Ombudsman's Determination

Applicant	Mr N
Scheme	Land Rover Pension Scheme (**the Scheme**)
Respondents	Jaguar Land Rover Pension Trustees Limited (**the Trustee**)
	Mercer, formerly JLT Benefit Solutions Limited (**Mercer**)

Outcome

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

Complaint summary

2. Mr N has complained that he was provided with misleading and factually incorrect information about the Bridging Pension he was entitled to from the Scheme.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge there were other exchanges of information between all the parties.

4. Mr N was a member of the Scheme through his employment with Land Rover. The Scheme was administered by JLT which is now part of Mercer. For ease of reference, the administrator is referred to as Mercer throughout.

5. In June 2011, Mr N received a newsletter from the Trustee which provided the following information:

   "**Bridging Pension**

   As a result of the Government's proposals for changes to the State Pension Age, the Trustee Board have confirmed that any Bridging Pensions in payment to Pensioners will cease to be paid from the State Pension Age that applied at the time the member retired.

> If this applies to you, and you retired with a Bridging Pension, then you need to be aware that your Basic State Pension could be delayed up to one year after your Bridging Pension ceases, depending upon your age and date of birth."

> "The Government has also made new proposals to increase State Pension Age for men born between 6 December 1953 and 5 April 1960…from December 2018 the State Pension Age for both men and women would start to increase, to reach age 66 by April 2020."

6. Mr N opted to retire on 31 December 2011. He received a Retirement Benefits Statement which said:

> "The pension includes a Bridging Pension of £2,000 per annum. This pension will cease in the event of your death."

7. Mr N also received a leavers information pack which incorrectly stated that his bridging pension of £2,000.00, per annum, would be payable until State Pension Age (**SPA**).

8. On 19 January 2012, Mercer sent a letter to Mr N (**the Settlement Letter**). It said that his pension commenced from 1 January 2012 and would be paid from 1 February 2012, with the arrears from his retirement date. It also said that his annual pension included an additional Bridging Pension which would be payable until his SPA.

9. On 21 June 2019, Mercer sent a letter to Mr N which said:-

   - When Mr N retired from Land Rover, he received a Bridging Pension in addition to his normal Land Rover Pension.
   - This Bridging Pension was payable for a fixed period to bridge the gap from his retirement date until he reached age 65 which was the Scheme's Normal Retirement Age (**NRA**).
   - When the Government announced proposals to increase SPA in April 2011, the Land Rover Pension Scheme Rules (the **Scheme Rules**) were updated to say that the Bridging Pension was payable only until age 65.
   - However, it had become aware that the Settlement Letter issued to Mr N when he retired was not updated and so it stated that the Bridging Pension was payable until he reached SPA, which was later than age 65.
   - The correct position was that the Bridging Pension would cease on the 1st of the month after he reached age 65 regardless of when he was due to start receiving his State Pension.

10. On 21 July 2019, Mr N sent a letter to Mercer regarding the letter of 21 June 2019 and said, in summary:-

- The statement in the first paragraph of Mercer's letter was incorrect in stating that the Bridging Pension was payable until he reached the age of 65.

- His voluntary retirement package was quite explicit in the Settlement Letter and in the Estimated Early Retirement Benefits document that the Bridging Pension was payable until he reached SPA.

- It was quite ridiculous to now claim that the Bridging Pension was only payable until he reached age 65. While the Scheme Rules may have been updated the pension documents provided to him and agreed upon were quite explicit.

- Additionally, this payment and associated documents formed part of a compromise agreement reached on 8 December 2011 between himself and Land Rover, which provided further binding legal status to his pension rights.

- It should review its decision in light of this and ensure that his Bridging Pension continued until he reached his SPA.

11. On 9 August 2019, Mercer responded to Mr N and said that the Settlement Letter issued to him when he retired was not updated. When the Government announced proposals to increase SPA in April 2011, the Scheme Rules were updated to say that the Bridging Pension was payable only until age 65.

12. On 11 August 2019, Mr N wrote to Mercer and said, in summary:-

    - It had said that the Settlement Letter issued to him had not been updated in accordance with the new Scheme Rules.

    - The mistake was not only in the Settlement Letter it was also in his Retirement Benefits Statement and the Jaguar and Land Rover Information Pack. These both clearly stated that the benefit would be paid until SPA.

    - The Retirement Benefits Statement and also the Jaguar and Land Rover Information Pack formed part of a compromise agreement between himself and Land Rover, which was legally binding. So, he was surprised that the Scheme's legal counsel would give the attempted "claw back" its approval.

    - Could it confirm when information about the change was included in the Scheme booklets, as he could not recall it being present in any that he had seen.

13. On 2 November 2019, Mr N resent his letter from 11 August 2019 as it had been returned to him by Royal Mail as it had been incorrectly addressed.

14. On 14 January 2020, Mercer sent a letter to Mr N and said:-

    - The Scheme Rules confirmed that a Bridging Pension was:

      > "A pension payable under Rule 11 (early retirement) to a member between the relevant date and the date the member attains age 65, or if earlier, his date of death,"

- It apologised that the letter he received when he retired was misleading and factually incorrect regarding how long the Bridging Pension would be payable for.
- However, it was obliged under the Scheme Rules to cease paying his Bridging Pension from his 65th birthday and not his SPA.

15. On 17 January 2020, Mr N sent a letter to Mercer and said:-

- It had taken two months to reply to him.
- He noted that it agreed that the information he had received was “misleading and factually incorrect” regarding how long the Bridging Pension was payable.
- These were the terms under which a legally binding compromise agreement was agreed and signed. So, the compromise agreement took precedent over the Scheme’s Rule 11.
- He had previously questioned the legal position regarding the attempted “claw back” but it had not responded to this.

16. On 15 May 2020, Mercer responded to Mr N’s complaint. It said:-

- Mr N’s benefits due from the Scheme were determined in accordance with the Schemes Rules that were in operation at the time of his retirement.
- The Scheme Rules provide that a Bridging Pension was payable between the date he left the Scheme and the date he reached age 65, not by reference to SPA.
- It did not expect the compromise agreement to include any details of the pension because it was an agreement between Mr N and Land Rover rather than the Trustee, but if he provided a copy of the compromise agreement it could investigate further.
- It also apologised as the service Mr N had received was not in line with the level of service it aimed to deliver.

17. On 3 June 2020, Mr N sent a letter to Mercer and said:-

- It had not dealt with his complaint promptly.
- It had not provided a legal basis for its assertion that his entitlement to the Bridging Pension was nullified due to an unpublished (at the time) change to the Scheme Rules.
- He enclosed page ‘Section 3B’ of the ‘Jaguar and Land Rover Information Pack’ (originally provided in July 2019), which stated that a Bridging Pension of £2,000 per annum would be paid until SPA.

- His compromise agreement also protected his rights in this matter. The Information Pack and ancillary documents he received prior to his retirement and the Settlement Letter formed the basis of a contract between himself and Land Rover Pensions.

- By altering the contract, Mercer was in effect trying to void part of the agreement and none of the conditions that allowed the contract to be voided applied.

- There could be little doubt that, given the information contained within the documents provided by the Scheme, his entitlement to the Bridging Pension until his SPA was both fair and reasonable.

18. On 7 July 2020, Mercer sent Mr N a letter which confirmed that payment of his Bridging Pension would cease from November 2020. Mercer provided revised figures for Mr N's annual pension.

19. On 11 July 2020, Mr N made a complaint under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He reiterated the details of his previous complaint and in addition said that Mercer had not responded to his letter dated 3 June 2020.

20. On 18 August 2020, the Trustee sent a letter to Mr N and said, in summary:-

- It acknowledged that the Settlement Letter stated that Mr N's pension included an additional Bridging Pension until he reached SPA.

- SPAs had been amended by legislation and as a result Mr N's SPA was now age 66.

- Mr N's benefits due from the Scheme were determined in accordance with the Schemes Rules that were in operation at the time of his retirement on 31 December 2011. The Scheme Rules provide that a Bridging Pension is payable between the date he left the Scheme and the date he attained age 65 <u>not</u> by reference to SPA.

- Consequently, the Trustee was not able to pay the Bridging Pension from the Scheme up to his new SPA because this did not reflect his entitlement under the Scheme Rules.

- Mr N was currently receiving the pension he was entitled to under the Scheme Rules and so there was no loss.

- The Settlement Letter was not a written contractual agreement between him and the Trustee. In addition, it noted that Mr N had referred to a compromise agreement. The Trustee was not a party to this compromise agreement as it was an agreement between Mr N and Land Rover. So, the Trustee had not broken any written contractual agreements in paying his Bridging Pension until he reached age 65 only.

- It apologised for the incorrect information that had been provided and it offered £500 to reflect the distress and inconvenience caused to him by the error.

21. On 22 August 2020, Mr N sent a letter to the Trustee and said:-

- The essence of the rejection of his complaint was that there was no contract between himself and the Scheme. This meant any correspondence from Mercer to him alluding to SPA was merely a mistake and one which could not be remedied by the Scheme.

- No less than three documents presented by Mercer outlining his pension benefits alluded to SPA as being the cut off point for the Bridging Pension. This meant the Trustee's position was untenable. The key elements for an enforceable contract were present:-

    - An offer was made by Mercer.

    - There was an acceptance of said offer.

    - His acceptance was conditional on the terms proposed.

- In order for the contract to become void there needed to be a common mistake, a mutual mistake, or a unilateral mistake. It was clear that none of these applied.

- It should also be borne in mind that it had taken no less than seven years for this mistake to come to light and he would have thought that any sensible administration would simply have absorbed the cost.

- He had asked to see a copy of the legal advice regarding this matter, and it had not been provided.

22. On 5 October 2020, the Trustee responded to Mr N's complaint. It said:-

- It acknowledged that the Information Pack provided to him before his retirement and the Settlement Letter referred to a Bridging Pension of £2,000 being payable until SPA. As he was aware, SPAs had been amended by legislation and, as a result of these legislative changes his SPA was now age 66.

- However, his benefits due from the Scheme were determined in accordance with the Schemes Rules. The Scheme Rules that were in force when he retired on 31 December 2011, and which governed the calculation of his pension were set out in the Scheme's Trust Deed and Rules dated 27 April 2011 (**the 2011 Rules**).

- Under Rule 11.3 of the 2011 Rules, an active member who retires upon taking voluntary redundancy is entitled to a Bridging Pension which is defined in the 2011 Rules as:

> “a pension payable under Rule 11 (early retirement) to a Member between the Relevant Date [the date of the member’s retirement] and the date the Member attains age 65, or if earlier, his death”.

- The definition of Bridging Pension in the Schemes Rules had not been amended since the 2011 Rules came into effect. It acknowledged that the increase in SPA beyond age 65 meant that the Bridging Pension no longer covered the entire period up to SPA. However, there was no legal obligation for pension schemes to amend their Rules to extend the payment period of Bridging Pensions in line with changes to the SPA.

- Mr N’s assertion that there was a contract between him and the Trustee which superseded the provisions of the 2011 Rules was also incorrect. The Settlement Letter was not a written contractual agreement between Mr N and the Trustee. When this letter was sent to Mr N, he had already taken the decision to take early retirement from the Scheme. It was regrettable that the letter contained incorrect details about the Bridging Pension, but the contents of the letter did not inform his decision making.

- Further the compromise agreement that he entered into in December 2011 was a contract between Mr N and Land Rover, so its terms were only enforceable against Land Rover, not the Trustee. In any event, the compromise agreement did not refer to a Bridging Pension or contain any other reference to his pension from the Scheme (other than to confirm in clause 6.1 that it did not affect any pension-related claims).

- The contents of the Information Pack that Mr N was provided with before he took voluntary redundancy did not form part of the compromise agreement. Clause 9.2 of the compromise agreement confirmed that the only statements that formed part of the compromise agreement were those that were expressly incorporated into it, which did not include information provided prior to entering into it.

- It was regrettable that Mr N was provided with incorrect information regarding his Bridging Pension but, in any event, he had not provided any evidence that he would have taken a different course of action had the correct details been included.

- It could not provide copies of legal advice because it was confidential and legally privileged, and the Trustee was not obliged to disclose such advice to third parties.

- It apologised that Mr N had received the incorrect information and confirmed that its offer of £500 was still open for Mr N to accept.

23. Mr N’s position:-

- The Trustee had a contractual obligation to pay the Bridging Pension until he reached his SPA because it formed part of his compromise agreement.
- Land Rover would have made an additional contribution to the Scheme when Mr N took voluntary redundancy. The contribution would have included an amount to cover his Bridging Pension until SPA.
- The Trustee poorly communicated the change to the Bridging Pension end date.
- The incorrect information was provided in at least four pieces of correspondence that he received.
- Mercer took eight years to identify and make him aware of the error.
- He had suffered a financial loss because his Bridging Pension would not be paid for the additional year, when he reached age 66.
- The Trustee and Mercer failed to respond to his queries in a timely manner.
- The Trustee’s offer of £500 offer was insufficient.

24. The Trustee’s position:-

- Mr N has received the correct benefits in accordance with the Scheme Rules.
- It believed the £500 offered was sufficient in the circumstances.

Adjudicator’s Opinion

25. Mr N’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or Mercer. The Adjudicator’s findings are summarised below:-

- The provision of incorrect information amounted to maladministration, but this did not mean that the Trustee should pay Mr N a level of benefit that he was not entitled to. For the complaint to succeed it would need to have been reasonable for Mr N to have relied on the misinformation and having done so, to have suffered financial detriment as a result.
- In the Adjudicator’s opinion, it was reasonable for Mr N to have relied on the information. He was provided with the details of his Bridging Pension in several pieces of correspondence and while he may have been aware that there were changes to legislation regarding SPA at the time he retired, he would not necessarily have been aware that these were reflected in the Scheme Rules.
- The Adjudicator considered whether Mr N took any actions based on the misinformation that caused him financial detriment. Mr N was provided with the incorrect information after he had agreed to take voluntary redundancy so, in the

Adjudicator's view, the fact that his Bridging Pension ended at age 65 rather than age 66 did not impact on his decision making.

- In the Adjudicator's opinion, the incorrect information did not cause Mr N to suffer a financial loss. In addition, Mr N was only entitled to receive the correct level of benefits in accordance with the Scheme Rules and so he had not lost an additional year of Bridging Pension as this was not something he was entitled to receive. However, he had suffered a loss of expectation because he believed that he would receive his Bridging Pension until his SPA.

- Mr N had argued that there was a contractual obligation on the Trustee to pay the Bridging Pension until his SPA. The Scheme is a trust-based arrangement so there was no legal contract between Mr N and the Trustee. Nor was there a legal requirement for the Trustee to pay Mr N the Bridging Pension until he reached age 66. The compromise agreement that Mr N had referred to was in relation to Mr N's employment. This agreement was between Mr N and Land Rover, the Trustee was not party to this agreement.

- The Trustee offered Mr N £500 in recognition of the distress and inconvenience that he suffered due to the misinformation. In the Adjudicator's opinion, this award was in line with any award that the Ombudsman might make in these circumstances and so was sufficient.

- Mr N also complained that Mercer delayed responding to his August 2019 letter. The Adjudicator noted that this was resent by Mr N on 2 November 2019 as the original letter had been incorrectly addressed by him. The letter was responded to on 14 January 2020. Mercer confirmed that its Service Level Agreement (**SLA**) with regard to responding to such queries was 10 working days. The response fell outside the SLA timescales and should have been responded to by 15 November 2019.

- In addition, Mr N's letter of 3 June 2020 was not responded to. In the Adjudicator's view, Mercer's failings in how they dealt with Mr N's complaint did constitute maladministration. However, although the delay and failure to respond was frustrating to Mr N, in the Adjudicator's view, the level of distress and inconvenience suffered did not warrant the Ombudsman's minimum award of £500. In the circumstances there should not be an increase to the amount already offered by the Trustee.

26. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments in response to the Opinion which are summarised below:-

- The information in the Land Rover Pensions pamphlet stated that:

  "…any Bridging Pensions in payment to Pensioners will cease to be paid **from** the SPA that applied at the time the member retired."

At the time of his retirement his SPA was 66 and thus his Bridging Pension should have ceased then, and not 65.

- The incorrect information did inform his decision making - he was provided with a detailed breakdown of his severance package by a Human Resources (**HR**) representative who attended his annual review with his manager. His package was based on an early retirement at the company's request and the details of his remuneration were laid out verbally at that meeting.

- The exact timeline for the written quotes was:-

  - 24 November 2011, quotes requested from HR department.
  - 29 November 2011, quotes sent out to Mr N's home address.
  - 30 November 2011, quotes received by Mr N.
  - 30 November 2011, acceptance of quotes returned by Mr N.

  Clearly, he accepted the offer based on the quotes received and this information did impact on his decision making. It was reasonable to assume that he did rely upon the information and there was no doubt that he had suffered financial loss.

- His early retirement was fully financed by Jaguar Land Rover which included a provision for the Bridging Pension until age 66. So, the Scheme did not suffer any loss. Given that nearly eight years passed before this error was detected, it would have been prudent for the Scheme to have used their discretion and waived their claim.

- Section 30.2 of the 2011 Rules does allow for Unauthorised Payments, and it does seem to allow the Trustee leeway:

  "Section 30.2 Unauthorised Payments

  Any rule or other provision of the Scheme which would require the Trustees to make an Unauthorised Payment (or to make an Unauthorised Payment if the consent of a specified person is given) shall be construed as conferring a discretion on the Trustees to make that payment".

- The Trust Deed was amended in April 2011 to reflect the impact of Government policy. At least nine months lapsed before the Bridging Pension element of this was changed in the relevant documentation. He assumed that the policy change was not properly communicated to the Jaguar Land Rover HR and/or Mercer. This is an example of further maladministration.

- The Adjudicator had said that no contract existed between himself and the Scheme and this was incorrect. The salient elements for an enforceable contact (or agreement) were present:-

  - An offer was made by the Scheme's Administrators.

  - There was an acceptance of said offer.
  - Acceptance was conditional on the terms proposed.
  - Thereafter a letter confirming pension details was received.
  - The terms of the pension were clearly defined.

- For the ‘agreement’ to become void one of the following would need to apply:-

  - Common mistake: where the mistake is shared by both parties, is fundamental and directly affects the basic definition of what the parties are contracting for. It would need to show that the contract was robbed of all substance.
  - Mutual mistake: where the parties are at cross-purposes with one another. If, from the parties’ words and conduct, only one possible interpretation of what was agreed can be deduced, the contract will still be valid; otherwise, it will be void.
  - Unilateral mistake: where one party is mistaken and the other knows or ought to have known of the mistake. If the mistake relates to the fundamental nature of the offer the contract can be voided.

  Clearly none of these applied and so the agreement stood.

- He also thought that once the amendment had been made to the Scheme Rules retaining the name “Bridging Pension” was inappropriate. His Majesty’s Revenue and Customs’ (**HMRC**) definition was clear and reasonable:

  > “A bridging pension is a higher level of scheme pension that may be paid between the date the member retires **until the date the member reaches state pension age**.” (Mr N’s emphasis in bold)

- The £500 compensation did not come close to addressing the level of maladministration that had occurred and the time and effort on his part to resolve this.

27. I have considered the additional points raised by Mr N, however they do not change the outcome. I agree with the Adjudicator’s Opinion.

Ombudsman’s decision

28. Mercer and the Trustee agreed that Mr N was provided with incorrect information regarding when his Bridging Pension payment would end. So, there is no dispute that a problem has occurred.

29. Mr N has provided a quote from a Pension pamphlet that he believes supports the position that his Bridging Pension should be paid until his SPA. The correct position in

the Scheme Rules is that Mr N's Bridging Pension is paid until age 65 and this is regardless of any incorrect or unclear information provided by Mercer or the Trustee.

30. Mr N has also provided a series of emails that he exchanged with the Jaguar Land Rover HR regarding the compromise agreement. Mr N has said that these emails support that the incorrect information did inform his decision making. I agree that Mr N would have wanted to consider all the available information when deciding whether to accept the offer of his early pension. However, the Bridging Pension was only a small part of the package that Mr N was being offered. In the circumstances, I find that it is likely that even if Mr N had been aware that the Bridging Pension ended a year before his SPA, he would still have accepted the early retirement offer. I also find that Mr N has not suffered any actual financial loss. He was not entitled to receive the Bridging Pension until age 66, so the fact that it is paid until age 65 is not a financial loss.

31. Mr N has put forward that his pension would have been fully funded by Jaguar Land Rover and there was no loss to the Scheme if he was paid a Bridging Pension until age 66. In addition, the Trustee has the right to make an Unauthorised Payment and could have used this discretion to waive the claim to end the Bridging Pension when he reached age 65. The Trustee is required to pay Mr N's pension according to the Scheme Rules and I would not expect them to use discretion to amend the pension paid to Mr N, when he is already receiving the correct amount. This is regardless of how the Scheme is funded.

32. Mr N has reiterated his assertion that he has a contract with the Trustee that requires them to pay him the Bridging Pension until he is age 66. The Adjudicator has set out that the Scheme is a trust-based arrangement so there was no legal contract between Mr N and the Trustee. I have reviewed the evidence presented and I am satisfied that there was no intention by Mercer or the Trustee to enter into a separate legal agreement with Mr N that provided an entitlement outside or beyond the Scheme Rules. I agree with the Adjudicator that there is no obligation on the Trustee to pay Mr N a benefit to which he is not entitled.

33. Mr N has set out that following the change to the Bridging Pension by the Trustee the name was now inappropriate as it did not meet HMRC's definition of how a Bridging Pension operated. When the Bridging Pension was originally conceived in the Scheme Rules it was paid until the member reached their SPA, which was age 65 for men. The Trustee has made the decision to retain the maximum age for payment of the Bridging Pension as age 65 in the Scheme Rules, even though the Government has increased SPA through legislation. In making this decision there is no obligation to change the name of the Bridging Pension irrespective of the fact that it does not cover the whole period until SPA.

34. Mr N has also said that he assumes that there were errors in how the change in the Bridging Pension was communicated by the Trustee to Jaguar Land Rover and Mercer. This is not something that is within the scope of this complaint and so I have not considered this point.

35. After considering all the submissions and evidence, I find the amount of £500 offered for the distress and inconvenience caused to Mr N is appropriate and should not be increased. Mr N should contact to Trustee if he wishes to accept its offer.

36. I do not uphold Mr N’s complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
16 January 2024