

Ombudsman's Determination

Applicant	Dr L
Scheme	ICI Pension Fund (the Fund)
Respondents	Willis Towers Watson (WTW) ICI Pensions Trustee Limited (the Trustee)

Outcome

1. I do not uphold Dr L's complaint, and no further action is required by the Trustee.

Complaint summary

2. Dr L's complaint is that he believes an out-of-date early retirement factor (**ERF**) was used in the calculation of his pension at retirement.

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. On 31 July 2007, Dr L left the Fund and his benefits were deferred.
5. Dr L is a member of the 1967 Section of the Fund, which is administered in accordance with the ICI Pension Fund Trust Deed and Rules (**the Rules**).
6. Rule 34.2(B) provides the criteria for the reduction of a deferred member's benefits when they are not retiring from active service and states:

"Any deferred Member may at any time on or after reaching the age of 50, by written notice to the Trustees elect to take a reduced pension commencing at age 50 or later as the case may be and to be determined in accordance with the following provisions:-

- (i) The Trustees may reduce the pension which could have been payable to him at Normal Retirement Age [**NRA**] by not more than 6 per cent for each year between the date on which payment of his or her pension

actually commences and his actual attainment of Normal Retirement Age; or

- (ii) The Trustees may reduce such pension on such other basis as the Actuary may certify as reasonable

as the Trustees may decide in each case provided only that they are reasonably satisfied that the value of the reduced pension shall be no less than the benefits that have accrued to him under the Rules.

PROVIDED ALSO THAT no reduction shall be applied in respect of the deferred pension of a female Deferred Pension Member who joined the Fund before the Revision Date and who elects to take a pension commencing at the age of 60 years or in respect of that part of the deferred pension attributable to Pensionable Service after 17 May 1990 of a male Deferred Pension Member who joined the Fund before the Revision Date and who so elects.” (original emphasis).

7. On 1 March 2019, Dr L began receiving an annual pension of £35,403.33 from the Fund. His pension was actuarially reduced as he claimed it earlier than his NRA of 62.
8. On 26 September 2019, Dr L wrote to WTW, who was the administrator of the Fund at the time, about the calculation of his pension and said that:-
 - As he understood it, if he claimed his pension from age 62 he would have received an annual benefit of £38,356.80. He claimed his pension on 1 March 2019, at age 59, so it was reduced by £2,953 (7.7%).
 - A colleague who retired at age 60 told him that their pension received a reduction of 6%, but this was later amended to a 1% reduction with no explanation. His colleague had been referred by WTW to page 11, section 1 D of the Fund’s pension handbook. This provided different percentage reductions for men, who accrued benefits before and after May 1990, if they retired before age 60.
 - His colleague said that WTW informed them that when their pension went into payment, it was increased from their date of leaving the Fund up to their date of retirement. Such an increase did not appear to have been applied to his pension, even though he was entitled to it.
 - He asked WTW to relook at the calculation of his benefits in line with page 11, section 1 D of the Fund’s pension handbook. He also wanted to understand why the reduction was so much higher for his pension (7.7 % at age 59), as opposed to the reduction his colleague received (1% at age 60).
9. On 11 October 2019, WTW responded to Dr L and explained that the post 17 May 1990 portion of his pension had been increased to account for equalisation brought

about by the *Barber* Judgement¹. At his date of retirement, his deferred pension was £38,356.80. An ERF of 0.9230 was applied to his pension reducing it to £35,403.33. It provided a list of the relevant ERFs that applied by reference to the number of years a member retired before NRA.

10. On 16 October 2019, Dr L wrote to WTW and said that based, on the ERF list provided, the reduction to his pension should have been based on a factor of 0.9419. This was on the basis he retired 2 years and 9 months before his NRA. By his calculation of $0.9415 \times £38,356.80$, his reduced annual pension should only have been £36,128.
11. On 23 October 2019, WTW informed Mr L that that the ERF list provided to him was incorrect and was only applicable from 11 June 2019 (**the June ERFs**). It provided the correct ERF list for his reference (**the March ERFs**), which contained the following statement:

“The above factors with effect from 1 April 2016 until (at the latest) 31 March 2018 are subject to periodic review.”
12. On 1 November 2019, Dr L contacted WTW and, referring to that statement, said that the March ERFs were only effective until 31 March 2018. However, he had retired on 1 March 2019. Therefore, it seemed, in his view, that the March ERFs should not have been applied to his pension, as they were out of date. The June ERFs, which were much more favourable, should have been applied in his case.
13. On 14 November 2019, WTW replied to Mr L and informed him that the date of 31 March 2018 was for internal guidance purposes only. The ERF that had applied to his pension, and that was contained in the March ERFs list, was correct.
14. On 20 November 2019, Dr L telephoned WTW to further query the calculation of his pension.
15. On 5 December 2019, WTW wrote to Dr L and said that the calculation and ERF applied to his pension were correct. The ERFs were subject to change from 31 March 2018, or when the Fund’s Actuary provided new ERFs.
16. In 2020, Dr L brought his concerns to the Pensions Ombudsman (**TPO**) to investigate. Dr L’s complaint was reviewed by TPO’s Early Resolution Service (**ERS**) who, in February 2021, contacted WTW to query the calculation of his benefits.
17. On 18 March 2021, WTW responded to the ERS adviser and said, in summary, that:-
 - The relevant rule for the reduction of a deferred member’s retirement benefits under the 1967 Section of the Fund was rule 34.2(B). In accordance with this rule

¹ *Barber v Guardian Royal Exchange* (European Court of Justice) – 17 May 1990 (**Barber**). Prior to the *Barber* Judgment, it was permissible for UK occupational pension schemes to have unequal retirement ages between male and female members, usually at 65 for men and 60 for women. This reflected state pension ages. From the date of the Judgment, 17 May 1990, all UK occupational pension schemes were required to equalise pension ages for men and women.

a deferred member's benefits were reduced upon the implementation of an ERF as calculated and provided by the Fund Actuary (34.2(B)(ii)).

- The Fund's ERFs were reviewed by the Fund Actuary after the completion of the Fund's triennial actuarial valuation. ERFs remained in force until they were updated and replaced. The footnote on the ERF list provided to Mr L was intended to be for internal control purposes to ensure WTW checked if the factors were up to date, or if new ones had been provided.
 - The date of 31 March 2018 was not intended to reflect a particular policy or approach whereby the ERFs must be reviewed or updated before that date. Rather, this date was included on the basis that the next actuarial valuation was on 31 March 2017 and would be completed by 31 March 2018. In practice, this valuation was not completed until February 2019. A full ERF review was then undertaken afterwards, with new ERFs applied from 11 June 2019.
 - The Fund membership did not have an entitlement, under the Rules, to any particular ERF. The Trustee held the necessary discretion to update the ERFs as appropriate.
 - The ERF applied to Dr L's pension, at his date of retirement, was from the in-force March ERFs. There was no requirement for the Trustee to update the ERFs at any particular point, nor was there any statutory duty to notify members of any changes to the ERFs.
 - The calculation of Dr L's benefits was undertaken in accordance with the Rules, and in line with the applicable ERF of 0.930 as he was still 2.667 years away from his NRA. The June ERFs could not have been used at the date of Dr L's retirement on 1 March 2019, as they were not in-force until three months later.
 - It was unfortunate that Dr L was initially provided with the June ERFs which were not applicable to him. It also apologised for the confusion caused by the footnote on the March ERFs list.
 - If Dr L wished to escalate his complaint further he was free to do so through the Fund's Internal Dispute Resolution Procedure (**IDRP**).
18. On 15 June 2021, Dr L submitted a complaint under stage one of the Fund's IDRP about the calculation of his pension. He asserted that the ERFs applicable for him "expired" from 31 March 2018, so they should not have been used thereafter. He inferred that if the Fund Actuary had reviewed and agreed that the March ERFs could be used for an additional 15 months, there should be evidence of such a decision. He had been disadvantaged as the June ERFs were more advantageous and should have been used to calculate his entitlement.
19. On 12 August 2021, WTW responded under stage one of the IDRP and broadly reiterated the information provided in its response to the ERS adviser. WTW also said:-

- It apologised for the confusion caused by the footnote that accompanied the March ERFs.
 - The March ERFs were implemented after the Fund's triennial valuation of 31 March 2014, completed in July 2015. The date of 31 March 2018 was set by reference to the next valuation of 31 March 2017. This was on the understanding it would be completed by 31 March 2018. As was previously explained to him, it was not completed until February 2019. The footnote was not an explicit expiry date for the March ERFs.
 - The Trustees did not forget to review the Fund's ERFs by 31 March 2018, nor did it fail to make a formal decision in March 2018. Instead, the ERFs were not subject to a review until after the triennial valuation, from 31 March 2017, and which was concluded in February 2019. It was only after this date that the March ERFs could be reviewed for an update if necessary.
 - The Fund Actuary would have notified the Trustee if an update to the March ERFs was required due to a notable change in investment market conditions, or changes to overriding legislation. No such events occurred so the March ERFs were applicable when he retired and took his pension.
 - WTW had reviewed its process, and a decision was made to remove all footnotes from ERF lists to avoid any confusion in the future.
20. On 17 September 2021, Dr L asked for his complaint to be escalated to stage two of the IDRP and he said:-
- He believed a reasonable interpretation of the footnote in the March ERFs of "*until at least 31 March 2018*" was that they should not be used beyond that date. This was unambiguous and could not be interpreted any other way.
 - If the footnote was intended to be used as guidance for WTW, then they should be able to provide proof of this via a written procedure document within its quality controls. If no such document existed, then the March ERFs should not have been used from 31 March 2018 onwards.
 - He accepted that the Rules did not provide any form of entitlement to any particular ERF. However, he expected that he should be entitled to an ERF that was available after the deadline for the previous ones had passed.
 - He wanted WTW to admit that it missed a clear deadline to review the March ERFs, and that it would compensate him accordingly for the difference between the March and June ERFs.
21. On 10 December 2021, the Chair of the Appeals Committee (**the Committee**) responded to Dr L's stage two IDRP complaint and reiterated the responses provided to the ERS adviser, and under stage one of the IDRP. It provided a copy of an email

from the Fund's actuarial team to WTW, dated 6 March 2018 (the **March 2018 Email**), which said:

"...You will be aware that the latest factors we have issued to you contain a note underneath each set of factors saying that they "are expected to apply until 31 March 2018". This was in anticipation of possible timescales for the 2017 valuation (and therefore any subsequent factor review), although the results of this valuation have not been finalised. For completeness and with 31 March 2018 approaching, I am therefore emailing you just to confirm that you should continue to use the current factors until further notice."

Adjudicator's Opinion

22. Dr L'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 relevant rule was 34.2(B) of the Rules which provided the Trustee with the requisite discretion to reduce a deferred member's pension if it was claimed before their NRA. More specifically, Rule 34.2(B)(ii) made clear that the reduction in an individual's pension was calculated based on the input/advice of the Fund Actuary. That was, so long as the reduced pension was not less than the benefit the individual accrued under the Fund.
- The Adjudicator's view was that the Rules were clear and unambiguous in their nature. It was for the Trustee to establish how a reduction was applied for early retirement if an individual retired before their NRA. The Rules made no reference to any particular ERF that any section of the Fund's membership should receive. Overall, WTW had acted in accordance with the Rules, so there was nothing further to consider in that regard.
- It was accepted that, in the first instance, the incorrect June ERF list was sent to Dr L. Dr L retired on 1 March 2019, so only the March ERFs were applicable in the calculation of his benefits. Generally, the provision of incorrect information amounted to maladministration. However, in this case, the provision of the incorrect ERF list had no material impact on Dr L as his pension was already in payment at the time. There was nothing to suggest that Dr L's pension was incorrectly calculated, or that an incorrect ERF was used.
- WTW made clear that the footnote date of 31 March 2018, on the March ERF list, was only ever intended to be used as an internal warning/signpost for WTW. It has said that this date did not represent a deadline/expiry date for the use of the ERFs. WTW provided confirmation from the Fund Actuary that the March ERFs were still applicable, beyond 31 March 2018, as the triennial valuation had not yet been completed.

- In the Adjudicator's view it was understandable that Dr L might have concluded that the March ERFs expired in March 2018 based on the footnote. However, this did not mean that his pension was incorrectly calculated, or that he was entitled to the June ERFs. There was a delay in the completion of a triennial valuation, which started on 31 March 2017 with the assumption it would be completed by 31 March 2018. This did not occur as the valuation was only completed in February 2019. In turn, this delayed the subsequent review of whether the March ERFs needed to be updated. If at any point from 31 March 2018 onwards, the ERFs needed to be updated, due to a change in global investment conditions, the Fund Actuary would have notified WTW. No such change occurred, so the March ERFs remained applicable and in force until June 2019.
 - The Adjudicator's opinion was that the March ERFs were the appropriate ERFs to use in the calculation of Dr L's retirement benefits. It was clear that the footnote attached to the March ERFs was for WTW's own internal controls. WTW had since said that footnotes to this effect were removed from any ERF lists that were available or issued to the membership.
 - The Adjudicator concluded their opinion by stating that Dr L had not suffered a financial loss as he was not entitled to the use of the June ERFs in calculating his pension. Irrespective of the fact that the June ERFs were more favourable, the March ERFs were applicable when he retired. Overall, Dr L's pension reflected his entitlement under the Fund at the time of his retirement.
23. Dr L did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Dr L provided his further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Dr L, which are:-
- The main point of his complaint related to the use of the phrase "at least" in the March ERFs. At least, in his view, amounted to a clear, unambiguous instruction in regard to the date of which the March ERF should be used up to. Consequently, this made clear that WTW failed to undertake the required review of the ERF by 15 months.
 - WTW insisted that the footnote did not amount to a rule and was only ever intended to be used as a form of internal control/signpost. It also maintained that the date of 31 March 2018 did not amount to a deadline or an expiry date for the March ERFs. He did not understand how "at least" could be interpreted to mean anything other than a concrete deadline for the use of the March ERFs.
 - It was immaterial that WTW had since removed the footnote from all ERF lists that were made available to the membership. The main point was that it was present on the March ERFs when his pension was calculated and put into payment.
 - Even if the footnote was an internal control, it was clearly not adhered to as the ERF review was 15 months late. Consequently, WTW's own internal controls had

failed. WTW's excuse of why the ERF review was not conducted when it should have been, was not valid. This was just another way of saying the review was late.

- He was not disputing the fact his pension was calculated using the ERFs that were in force at the time. His complaint was more that WTW failed to undertake a review of the ERFs by an explicitly clear deadline of 31 March 2018. The ERFs used to calculate his pension were far beyond the deadline date of 31 March 2018. It was unclear why it did not matter if the footnote date was not adhered to, as failing to adhere to this date meant that WTW had failed its own internal controls.
- Overall, irrespective of whether the footnote constituted as a rule, or an internal control, WTW failed to undertake a review of the ERFs in the required time frame.

Ombudsman's decision

24. Dr L's complaint relates to the use of the March ERFs in the calculation of his pension entitlement. Due to the inclusion of a footnote on the March ERF list, which references their use until "at least" 31 March 2018, he believes the March ERFs were out of date when used in the calculation of his pension in March 2019.
25. The key question to consider in looking at this complaint is what the Rules of the Scheme require. Rule 34.2(B), set out in paragraph 6 above, is the relevant rule and provides two bases on which an ERF may be applied if a deferred member's pension is claimed before NRA. In this case, the Trustee says that it applies the reduction in accordance with the second limb of the Rule – Rule 34.2(B)(ii), which states that "*The Trustees may reduce such pension on such other basis as the Actuary may certify as reasonable*". On top of that, the Trustee must also be reasonably satisfied, essentially for preservation purposes, that the 'value' of the reduced pension is not less than the benefit the individual has accrued under the Fund (the **Value Test**). There is also a *Barber* proviso to contend with, and which is referred to in paragraph 9 above (and so I do not consider it further here).
26. The Rules make no reference to any particular ERF that should be applied to the calculation. Nor do the Rules refer to any particular timeframe for ERFs to be reviewed.
27. So, for the purposes of that Rule, the Trustee has considerable latitude to decide what ERF applies, provided that the Actuary certifies that reduction as reasonable (and the Value Test is satisfied, which in practice will be a part of the Actuary's considerations in any event).
28. Therefore, on the face of it, it is possible to have some sympathy for Dr L's argument that the phrase "*at least until 31 March 2018*" in the footnote on the March ERF list could suggest that those ERFs were out-of-date and perhaps were no longer "reasonable" in the eyes of the Actuary.

29. However, prior to 31 March 2018, the Fund's actuarial team sent the March 2018 Email to the administrators (referred to in paragraph 21 above) to confirm that the ERFs contained in the March ERFs list should continue to be used. I am content that amounts to confirmation that the Actuary was of the opinion that those existing ERFs remained reasonable (and I note that the Actuary has also confirmed, for the avoidance of doubt, that the reduction also met the Value Test).
30. Furthermore, I note that the Actuary has also confirmed that no events occurred which, in his view, required the Trustee to review the March Factors between that March 2018 Email being sent and Dr L's retirement. Rather, the full review of factors occurred, as is common, at the conclusion of the Scheme's valuation. As a result, the ERF used to reduce Dr L's pension was therefore correct and satisfied the requirements of the Rules.
31. Dr L is only entitled to the ERFs that were properly in place at the time of his retirement, which were the March ERFs. He is not entitled to the June ERFs as they came into force after his benefits were calculated and put into payment.
32. I do not uphold Dr L's complaint.

Dominic Harris

Pensions Ombudsman

11 December 2025