

## Ombudsman's Determination

Applicant	Mr T
Scheme	Emerson UK Pension Plan ( <b>the Plan</b> )
Respondents	Emerson UK Trustees Limited ( <b>the Trustee</b> ) Capita

## Outcome

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

## Complaint summary

2. Mr T has complained that he was given unclear information that led him to believe that his pension would increase annually in line with inflation. He says that this caused him to make decisions that have financially disadvantaged him.

## Background information, including submissions from the parties and timeline of events

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. In the paragraphs that follow, pre 1997 refers to the period before 6 April 1997 and post 1997 to the period after 5 April 1997.
5. On 1 January 1991, Mr T joined the Rosemount Retirement Benefits Scheme (**the Rosemount Scheme**) which later became part of the Plan.
6. Mr T had previously accrued benefits in the Northumbrian Water Limited Pension Scheme, and these were transferred to the Rosemount Scheme. As a result of the transfer, Mr T was awarded additional service of 14 years which was treated as pre 1997 service.
7. On 31 October 2003, Mr T's active membership of the Plan ended.

8. Mr T's benefits in the Plan are governed by the trust deed and rules and sub-rules dated 20 June 2012. Extracts from these two documents (**the Rules**) can be found in Appendix 2.
9. On 28 June 2012, following a request from Mr T, Capita provided him with retirement estimates based on retirement at ages 60 and 65. Under a heading of 'Annual Rate of Pensions Increases' it stated that:

"If the member was previously a Brooks member [...] If the member was previously a Westinghouse member [...] Any further pre 1997 benefits will increase at the company's discretion."
10. On 28 March 2014, Capita wrote to Mr T in response to an enquiry he had made concerning pension increases. The information it provided related to increases to preserved pensions.
11. On 5 February 2016, Capita wrote to Mr T in response to a request he had made for information on early retirement factors. It confirmed that the factors varied depending on the rate of increase that applied to each element of pension in payment. It said:

"No increases (for benefits accrued prior to 6 April 1997 in excess of the Guaranteed Minimum Pension)."
12. On 2 November 2017, following an earlier request from Mr T, the Trustee sent details of Mr T's benefits in the Plan to his independent financial adviser (**IFA**). It included a 'defined benefit information' document. In this document, in response to the question: "How are benefits in excess of the GMP built up prior to 6 April 1997 increased in payment?" it stated: "No increases apply".
13. On 1 February 2019, Capita emailed Mr T following a telephone call he had made to ask it to check the calculation of his benefits. It confirmed that the calculation had been reviewed and was correct and that his transferred-in benefits had been treated correctly.
14. In September 2019, Mr T retired on his 60th birthday.
15. On 18 September 2019, Capita wrote to Mr T to confirm the benefits that would be payable to him. These were a pension commencement lump sum (**PCLS**) of £47,065.81 together with an annual pension of £23,503.55.
16. On 27 October 2019, the Trustee responded to a request from Mr T, who had asked for a copy of the Plan booklet. It said that, while there was no booklet, it had provided a fact sheet. It also said that increases were applied annually on 1 April. The fact sheet contained the same information in relation to increases on pre 1997 pension as had been sent to Mr T's IFA on 2 November 2017.
17. On 1 April 2020, Mr T's pension did not increase. He raised a complaint with Capita, saying that he had previously been assured that his pension was index linked, initially to the Retail Price Index and then to the Consumer Price Index (**CPI**).

18. On 1 July 2020, Capita responded. It said that, when Mr T retired, his post 1997 benefits were fully commuted to provide the PCLS. His residual pension was made up of pre 1997 pension only and did not increase in payment. It was its policy to commute the most recent tranche of pension first when calculating retirement benefits.
19. On 5 July 2020, Mr T wrote to the Trustee to complain that his pension had not been increased on 1 April 2020. In summary he said:-
  - Prior to his retirement, he requested information on the Plan. He was sent a copy of 'The Emerson UK Pension Plan (the Plan) Benefit Notes' (**the Notes**). He reviewed the information in the paragraph 'How will my pension increase once it is in Payment?' and he asked Capita on what date the increases to his pension would occur. He was told 1 April each year.
  - He was given unclear information that led him to believe that his pension would increase annually in line with inflation, and this had caused him to make decisions that had disadvantaged him.
20. On 19 August 2020, the Trustee provided its response to Mr T's complaint which it had considered under stage one of the Plan's two-stage internal dispute resolution procedure (**IDRP**). In summary, it said:-
  - Capita had sent communications to Mr T's IFA in November 2017 and October 2019, in which the correct pension increases were detailed. However, the Notes included incorrect information.
  - How pensions increased in payment was dependent on which section of the Plan the member was in. Mr T was in the Fisher-Rosemount section, and he was entitled to receive discretionary increases on his pre 1997 pension. The Trustee may decide to award an increase if the Plan became very well-funded, but it was not obliged to do this.
  - At age 65, Mr T's guaranteed minimum pension (**GMP**) will come into payment. The part of his GMP accrued after April 1988 will receive increases in line with the CPI, capped at 3% per annum.
  - When Mr T retired, his most recently accrued pension, in this case his post 1997 index linked pension, was commuted. As he exchanged a more valuable index linked pension for cash, he would have received more favourable terms than if he had exchanged his non increasing pension.
  - It agreed that the information Mr T had received from Capita could have been clearer. Due to this, and issues Mr T had with the service provided, Capita was willing to offer him an ex-gratia payment of £250.
21. On 6 September 2020, Mr T asked the Trustee to consider his complaint under stage two of the IDRP. In summary, he said:-

- All the communications he had received indicated his pension would be increased in line with the CPI. These included:
  - a document dated 2002: 'Emerson Electric UK Pension Plan – Fisher-Rosemount Section Deferred Pensions' (**the Deferred Document**). An extract from the Deferred Document can be found in Appendix 1;
  - Capita's letters of 28 March 2014 and 5 February 2016; and
  - the Notes, an extract from which can be found in Appendix 1.
- The Trustee said that correct pension increase information had been provided to his IFA in 2017 and 2019. However, he had been told by his IFA that: "We cannot beat the scheme, especially due to its benefits and index linking."
- He had been told twice on telephone calls with Capita that his index linking would take place on 1 April every year.
- He had queried his benefits with Capita and had received its response on 1 February 2019 confirming that the figures he had been provided with were correct. It was never explained to him that his latest pension would be used to provide his PCLS.
- His pension not being index linked would have a profound effect on its purchasing power.
- He would like CPI index linking restored to his pension, backdated to 1 April 2020.

22. On 26 November 2020, the Trustee provided its response under stage two of the IDR. In summary, it said:-

- Mr T had referred to the Deferred Document which stated that his pension in respect of pre-April 1997 service may be increased at the discretion of the Trustee. There was no requirement under pensions legislation for this element of his pension to be increased. Under the Rules the Trustee did not have the power to increase this element of pension. It could only be increased if the Principal Company directed this and there had never been such a direction for the section of the Plan of which Mr T was a member.
- Capita's letter of 5 February 2016 said that pensions accrued prior to 1997 did not receive increases in payment.
- Capita's letter of 28 March 2014 related to the revaluation that applied to Mr T's pension in deferment.
- The Notes contained incorrect information, stating that Mr T's pension accrued prior to 6 April 1997 would increase in payment in line with the CPI to a maximum of 5%. It apologised for this error.

- It was not industry practice to ask a member the tranche of pension they wish to surrender for their PCLS.
- It had a duty to pay benefits in accordance with the Rules.
- It offered Mr T £1,000 as a gesture of goodwill in full and final settlement of his claim.

23. The Trustee's legal representative advised that:-

- Mr T's pre commutation annual pension was £28,601.89. He received a PCLS together with a residual annual pension of £23,503.55. The PCLS was taken from Mr T's post 1997 annual pension of £3,794.99 and £1,303.35 of his pre 1997 annual pension.
- Had Mr T's PCLS been taken wholly from his pre 1997 pension, he would have received the same cash sum together with a reduced annual pension of £21,233.86 of which £3,794.99 would have been index linked.
- The Trustee considered that Mr T was no worse off and that he would not have made different retirement decisions had he been given the option of taking his full PCLS from his pre 1997 pension.

24. Mr T said:-

- He had a copy of 'The Rosemount Retirement Benefits Programme – a guide for members' (**the Guide**). The Guide refers to pension increases in payment and an extract from it can be found in Appendix 1.
- He did not accept the Trustee's offer of £1,000.

## **Adjudicator's Opinion**

25. Mr T's complaint was considered by one of our Adjudicators, who concluded that no further action was required by the Trustee or Capita. The Adjudicator's findings are summarised below, in paragraphs 26 to 36:-

26. In the Notes it was incorrectly stated that Mr T's pre 1997 pension in excess of his GMP would increase annually in payment in line with the CPI, to a maximum of five per cent. However, as stated in the Rules, this element of Mr T's pension was not guaranteed to increase in payment. Instead, any increases were subject to the discretion of the Principal Company. The Trustee confirmed that there had never been such a direction for the section of the Plan of which Mr T was a member.

27. The Adjudicator reviewed the other written communications that Mr T and the IFA received from the Trustee and Capita for information on any increases on this element of his pension. These included:

- The Deferred Document that referred to increases being at the Trustee's discretion;
  - Retirement estimates sent to Mr T by Capita in June 2012 that referred to increases being at the company's discretion;
  - A response from Capita to Mr T in February 2016, and a letter to the IFA in November 2017, that both referred to there being no increases;
  - The fact sheet sent to Mr T in October 2019 that also referred to there being no increases; and
  - The Guide which referred to the Rosemount Retirement Benefits Scheme and stated that any increases were at the discretion of the company.
28. Mr T referred to a communication from Capita in March 2014. However, the information it provided was in relation to increases to preserved pensions rather than pensions in payment.
29. Mr T also referred to a number of telephone calls with Capita in which he said that his benefits were discussed. The Adjudicator said it was not possible for him to comment on these as no evidence was available of what was said.
30. While Mr T was provided with incorrect information when the Notes were sent to him, there were at least six occasions where he or his IFA were made aware that there were no guaranteed increases on his pre 1997 pension in excess of the GMP. In the Adjudicator's opinion, it was not reasonable for Mr T to rely on the information in the Notes without undertaking adequate investigation as to why that information was not consistent with the other information he and his IFA had received. In the Adjudicator's view there was not enough direct evidence to suggest that, on the balance of probabilities, he made such enquiries.
31. Mr T also referred to the way in which his latest pension was exchanged to provide his PCLS. This resulted in him having no remaining post 1997 pension which would have received guaranteed increases. In the Adjudicator's view, Capita did nothing wrong when undertaking this part of the calculation of Mr T's benefits. It was normal for administrators to have a standard process which determines the order to commute elements of pension to provide a PCLS. The Adjudicator's view was that it was not common practice to allow the member to decide the order of commutation and that the approach Capita adopted was reasonable.
32. Prior to exchanging any pension for PCLS, and ignoring his additional voluntary contributions, only 13% of Mr T's pension related to post 1997 service. Had he been given the option to exchange part of his pre 1997 pension to fund his full PCLS, then over 82% of his remaining pension would still relate to pre 1997 service and would not be subject to guaranteed pension increases. Furthermore, had this option been available to Mr T, the annual pension he would have been initially paid would have been at least £2,200 less than he received. This was because his pre 1997 pension

had a lower pound-for-pound value than his post 1997 pension, due to the lack of guaranteed increases attaching to it. So, more of his pre 1997 pension would have had to have been surrendered to provide the same PCLS.

33. In the Adjudicator's opinion, the order in which Mr T's pension was surrendered did not have sufficient repercussions on his benefits to have a material impact on his retirement planning.
34. It was the Adjudicator's view that the Trustee was not bound to follow the incorrect information and Mr T was only entitled to receive the benefits as provided under the Rules. Mr T had suffered a loss of expectation and not an actual financial loss, as he was receiving his correct benefit entitlement from the Plan.
35. The Adjudicator also considered whether Mr T had suffered any non-financial injustice as a result of the actions of Capita or the Trustee.
36. The Trustee accepted that the information provided by Capita in the Notes was incorrect. In the Adjudicator's opinion, providing incorrect information to Mr T amounted to maladministration and Mr T had sustained non-financial injustice. On balance, his view was that the circumstances of Mr T's case did not quite meet the threshold for a distress and inconvenience payment.
37. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
38. Mr T provided some further comments in response to the Opinion. In summary he said:-
  - He had to rely on Capita as a "competent authority". He should not have to question the accuracy of the information that it provided. It had a duty of care when dealing with him.
  - While active members of the Plan received a better level of service, as a preserved member, he found Capita very difficult to deal with. He did not automatically receive annual deferred statements. He had to request these, and they were not always correct.
  - The Adjudicator's Opinion did not entirely reflect his experience of having to deal with all the issues over the timescale involved. The offer from the Trustee of £1,000 was derisory in the light of the years of frustration and inconvenience he had suffered when dealing with Capita.
  - Having searched the internet, he found no evidence that pension administrators are entitled to use the latest tranche of pension to provide the PCLS.
  - Using the index linked element of his pension to partly provide his PCLS was advantageous to the Trustee as it did not have to increase his residual pension each year. It was disadvantageous to him as the value of his pension would be reduced over time by inflation.

39. I have considered the additional points raised by Mr T, however they do not change the outcome, I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

40. While there is no dispute that there has been maladministration on the part of Capita, the starting point is that Mr T is only entitled to the benefits provided by the Rules. Exceptionally, in cases where incorrect information has been given, redress will be provided if it can be shown that financial loss or non-financial injustice has flowed from reliance on that incorrect information. For example, the member may have taken a decision in reliance on the accuracy of the information, which they would not otherwise have taken. However, they must be able to prove both that they relied on the accuracy of the information provided and that it was reasonable to do so.
41. I have considered whether it was reasonable for Mr T to have accepted the information provided in the Notes, in relation to the pension increases that would apply to the pre 1997 element of his pension. I fully appreciate Mr T's point of view on this matter, but I find that it was not reasonable for him to have relied on this information.
42. Prior to his retirement in September 2019, Mr T and the IFA had been advised on at least four occasions that Mr T's pre 1997 pension would not receive automatic increases in payment. Furthermore, he had a copy of the Guide. This, while referring to the earlier Rosemount Scheme, confirmed this point, as did the fact sheet he received shortly after his retirement.
43. I consider it reasonable to expect that Mr T would have been aware of the discrepancy between the information in these communications and the Notes. Mr T has commented on Capita's duty of care to him and that he should have been able to rely on the information it provided. However, Mr T's awareness of a possible discrepancy should have led him to query this with the Trustee or Capita. While Mr T said that he had a number of telephone conversations with Capita in relation to his retirement benefits, there is no evidence of what may have been said in relation to the discrepancy in the information he had been provided.
44. Mr T has raised some additional concerns in relation to the quality of service that he received from Capita, including the lack of provision of annual deferred statements. The scope of my investigation is restricted to Mr T's original complaint, and I am not able to comment on matters outside that.
45. I note that Mr T was unable to find any evidence on the internet that Capita was permitted to surrender his latest element of pension first to provide his PCLS. The Rules are silent on this matter. The Trustee and Capita were permitted to develop their own procedure in this respect. I find that the procedure they adopted is not unreasonable in the circumstances.



46. Mr T believes that the Trustee has benefitted, and he has been disadvantaged, by the index-linked element of his pension being used to provide part of his PCLS. He said that this resulted in the Trustee not having to apply automatic annual increases to his remaining pension. I do not find that this is the case, for the reasons stated by the Adjudicator in paragraph 32 above. Had Mr T been permitted to take his PCLS wholly from his pre 1997 pension, the resulting benefits would have been actuarially equivalent in value to those he received. This was due to the factors that were used to convert pension to PCLS which varied for different elements of pension.
47. Although I sympathise with Mr T's circumstances, I do not find that he has suffered any actual financial loss. However, it is evident to me that he has experienced some distress and inconvenience because of the maladministration identified.
48. When deciding whether to direct an award for non-financial injustice, I assess each case on its facts and merits. My awards for non-financial injustice are modest and not intended to punish a respondent.
49. Having carefully considered the submissions and evidence, in light of my conclusions above, I find that the degree of non-financial injustice which Mr T has suffered does not warrant my minimum award of £500.
50. If Mr T wishes to accept the offer of £1,000 from the Trustee, he should contact it directly.
51. I do not uphold Mr T's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
25 October 2023

## Appendix 1

### Extracts from the documentation referred to by Mr T

The Deferred Document:

“Increases to your Pension once in Payment

Your pension in respect of pre 6 April 1997 service may be increased at the discretion of the Trustee.”

The Notes:

“How will my pension increase once it is in payment?”

Your pension, in excess of your Guaranteed Minimum pension, will be increased by the Plan each PI month as follows:

Pension Accrued  
Before 6 April 1997

Increase Amount  
In line with the Consumer Prices Index (CPI), to a maximum of 5.00%”

The Guide states that:

“All pensions in payment will be reviewed each year.”

It then refers to the increases that apply to the post 1988 GMP and the post 1997 pension and goes on to say:

“Any additional increases are awarded at the discretion of the Company.”

## Appendix 2

### Extract from the Emerson UK Pension Plan Sub-Rules dated 20 June 2012

“Appendix 9 – Fisher-Rosemount (Emerson Process Management) [...]

#### 7. Payment of Pensions

Rule 7 shall apply [...]

### Extract from the Emerson UK Pension Plan Trust Deed and Rules dated 20 June 2012

“7. Payment of Pensions; Pension Increases [...]

#### 7.2 Fixed Pension Increases

7.2.1 Subject to Rule 7.2.2 and to satisfying the requirements of Section 51 of the PA 1995 in respect of Pensionable Service accrued by a Member after 5 April 1997, each pension in payment under the Plan shall increase to the extent (if any) specified in the Appendix to which the Member belongs or as otherwise determined by the Trustee and notified to the Member.

7.2.2 Where provision is made in an Appendix for increases to pension in payment, notwithstanding anything to the contrary in the provisions of the Plan, any pension in payment in respect of Pensionable Service accrued by a Member on a defined benefit basis on or after 6 April 2009 shall be subject to a maximum increase of 2.5% per annum.

#### 7.3 Discretionary Pension Increases

Pensions in payment, in excess of any Guaranteed Minimum Pensions, shall be reviewed from time to time by the Principal Company and the Principal Company may (having regards to Actuarial Advice, the rise in the Index and the financial state of the Fund) direct that a pension shall be increased, subject to Inland Revenue Limits or, as appropriate, Schedule 7 (Overriding Benefit Provisions).”