

Ombudsman's Determination

Applicant	Mr B
Scheme	Railways Pension Scheme (the Scheme)
Respondents	The Railways Pension Trustee Company Limited (the Trustee) Railpen (formerly RPMI Limited) (RPMI)

Outcome

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

Complaint summary

2. Mr B complained that his projected Scheme benefits will be lower than he would have received in earlier years. This is due to a change in the factors used to convert additional voluntary contributions (**AVCs**) into pension benefits.

Background information, including submissions from the parties

3. Mr B is a member of the Scheme.
4. On 24 June 2013, Mr B began making AVCs into BRASS which is the Scheme's in-house AVC arrangement.
5. The 'Guide for members of BRASS (Network Rail Section)', which is available on the Scheme website contains a section that sets out "How you can take your BRASS funds at retirement". The information states:-
 - Any contributions that a Network Rail member paid into BRASS before 6 April 2009 can be used to provide a lump sum benefit which can then be converted at the rate of £12 of the lump sum for £1 of pension per year.
 - Contributions made on or after 6 April 2009 will not provide additional pension at the rate of £12 of lump sum for £1 of pension per year. Instead, these funds will be used to provide either a cash lump sum up to the permitted maximum under HMRC rules or a pension at the rate determined by the Actuary or, if the Trustee elects, on terms available from an insurance company.

- When a member receives their Annual Pension Estimate the value of their BRASS Account for any contributions made before 6 April 2009 will be shown as BRASS2. The value of the BRASS Account for any contributions made on or after 6 April 2009 will be shown as BRASS3.

6. In January 2021, Mr B contacted RPMI and queried the change to the conversion rates after 6 April 2009.

7. In January 2021, RPMI sent Mr B an email that contained an explanation from the Scheme's Technical Services Actuary as to how the conversion rates worked. It said in summary:-

- Contributions received after 6 April 2009 were classed as BRASS3 contributions and any excess funds would be converted to pension at a rate advised by the Scheme Actuary and agreed by the Trustee.
- The rates were reviewed by the Actuary every three years as part of the triennial valuation of the Scheme and were based on many different factors. The rate that he would receive was more beneficial the older he was. The current rates from ages 65 to 70 were:

Age	Rate
65	16.5
66	16.02
67	15.54
68	15.06
69	14.57
70	14.07

- The conversion rate was the rate at which his excess BRASS funds [above HMRC limits] would be converted to additional pension and he did not lose the cash accumulated via BRASS contributions. All contributions and growth would be paid to him either as a lump sum or as annual pension.

8. On 20 January 2021, Mr B sent an email to RPMI and said in summary:-

- According to the Office of National Statistics (**ONS**) the life expectancy in the UK was as follows:

“Life expectancy at birth in the UK in 2017 to 2019 was 79.4 years for males and 83.1 years for females; (so less for older people born 65 - 70 years ago).”

- He did not think that the conversion rates sounded fair or reasonable and did not reflect life expectancies. Further, he disagreed that the benefit was greater the older a member was when they left the Scheme and took a pension.

- Inflation had an impact and if the investment was not covering inflation, then that could be a result of poor investing considering for example that credit card interest rates were over 20% and the housing market was returning more than double the inflation rate.
- He would therefore like to know more about how the conversion rates were determined and what all the costs were to manage these funds including bonus or dividends. Further, were these rates annually based or were they apportioned over years and days and were they negotiable.

9. In February 2021, RPMI responded to Mr B and said:-

- RPMI administered the Scheme, and its duty as Scheme Administrator was to calculate members' benefits in accordance with the Rules of the Scheme using the conversion rates set by the Trustee. It had fulfilled this duty, but it acknowledged that Mr B wished to challenge the BRASS3 conversion terms that the Trustee had set.

Calculation of the BRASS 3 conversion terms

- Under Paragraph 6 of Schedule 3 of the Rules of the Network Rail Section (**the NR Section**), where a member elects to convert BRASS3 funds to additional pension on retirement, the basis for this conversion was determined by the Trustee having considered the advice of the Actuary. If the relevant BRASS3 funds exceeded HMRC's limit for a maximum tax-free lump sum payment, then these were required to be converted to pension on the same terms.
- The conversion rates were designed to reflect an estimate of the cost to the Network Rail Section of providing the equivalent "single life" pension benefits in the Scheme. This cost estimate was reviewed by the Scheme Actuary and the Trustee broadly every three years, following the triennial valuation of the NR Section.

Mortality assumptions

- The Scheme Actuary's mortality assumptions were important factors that underlie this cost estimate. Although Mr B was only provided with the table of BRASS3 conversion rates for males, different rates applied to female members since women had a higher life expectancy than men.
- Mr B had quoted figures for the life expectancy at birth in the UK (2017 to 2019) as published by the ONS (79.4 years for males and 83.1 years for females). The same report contained a section on life expectancy at age 65 years in the UK which stated that:

"If those aged 65 years were to experience the same age-specific mortality rates seen in 2017 to 2019 for the rest of their lives, a 65-year-old male could expect to live on average for a further 18.8 years and a female for 21.1 years,

which represent the highest life expectancies at age 65 years ever observed in the UK.”

This would equate to males living to age 83.8 years and females living to 86.1 years. The fact that life expectancy at birth was a lower figure reflected the number of people born who do not survive infancy.

- It should also be noted that pension scheme members had a longer life expectancy than the UK population. This was because pension scheme members tended to be more affluent than the general population, having been in employment and having been employed by firms that provided pensions and other employee benefits.
- The mortality assumptions that underlie the BRASS3 conversion rates were the same as those adopted by the Scheme Actuary for the 31 December 2016 actuarial valuation of the Network Rail Section. For this valuation, the Scheme Actuary used the self-administered pension schemes mortality tables published by the continuous mortality investigation in February 2014 and based on their mortality investigation over the period 2004 to 2011.

Other relevant factors

- The investment returns assumed in setting the BRASS3 conversion rates were at the higher end of the range adopted for the conversion of cash to additional pension within other sections of the Scheme. The higher assumed investment return brought down the assessment of the cost of providing the pension benefits from the Scheme and, hence, the conversion terms were more generous to the member than they might otherwise be.
- The costs of managing the NR Section’s assets had no direct bearing on the conversion rates that had been set by the Trustee. Investment costs were assumed to be met out of future investment income. Therefore, the investment return assumption set by the Scheme Actuary was net of such costs.

Application of the conversion rates

- In relation as to whether the conversion rates were negotiable. It would be inappropriate for the Trustee to amend its standard conversion rates for an individual member of the Scheme, and to pay that individual a benefit that was higher than required under the Rules of the Scheme.
- It would also point out that the cost of purchasing equivalent pension benefits on the open market would be much higher than the BRASS3 conversion rates adopted for the NR Section as could be evidenced if Mr B searched for current annuity rates online.
- It could confirm that the factors were determined according to the member’s age in years and nearest months so, for example, if a male is aged 65 years and 6

months (to the nearest month) when the conversion took place, then a conversion factor of 16.26 was used. This was in accordance with the calculation instructions provided by the Scheme Actuary.

10. On 16 February 2021, Mr B sent an email to the Network Rail Head of Pensions and said that further to his previous communications he would like to know what their standpoint was. Also, whether they could do anything to rectify the unjust situation, bearing in mind that this situation affected every member of the pension fund who was paying money into BRASS.
11. On 18 February 2021, the Head of Pensions sent an email to Mr B and said in summary:-
 - RPMI had responded as it was their role to answer questions and provide specific information about the rates that were used for converting BRASS funds into pension benefits.
 - It was his belief that the approach taken by the Trustee of the Scheme, based upon the advice provided by the Scheme Actuary in relation to the conversion rates was acceptable and completely appropriate.
 - When considering and agreeing the conversion rates, the Trustee considered all members of the National Rail Section of the Scheme and not just members on an individual basis.
12. In June 2021, Mr B raised a complaint with RPMI under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said:-
 - The conversion rate had moved considerably from the £1 pension for every £12 of BRASS funds converted. This change had come at such a late stage for him that it could not be recovered and had cost him £30,000. Why had there been such a huge change in the factor and why was there not a differential conversion rate applied for different age groups.
 - The conversion rate should follow the policy of changing pension investment to a safer investment when one is within five years of pension retirement age. He or anyone in his situation or at his age could not make up the shortfall in a few months. He believed that the decision was taken because of the Covid pandemic when markets fell dramatically. This had changed and markets had since gained the losses.
 - Life expectancy was increasing but a recent query to ONS had indicated that there could be a fall because of Covid. If a comparison was made, then it should be made against similar pension funds like the NHS or the best in the market and not the private sector or worst scenario. Network Rail indicated in a message to all personnel at the end of the last year that the Scheme was well funded and strong – so why the change?

- Why was future investment not considered? As mentioned previously, the Scheme was virtually just paying out what was in one's account whereas investments should double every six to eight years. Why was the decision subjective and not linked to critical market factors such as investment levels, change in life expectancy and adapted weekly like the investments. Why must the conversion rates stay unchanged for three years?
- He did not agree with the explanation of the Technical Services Actuary in connection with the conversion rates for BRASS funds. He requested that the conversion rate change decision was reviewed, and the conversion rates were improved significantly.

13. On 13 August 2021, RPMI issued a response to Mr B. It reiterated its previous points and in addition said:-

- Mr B had not made any BRASS contributions before 6 April 2009 and so his contributions would not have ever converted at a rate of 12:1. The Rules were in place before he joined the NR Section of the Scheme. While he felt that these changes had taken place late in his career, the changes were put in place prior to any contribution being received from him. In addition, the Covid pandemic had no impact on how the conversion rates were derived.
- The conversion rates were last amended in 2019. They would be reviewed again in 2022, in line with the triennial valuation cycle for the Scheme. If there have been any changes to mortality rates or expected future improvements in mortality rates, due to the Covid pandemic at the time of the Scheme Actuary's review, then these will be reflected in the new conversion rates that will apply from mid-2022 onwards.
- In reviewing only every three years the conversion rates were stable and allowed members to plan for their retirement. This was also practical from the Scheme's perspective since an annual review of conversion rates would be costly from the point of view of adviser's fees and the Scheme's administration. These costs are met from the contributions paid by members and their employers.
- RPMI was still receiving BRASS contributions from him, and these would not convert to pension at a rate of 12:1 and the current conversion rates would apply.
- As the Head of Pensions had previously highlighted, the conversion rates adopted by the NR Section of the Scheme were generous compared to many other UK occupational pension schemes and very few schemes offer any opportunity to convert AVCs into scheme pension. The vast majority require members to use the open market option, thus placing no risk at all on the scheme and hence the comparison to the private market is a fair one.

- Every quarter, the Scheme Actuary reviewed financial market conditions and, if these had changed materially since the last review, they provide a Market Value Adjustment (**MVA**) for RPMI to apply to the BRASS3 conversion terms. In this way, the conversion terms were linked to critical market factors. The MVAs do not consider changes in life expectancy since tables of mortality experience were not published frequently and expectations of future mortality experience did not generally change from quarter to quarter.
 - The conversion rates do not need to consider the lifestyle policy of moving BRASS funds into safer investments within five years of a member's retirement because, on the member's retirement, their BRASS funds are effectively transferred to the Scheme to provide the equivalent pension benefit over the terms of their retirement. Hence it is the Scheme's investment strategy that is relevant to the calculation of the conversion rates. Furthermore, if this was considered, the assumed rate of future investment return would be lower, and the conversion terms would not be as generous to the member.
14. On 1 September 2021, Mr B wrote to RPMI because he disagreed with its response. He said:-
- The Rules of the Scheme had been manipulated to benefit others and not the contributing members.
 - The information regarding conversion rates was not explained on the Scheme website.
 - The changes to conversion rates should only apply to new members and not existing members of the Scheme. It was unfair and unethical to penalise members close to their retirement date.
 - He received no notification that the conversion rates had changed.
15. On 19 November 2021, the Trustee issued its stage two IDR response. It said that:-
- It was not upholding Mr B's complaint.
 - Having reviewed all the evidence submitted by Mr B, together with the response from RPMI under stage one of the IDR, the Trustee agreed that RPMI had acted appropriately and had administered his benefits correctly in accordance with the Trust Deed and Scheme Rules.

Adjudicator's Opinion

16. Mr B's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or RPMI. The Adjudicator's findings are summarised below:-
- Mr B began making AVCs on 24 June 2013. These were BRASS3 contributions and were subject to conversion rates set by reference to the advice of the Scheme Actuary. Mr B has referred to the fixed conversion rate applicable before 6 April 2009, that is BRASS2 contributions, and has said that members contributing on this basis received a more generous pension benefit.
 - Mr B was not paying AVCs before 6 April 2009 and so the conversion rate applicable at that time was not relevant to his membership. Paragraph 6 of Schedule 3 of the Rules of the NR Section stated that the basis of the conversion factors for the BRASS3 section were determined by the Trustee having considered the advice of the Actuary.
 - The Trustee had explained that the conversion rates were reviewed by the Scheme Actuary and the Trustee broadly every three years following the triennial valuation of the Scheme. The Scheme Actuary also provided a MVA every quarter to apply to the conversion rates.
 - In the Adjudicator's opinion as the Trustee had followed the direction in the Scheme Rules to take the advice of the Scheme Actuary there had been no maladministration.
 - Mr B has also said that the Scheme website did not clearly explain how the conversion rates were applied and he was not informed of the change. In the Adjudicator's opinion the current information does clearly differentiate between BRASS2 and BRASS3 funds. If Mr B was unsure regarding how his contributions would be converted, he had the opportunity to check this with RPMI at the time he started making the contributions.
 - There was no need to inform Mr B of the change in 2009 as he was not paying AVCs at this time. The correct position was confirmed to Mr B in 2021 when he queried the change since 6 April 2009, and he continued to make contributions. In the Adjudicator's opinion Mr B was aware that his BRASS3 funds would not be converted at a rate of 12:1 and he continued to make contributions on this basis.
17. Mr B did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and note the additional points raised by Mr B which are summarised below:-
- He has clarified that he began working at Network Rail on 6 May 2008 but was required to join the defined contribution scheme for the first five years of his employment and after this period he became a member of the Scheme.

- Since he started his employment there has been continual changes to the Scheme which has affected the support that members were given and the pension benefits that were available. Retirement seminars were on offer previously and BRASS contributions were matched by Network Rail.
- His understanding was that the generally accepted objective of a defined benefit pension fund was to stabilise the peaks and troughs of the pension funding so as to give the members a definite pension benefit to plan the later stages of life. This has not happened in this case.
- He also provided quotes from the Pensions Minister and Money Talk that he felt illustrated his point which say that the money invested in pension schemes should be made to work for the individual and that if you have a defined benefit pension from an employer it is their responsibility to meet their promises of retirement income.

Information about BRASS benefits and the changes to the conversion factors

- He has provided the Scheme guides that were available at 6 May 2013 when he joined the Scheme. He has said that he has searched all the information he was provided regarding his BRASS contributions, and he is sure that there was no mention of "...on terms available from an insurance company". This may have been changed at some time as it would seem that changes have been made each year. The guides do not mention that BRASS conversions will change to "full insurance rates", but BRASS funds invested after 6 April 2009 are converted using factors agreed by the Trustee on a cost neutral basis.
- He queried this through the helpline, and he was told that the conversion factor was unlikely to change significantly as the pension fund was doing well and that that investments were doing well and "safe". He was led to believe that the words "cost neutral basis" meant precisely the state of the pension fund. There was no mention of insurance policies being used.
- He also provided calculations to show what BRASS benefits he could have received at the three main points in the duration of his employment with Network Rail:
 - On 6 May 2008 when he was a member of the defined contribution scheme.
 - In December 2016 when he was a member of the Scheme and had reached age 65
 - In September 2021 just before he reached age 70.
- He felt these calculations demonstrate how the BRASS benefits have deteriorated. He has concluded that at each stage the pension benefits have

worsened, and he now feels the amount offered is probably worse than those in some private sector schemes.

- His individual circumstances are that he has spent time out of the UK and so does not qualify for a full state pension. This was why he contributed to the BRASS scheme so that he could increase his pension benefits. He cannot see the reason for reducing the conversion factors. The Scheme was stable, the general investment market was good and had stabilised after Covid. However, he was told by one of the staff when he said he was going to appeal against the conversion rate, that it was a directive from Government to align with private practice. This was not fairly communicated to members and the change was so close to his retirement date that he was not able to make up the loss.

Other issues that have not been taken into account

- His BRASS amount was not included in his pension, and it took many email messages to get this resolved. In addition, a different set of less beneficial conversion factors were applied. He was told he had no option to challenge this. As his complaint was already in progress, he believed that this would be corrected when the main dispute was resolved.
- The Scheme guides he has been provided with are very general and make use of glossy wording to make members think that all is well. Meanwhile there are manipulations taking place without anyone being informed.
- He had often requested telephone access to senior managers to discuss the issues he was having but this was denied. The telephone operators would refuse to provide anything in writing and said all the information he needed was on the website. He is also unhappy that during telephone contact he has had to give a lot of personal information for “security reasons” but if he asked for any information to verify who he was speaking to this did not happen.
- The CEO of Network Rail initially recognised his dilemma but once he spoke to the manager of the Scheme, he commented that it was out of his hands. He would like to know why this was, as he suspects it could be that he was confidentially told by a pension fund member that the changes to the conversion factors were a Government directive. This is a Government guaranteed arrangement and so the money belongs to the members.
- He requested information concerning the organisations’ day to day “share” indices and why contribution transaction conversions varied after the money had been sent by Network Rail. Also, the board salary history as required by law, bonuses, overhead costs, and a history of general salary increases. but this was refused. Railpen also refused to give the history of the conversion rates and/or the detailed reason for the change.
- Pension funds should be made to be open and honest. Options or recommendations should be given to members that they can take pension

benefits earlier when planned major changes are being considered, as in this case.

- He cannot fully explain the mental anguish this dispute has caused him, and he has continually lost sleep due to the impact on him. His worry about this injustice, the future, the cost of living increases and inflation has not helped the situation either.

Ombudsman's decision

18. Mr B complained that the benefits available from the Scheme have unfairly worsened over time due to the change in the factors used to convert his AVCs into pension benefits.
19. However, while Mr B might be dissatisfied with the way his benefits have been calculated there is no indication that he is receiving incorrect pension benefits. Rather, I am satisfied that he is being paid the correct benefits to which he is entitled under the Rules of the Scheme.
20. The Rules that govern the BRASS benefits that Mr B has paid into provide that the conversion factor, at the time the benefits are taken, will be determined by the Trustee having considered the advice of the Actuary. It is the case that the fixed conversion factor of 12:1 is not applicable to Mr B, but it is important to note that this was never an option available to Mr B, as he was not a member of the BRASS section at the relevant time and his benefits have been paid according to the Rules that apply during his participation in the Scheme.
21. I acknowledge that Mr B is unhappy with the conversion rate that was applied to his benefits, but this does not mean that it was incorrect. Mr B did query this at the time and was provided with information regarding the factor used. I am satisfied that the Trustee has acted in keeping with the Scheme Rules.
22. I do not uphold Mr B's complaint.

Dominic Harris

Pensions Ombudsman
17 April 2024