing each year due to inflation and his state pension is not increasing to compensate for this.
- He was still in dispute with the Trustee regarding how his application to leave the OBSPS was managed. He was told that he could not transfer as he was age 64 but he has never been able to find the information in the Rules that showed that his age meant he could not transfer.

12. On 10 July 2019, the Trustee sent a letter to Mr S and said in summary:-

- Mr S was a pensioner member having retired at Normal Pension Age under the OBSPS.
- Mr S joined the Scheme on 28 March 2018 having completed the option form sent to him as part of the Time to Choose exercise in 2017.
- Mr S’ annual pension was accrued between 4 December 1966 and 30 August 1980 and comprised of:

GMP	1,262.04
Excess over GMP	84.84
Total	1,346.88

- Increases to pensions in payment in the Scheme were calculated in accordance with the Scheme’s governing documentation. The provisions in respect of increases to the pensions were set out in Section B(6) of schedule 10 of the Framework Agreement:

Pensions in payment increases	Increases to pensions in payment including those derived from Additional Voluntary Contributions will be
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	<p>at statutory minimum levels which are currently as follows:</p> <ul style="list-style-type: none"> i) CPI increases capped at 3% on post 88 GMP. ii) No increases in respect of other pre 97 pension. iii) CPI increases capped at 5% in respect of post 5 April 1997 pre 6 April 2005 pension. iv) CPI increases capped at 2.5% in respect of post 5 April 2005 pension
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- The majority of Mr S’ Scheme pension was pre 1988 GMP and this was not increased once it comes into payment. The balance of Mr S’ pension, £84.84, was earned over the period 1966 -1980 and so was treated as “other pre 97 pension”. There are no increases due on this element of pension under the Scheme Rules.
- The Trustee was obliged to act in accordance with the Scheme’s governing documentation. Pensions and other benefits payable from the Scheme are calculated according to the Scheme Rules and were not directly linked to the investment return achieved on scheme assets.

13. Summary of Mr S’ position:-

- The fact that part of his pension was indexed before the formation of the Scheme has not been explained.
- He has not been able to find any information to say why he could not transfer out of the OBSPS in 2011 when he was age 64.
- He does not think that the Scheme is being administered correctly as his Scheme pension does not increase and his state pension does not make up for any deficit.
- Tata Steel have now offered Scheme members a restoration payment and the fact that it has done this shows that his pension was not indexed correctly.

14. Summary of the Trustee’s position:-

- Mr S’ complaint regarding GMP has been raised previously and has already been considered formally by the Trustee Board.

Adjudicator’s Opinion

15. Mr 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 summarised below:-

- The Trustee had provided Mr S with information regarding how his pension would change if he moved to the Scheme in the Time to Choose exercise.
 - There was no change to Mr S' pre 1988 GMP which already had no increases. Mr S' post 1997 excess pension changed to a position where it would no longer receive any increases.
 - Mr S signed an option form to say that he agreed to the transfer to the Scheme, and he accepted that the Scheme benefits would replace those he had in OBSPS.
 - In the Adjudicator's opinion it was clearly explained to Mr S that that there would be no further increases on his post 1997 excess pension following the transfer to the Scheme. Further, there was no evidence that the Scheme was not being administered correctly in accordance with the Rules. In the circumstances there had been no maladministration.
 - The Adjudicator also said that Mr S had raised a number of further complaints that were not part of his original submission.
 - Mr S complained that his GMP has not been correctly accrued and then administered as his state pension did not make up for the lack of increase in his GMP. The Adjudicator noted that Mr S has contacted the Department of Work and Pensions and HM Revenue and Customs, and both had said his state pension was operating correctly. The Trustee had also said that Mr S' complaint regarding his GMP has been raised previously and the Trustee Board has already issued a formal response to the complaint. This complaint did not form part of Mr S' current complaint and so the Adjudicator said they would not be dealing with it in their Opinion.
 - Mr S also complained that he was not able to transfer his pension in 2011 as he was age 64. This complaint was about an issue that took place before Mr S became a Scheme member and related to the OBSPS so could not be considered here. In addition, in most cases applications to the Pensions Ombudsman need to be made within three years of the event being complained about or if later within three years of when the individual became aware of this issue or should have been aware of it. As Mr S was aware that he could not transfer his pension in 2011 this complaint issue was outside the time limits for bringing a complaint to the Pensions Ombudsman.
 - The complaint regarding the restoration payment was a new issue and Mr S should raise this with the Trustee in the first instance.
16. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments which are summarised below:-
- He did not think that the Adjudicator had understood the problem. In 2018 the choice was either to go into the PPF with a lower expectation or move to the new pension scheme with possibly a lower increase rate. It seemed that both sets of

funds were consolidated so a segregation of how the funds were accrued did not now seem to be applicable. He did not agree to receiving no increment and expected a small increment each year. He would like to see where in the Time to Choose document it said that there would be no increases.

- He was still in dispute with the DWP as it assumes he is getting a certain level of pension which is incremented each year. His state pension with deductions has not kept up with inflation as they do not seem to account for private pensions not being indexed.
- He was contracted out of SERPs without his knowledge or consent. He would like to see any papers he signed to agree to contracting out. The Scheme would never tell him how much his accrued pension fund was. He would have thought that was a reasonable request to find out how much was accrued.
- He believed Tata Steel had not behaved fairly as after being allowed to rid itself of the OBSPS it has declared a £365 million profit.
- He thought the Adjudicator should have considered the poor performance of the Scheme. It had a multimillion pound fund and a shrinking membership, and it had not been able to keep up with inflation. On 13 July 2022 it had 6,175 members and £9.9 billion in assets even just looking at the returns available on the high street the Scheme should have achieved a better performance.
- He would like to know did the Scheme staff and the Trustees get salary increases each year while Scheme members were getting minimal increases or in his case zero increases.

17. I agree with the Adjudicator's Opinion and note the additional points raised by Mr S.

Ombudsman's decision

18. It was made clear to Mr S that there would be no further increases to his pension if he joined the Scheme. Page one of the Time to Choose booklet he received set out his benefits under the OBSPS. Mr S' pension was made up of GMP that had been built up between 1978 and 1988, and some additional pension in excess of GMP that had built up between 1966 and 1980 (his pre 1997 excess pension). The pre 1988 GMP did not increase in the OBSPS, nor does it increase in the Scheme. However, the pre 1997 excess pension was receiving increases in the OBSPS. This has changed to having no increases in the Scheme, but this is in line with the clear information in the Time to Choose booklet.

19. Page five of the Time to Choose booklet set out information about increases applicable to the different elements of members pensions depending on whether their pension moved from the OBSPS to the Scheme or the PPF. The parts of the table from page five relevant to Mr S' benefits are set out below.

Part of your pension	Increases with the Scheme	Increases with the PPF
GMP built up between 1978 and 1988	None	None
Excess pension over GMP built up to 1997	None	None

20. Mr S agreed to move to the Scheme, and it was made clear to him that there would be no further increases to his pension benefits. This would have also been the case had he chosen to remain in the OBSPS and enter the PPF.
21. Mr S has referred to a consolidation of the pension funds and that this should mean that the agreed changes should no longer have occurred. Mr S has not been provided with any further information from the OBSPS or from the Scheme to say that the agreed changes were not going ahead. Rather, the changes to Mr S' pension benefits are those that he agreed when he moved to the Scheme, and the Trustee has not made any error in not providing revaluation on the amount being paid to Mr S.
22. I understand that Mr S is still unhappy with how his State Pension is being calculated. However this is a matter for the DWP to consider. I note that Mr S has asked the Trustee what the amount of his accrued fund was. However, Mr S' pension is calculated according to the Rules of the Scheme, on a defined benefit basis, and as such he does not have an accrued fund (as one might have with a defined contribution arrangement).
23. Mr S has a defined benefit pension which means the amount he receives is calculated with reference to the years of pensionable service accrued and his pensionable salary as set out in the Scheme Rules, it is not calculated in relation to, or affected by, investment returns. The fact that Mr S does not receive increases is due to the Scheme Rules, so that even if the investment returns were higher Mr S would still not be entitled to receive a higher benefit. In addition, the behaviour of Tata Steel or whether the Scheme staff or the Trustees received salary increases does not impact on the amount that Mr S receives.
24. The OBSPS was contracted out of SERPS, and this is why Mr S has received GMP rather than paying higher national insurance contributions and receiving SERPS element in his state pension. The Trustee of OBSPS and Mr S' employer made the decision to contract out, and it was not one that Mr S had to individually agree to.
25. I do not uphold Mr S' complaint.

Dominic Harris

Pensions Ombudsman
23 February 2024