

Ombudsman's Determination

Applicant	Mr S
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	Worcestershire County Council (the Council)

Outcome

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

Complaint summary

2. Mr S has complained that he received an annual pension increase letter (**PIL**) from the Council each year between 2011 and 2020 which were understated, causing him financial detriment.

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. The Local Government Association (**LGA**) is a national organisation with a stated aim of working with member councils to support, promote and improve local government services.
5. Mr S initially joined the Scheme on 7 April 1962 and left on 30 June 1994. He subsequently rejoined the Scheme on 1 February 2001 and retired on 30 August 2005. The two related pensions went into payment on the following day. Policy number 01090338164 was for the pension covering the period of service between 7 April 1972 to 30 June 1994.
6. Following Mr S' retirement, the Council sent him a PIL each year based on the Government's annual Pensions Increase (Review) Order that was required under Section 59(5) of the Social Security Pensions Act 1975 (**the 1975 Act**) as set out in the Appendix One.
7. In 2009, the Council sent Mr S a PIL (**the 2009 PIL**) based on the Pensions Increase (Review) Order 2009. The letter confirmed that the excess of a Guaranteed Minimum

Pension (**GMP**) element of policy number 01090338164 would increase by 5% annually from £19,941.24 to a “New Annual Pension” (**NAP**) of £20,938.30 from 6 April 2009. The letter also confirmed that there would be no increase on the GMP, and a “Frequently Asked Questions” section (**the FAQs**) was included as set out in the Appendix Three.

8. In April 2009, Mr S reached the State Pension Age (**SPA**) of 65.
9. On 15 April 2009, the Council wrote to Mr S (**the Modification Letter**) and said he had paid ‘modified contributions’ during his period of service before 31 March 1980 as part of a Government aim to avoid duplication of his pension payments, due to his entitlement to a State Pension. The Council said that as consequence of this, his pension from policy number 01090338164 had reduced from £20,938.31 to £20,889.20 annually from the SPA.
10. In 2010, the Council sent Mr S a PIL (**the 2010 PIL**) relating to the Pensions Increase (Review) Order 2010. The letter confirmed that the total annual pension of £20,889.20 under policy number 01090338164 minus an annual GMP of £4,236.96 would not increase from 12 April 2010. The Council said the total annual pension would remain £20,889.20. The letter also reiterated the FAQs.
11. On 15 April 2013, the Council sent Mr S a PIL relating to the Pensions Increase (Review) Order 2013. The letter confirmed that the total annual pension of £22,385.55 minus an annual GMP of £4,324.32 under policy number 01090338164 would increase by 2.2% annually. The Council said the Post 6 April 1988 GMP would also increase by that percentage and Mr S would receive a NAP of £22,816.18 from 8 April 2013. The FAQ’s were also reiterated.
12. On 8 April 2014, the Council sent Mr S a PIL relating to the Pensions Increase (Review) Order 2014. The letter confirmed that the total annual pension of £22,816.18 under policy number 01090338164 minus an annual GMP of £4,357.60 would increase by 2.7% annually and the Post 6 April 1988 GMP by the same figure. The Council said Mr S would receive a NAP of £23,356.69 from 7 April 2014 and reiterated the FAQs.
13. On 1 April 2016, the Council sent Mr S a PIL relating to the Pensions Increase (Review) Order 2016, confirming that there would be no annual increase on the total annual pension of £23,603.41 minus an annual GMP of £4,418.96 under policy number 01090338164. The Council said Mr S would continue to receive a pension of £23,603.41 annually from 11 April 2016 and reiterated the FAQs.
14. On 5 April 2017, the Council sent Mr S a PIL relating to the Pensions Increase (Review) Order 2017, confirming that the total pension of £23,603.41 minus a GMP of £4,418.96 under policy number 01090338164 would increase by 1% annually and the Post-6 April 1988 GMP by the same percentage. The Council said Mr S would receive a NAP of £23,811.37 from 10 April 2017. The FAQs were also included in the letter.

15. On 3 April 2020, the Council sent Mr S a PIL relating to the Pensions Increase (Review) Order 2020 (**the 2020 Order**) as set out in Appendix Six. The Council confirmed that the total pension of £24,961.08 minus a GMP of £4,524.52 under policy number 01090338164 would increase by 1.7% and the Post-6 April 1988 GMP by the same percentage. The Council said Mr S would receive a NAP of £25,337.63 from 6 April 2020 and reiterated the FAQs.
16. On 4 May 2020, Mr S wrote to the Council and said:-
 - Before he reached the SPA in April 2009, all annual inflation increases had been applied to the full value of his pension from the Scheme. After that date the annual increases had not been fully applied to the GMP.
 - He was unable to find any information on the Scheme's website for members (**the member portal**) regarding calculation of annual pension increases. However, he had found a copy of a London Pension Fund Authority (**LPFA**) guide to the effect of the State Pension on the Scheme dated April 2011 (**The LPFA GMP Guide**). It stated, "...we therefore deduct the Pensions Increase due from [the GMP] before paying your pension. Your [Scheme] pension may therefore not show the full index linking that you would expect, but any balance is paid with your State Pension."
 - Examples regarding the calculation of annual pension increases provided in the LPFA GMP Guide suggested that the total of increases applied to the Scheme pension added to those on the State Pension, should reconcile with the figures quoted in the PILs he had received. So, according to his calculations, the Scheme pension of £19,928.70 quoted on 5 April 2009 ought to have increased by a total of 28.86% since that time to comply with the Social Security Administration Act 1992 (**the 1992 Act**) as set out in Appendix Two.
17. On 19 May 2020, the Council wrote to Mr S and provided a calculation of the increases on his pension from the SPA, showing the way in which the GMP element of the benefits had changed. The Council said that the Post-6 April 1988 GMP could increase up to a maximum of 3% a year in the Scheme, any further inflation increases on the GMP was paid with the State Pension.
18. On 5 June 2020, Mr S emailed the Council and reiterated his complaint of 4 May 2020 that annual increases had not been correctly applied to the GMP and he would like copies of the PILs sent to him in 2009 and 2010.
19. On 9 June 2020, the Council wrote to Mr S and said he had received the full pension increase that was due in 2009 because he reached the SPA in April 2009, after the increase on 6 April 2009. The Council also provided copies of the PILS sent to him in 2009 and 2010 with the Modification Letter.
20. On 12 June 2020, Mr S wrote to the Council and complained that:-

- He understood that each PIL received between 2011 and 2020 had been calculated on the basis of guidance provided in those letters or bulletins that were available to members of the Scheme. However, he was confused by the NAP quoted in those letters because it was not clear that the rate of increase should not be applied to the full value of his pension from the previous year. Although the difference between the figures was minimal from one year to the next, the cumulative effect over several years was “substantial.”
- The primary legislation applicable to each PIL was Sections 150 and 151 of the 1992 Act, which provided for a review of pensions “in order to determine whether they have retained their value in relation to the general level of prices...”. An ‘Explanatory Note’ in relation to the 2020 Order (**the 2020 Explanatory Note**) had confirmed that “Public service pensions in payment, pensions and preserved lump sums are increased annually to take account of increases in the cost of living so that they maintain their purchasing power”. Section 59(5) of the 1975 Act refers to the 1992 Act and provides that “the annual rate of an official pension may...be increased.”
- Section 4 of the 2020 Order required that the amount by which any increase was calculated should be reduced by an amount equal to the GMP to ensure that the Scheme pension and GMP did not exceed the “authorised” increase rate of the overall pension. However, there was no provision within the 2020 Order requiring the annual rate of increase to comply with Section 150 of the 1992 Act. He would like the Scheme’s interpretation of the 2020 Order that provided for a NAP that did not reflect the quoted level of increase or the legislative requirement to maintain the pension’s purchasing power.
- Between 2010 and 2020 he had received total pension increases of £4,448.43 or 21.29% on his annual pension from £20,889.20 to £25,337.63. However, the PILs provided during the same period had pointed to increases in annual pension totalling £5,182.99 or 24.81% from £20,889.20 to £26,072.18. So, he had suffered a cumulative loss of 3.52% on the benefits that were due, and this was in breach of Section 150 of the 1992 Act.

21. On 22 June 2020, the Council wrote to Mr S and provided a copy of the LGA’s guidance booklet called the LGA Administrator Guide (**the LGA Guide**). Regarding the way in which annual pension increases should be applied under the Scheme it states:-

“Before 6 April 2016 – interaction between state benefits and LGPS pensions

Before the 6 April 2016 the old State pension system was in operation and increases applied to [the Scheme’s] benefits were dependent on whether the State applied an ‘uprating difference calculation’ and paid the net result with any State benefits. This was commonly known to public service pension

scheme administrators as payment of net 'Additional Pension' ('net AP'). The 'uprating difference calculation' was broadly calculated as follows:

"DWP calculated the gross AP and increased that value by the percentage increase in prices as currently measured by the Consumer Prices Index. A Contracted-out Deduction, which was not increased and which broadly equated to the pensioners GMP, was set against the value of the increased gross AP, and any surplus amount was paid to the pensioner = Net AP".

[...]

Increases for members

For members who reach SPA after 5 April 2016 the increases applied to their [Scheme] benefits are not dependent on whether the State applies an 'uprating difference calculation' and pays the net result with any State benefits. This is because the application of the 'uprating difference calculation' ended on 5 April 2016 with the ending of contracting out... Thus, their pension must be calculated from the outset (or from the effective date of the GMP, if later) to include pensions increase on the Pre 88 GMP and any excess in pensions increase above 3% on the Post 88 GMP..."

22. On 29 June 2020, Mr S emailed the Council and complained that the LGA Guide did not comply with the 2020 Order or Section 150 of the 1992 Act. He wanted clarification regarding the legislation applied in the LGA Guide used in calculating a NAP which was 3.5% less than provided for under Section 150 of the 1992 Act and Part 3 of the 2020 Order when the Scheme pension and GMP have been added together.
23. On 16 July 2020, the Council emailed Mr S confirming the LGA had said the following with regard to the calculation of annual pension increases:-

"Member in receipt of Additional State Pension

Increases to Public Service Pensions...are applied using section 59 of the [1975 Act]...that Act states that where a person is entitled to a GMP the amount to which any increase is calculated, shall first be reduced by the GMP (this means Pre and Post 88 GMP). This is also set out in the annual Pensions Increase (Review) Order. This means that under section 59 [of the 1975 Act], only benefits in excess of the total GMP receive increases by way of the annual Pensions Increase (Review) Order. If the member has a post 88 GMP then increases to the Post 88 GMP are applied under section 109 of the Pension Schemes Act 1993 (**the 1993 Act**) (see Appendix Four) up to a maximum of 3%, under [the 2020 Order]."

24. In summary the LGA also said that after considering the Scheme pension and the State Pension a member should receive the full value of their quoted pension increases.

25. On 20 July 2020, Mr S emailed the Council and complained that the guidance provided by the LGA on 22 June 2020 had included “shall first be reduced by the GMP” with regard to the basis for calculating the annual increases on his pension. Mr S said this did not reflect the 2020 Order or any other related legislation, and the wording in each PIL required the Council to “increase the annual rate of the pension” in accordance with the 1992 Act.
26. On 4 August 2020, the Council emailed Mr S and said the LGA had confirmed that the Scheme’s approach to applying pensions increases by considering the GMP element separately to the excess of GMP element was correct. The LGA Guide had been created in conjunction with a number of “technical experts”. The Council said the LGA had also referred to a previous court case involving a member of NHS Pension Scheme, which had determined that a GMP should not be considered in the same way as the excess of GMP element when calculating annual pension increases.
27. On 6 August 2020, Mr S emailed the Council and complained that the LGA Guide was incorrect. He said the annual increase confirmed in the 2012 PIL was only 4.5% from the previous year, and not 5.2% as quoted. So, the LGA Guide had failed to comply with Government policy that public service pensions, such as those from the Scheme, should be increased annually to take account of inflation.
28. On 19 August 2020, the Council emailed Mr S and said that the LGA had confirmed that the methodology used in calculating annual increases on his pension was correct.
29. On 22 August 2020, Mr S escalated his previous complaint under stage one of the Scheme’s Internal Dispute Resolution Procedure (**IDRP**).
30. On 16 November 2020, the Council wrote to Mr S and said:-
 - Payment of annual increases on his overall pension entitlements had been split between the Scheme and the Government via the State Pension. The reason behind this was that the GMP element of his benefits had to be at least equal to the State Pension, had he not been contracted-out at any time between 6 April 1978 and 5 April 1997. The GMP formed a part of his pension from the Scheme and was not paid in addition to it. So, the Government was partly responsible for paying the inflation increases on the GMP.
 - Annual inflation increases on any GMP earned between 6 April 1978 and 5 April 1988 was paid by the Government with the State Pension. With regard to the Post-6 April 1988 GMP, the first 3% of the annual pension increases had to be paid by the Scheme. The Post-6 April 1988 GMP increases above that initial 3% were paid by the Government in the State Pension. Annual increases on the excess of GMP element of his pension were paid by the Scheme.
 - To avoid double annual increases on the GMP element of pensions, section 59(5) of the 1975 Act required an occupational scheme to deduct the value of the GMP,

before increasing a pension which included a GMP. Section 109 of the Pension Schemes Act 1993 required the occupational scheme to increase the GMP earned in the tax years from 1988 to 1997 inclusive up to a limit of 3%.

Paragraphs 3 and 8 of the Pension Schemes Act 1993 required the occupational scheme to deduct the amount of any increase under Section 109, in the same tax year, before calculating the increase due under an order under Section 59.

- For GMP entitlements earned before 6 April 1988, an occupational scheme was not required to increase GMPs in payment under any legislation governing occupational pensions. His pension had been increased appropriately albeit from two different sources, the Scheme and the Government.

31. On 18 November 2020, Mr S appealed under stage two of the IDRP and said his email of 12 June 2020 had shown he suffered a cumulative pension underpayment of 3.52% over the period between 2011 and 2020. He said this had resulted from the annual pension increases that were due at that time not being applied correctly.

32. On 13 April 2021, the Council wrote to Mr S in response and said:-

- The Council's conclusion that Section 59(5) of the 1975 Act meant the GMP element of Mr S' pension had to be deducted from his pension before calculating his annual inflation increases, was correct. The PILs sent from 2009 to 2020 had also been calculated appropriately and in accordance with Section 59(5) of the 1975 Act, Pensions Increase (Review) Orders issued under the 1975 Act, Section 109 of the 1993 Act, and GMP Increase Orders issued under the 1993 Act.
- Consideration had been given to Paragraphs 11.8 – 11.10 of HM Treasury's Guidance (**the Treasury Guidance**) on the operation of pensions increase legislation for public service pension schemes April 2016, (see Appendix Five). Paragraph 11.8 states that to prevent double annual inflation increases on the GMP element, section 59(5) of the 1975 Act limited public service pension arrangements, such as the Scheme, to increase only the excess of GMP element of a member's benefits. Paragraph 11.9 of the Treasury Guidance stated that under Section 59 of the 1975 Act, GMPs should be deducted, before calculating total annual inflation increases.
- Paragraph 11.10 of the Treasury Guidance set out a simplified illustration showing how the DWP calculated the State Pension payable and how this related to payment of a public service pension where the Treasury had not given any direction under section 59A that no reduction should be made. That illustration was consistent with the calculations set out in the PILs that were sent to him between 2009 and 2020. The LGA guidance for calculating annual inflation increases was accurately reflected the PILs and all related pensions legislation. So, his complaint was not upheld.

Mr S' position

33. There is no requirement under Section 59(5) of the 1975 Act for the value of a GMP to be deducted from a Scheme member's annual pension before calculating annual inflation increases. Under that legislation, "The increases in the rate of a pension that may be provided for by an order under this section are to be calculated by reference to the basic rate of the pension as authorised to be increased etc: but where a person is entitled to a GMP the amount by reference to which any increase authorised by that order is to be calculated shall be reduced by an amount equal to the rate of the guaranteed minimum pension".
34. The 2020 Order follows a legislative process in which Section 3 provides for the Council to increase the annual pension. This is followed by Section 4, which states that, "The amount by reference to which any increase is calculated for the purposes of Article 3(2) must be reduced by an amount equal to the rate of the GMP". The 2020 Order is consistent with Section 59(5) of the 1975 Act, and this does not require that the Scheme's benefits must be reduced by the amount of the GMP before an annual increase is applied.
35. The Court of Appeal decision relating to the Department of Health v Pensions Ombudsman & Anor (1998) EWCA Civ1296 (27 July 1998) included that:-

"In my view the construction of [Section 59(5) of the 1975 Act] for which the Department [of Health] contends neither requires an implication nor carries with it any element of divestment. It certainly requires a recalculation, but for the future not for the past. The recalculation does not deprive the pensioner of anything to which he has already become entitled. It simply quantifies the lesser amount he will receive in the future etc."
36. That Appeal Court decision related to another case but it provided an interpretation of Section 59(5) of the 1975 Act that differs to Paragraph 11.9 of the Treasury Guidance (see Appendix Five). The Treasury Guidance incorrectly states that "section 59(5) of the [1975 Act] requires a public service pension to be reduced by the amount of the GMP to which the public service pensioner is entitled before pensions increase is calculated."

The Council's position

37. PILs were sent to Mr S each year between 2009 and 2020 relating to policy number 01090338164 and his pension covering the period of service between 1 February 2001 and 30 August 2005, all of which were calculated in a similar way.

Adjudicator's Opinion

38. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator's findings are summarised below.

39. The Council is required to act in accordance with the Regulations governing the Scheme and any related pensions legislation. The GMP element of Mr S' benefits did not become due for payment until he reached the SPA in April 2009; the GMP had a notional value within the overall benefits up to that point.
40. Consequently, the GMP was not quoted in the 2009 PIL, or any earlier PILs sent by the Council. However, the 2010 PIL and all those that followed up to 2020 quoted the GMP and the percentage rate of increase applied to the Post-6 April 1988 GMP separately to the annual increase on the excess of GMP element.
41. The FAQs in the PILs also confirmed that, "If you reached [the SPA] before [6 April 2016], and you have service before 6 April 1988...your GMP will be increased, but instead of being paid by the Scheme, it will be paid with your State Pension. For any service after 6 April 1988, the Scheme will pay up to 3% of the increase of your GMP. Any increase over 3% will be paid with your State pension". The Council then applied these points in calculating the annual increases quoted in the PILs sent to Mr S' from 2010 in accordance with the 1993 Act as set out in Appendix Four.
42. So, in the Adjudicator's opinion it was necessary for the Council to calculate and quote the annual increases applied to the GMP and excess of GMP elements of Mr S' pension separately from 2010 onwards. The annual increases were not due to be automatically applied equally to the GMP and the excess of GMP elements of Mr S' pension after the SPA.
43. Annual increases under the Scheme must also be applied in accordance with Section 59(5) of the 1975 Act and Section 151 of the 1992 Act, as referred to in the 2020 Order. Under Section 6 of the 1975 Act, "The increases in the rate of a pension that may be provided for by an order under this section are to be calculated by reference to the basic rate of the pension as authorised to be increased by section 1 of the said Act of 1971 or by any order under section 2 of that Act or this section;...".
44. However, Section 59(5) of the 1975 Act also states that "the amount by reference to which any increase authorised by that or any subsequent order is to be calculated shall be reduced by an amount equal to the rate of the guaranteed minimum pension". In effect Section 59 of the 1975 Act provides that the basic pension or excess of GMP element of Mr S' benefits could increase by the total value of the pension minus the value of the GMP. The Treasury Guidance and the LPFA GMP Guide also correctly confirmed this to be the case.
45. So, in the Adjudicator's view there is no evidence that the Council failed to correctly apply Section 59 of the 1975 Act or the Governments annual Pension Increase (Review) Orders. Those provisions and the 1993 Act required the Council to increase Mr S' pension by deducting the value of the GMP before applying increases to the excess of GMP element, and in only applying a maximum 3% increase to the Post-6 April 1988 GMP. The remaining annual increases on the GMP were due to be paid in the State Pension. So, in the Adjudicator's opinion Mr S' annual increases quoted in the PILs he received between 2011 and 2020 were not understated or underpaid.

46. Mr S has acknowledged that the Court of Appeal decision on the Department of Health v Pensions Ombudsman & Anor (1998) EWCA Civ1296 (27 July 1998) (**the Appeal Court Decision**), related to another case that was unrelated to his complaint. The Appeal Court Decision did not specifically state that Section 59(5) of the 1975 Act was incorrect, especially in the context of Mr S' complaint, which was different. So, in the Adjudicator's view the Appeal Court decision is irrelevant in this case and has no bearing on Mr S' complaint. Mr S' complaint should not be upheld.
47. The Council accepted the Adjudicator's Opinion, Mr S did not, and the complaint was passed to me to consider. I agree with the Adjudicator's opinion and note the additional points raised by Mr S.

Mr S' additional comments

48. The Council did not correctly apply Section 59 of the 1975 Act or the Governments annual Pension Increase (Review) Orders. By deducting the value of his GMP from his public service pension before calculating his annual increases, the Council was not acting in accordance with the Appeal Court Decision. That ruling should apply to "every pensioner" as it was the Appeal Court's generic interpretation of Section 59(5) of the 1975 Act.
49. Section 59 of the 1975 Act relates to "Increase of Official Pensions" and Section 59(1) of the 1975 Act refers explicitly to the annual rate of an official pension. The Court of Appeal Decision included an interpretation of Section 59(5) of the 1975 Act that was different to the approach taken by the Council in calculating annual pension increases, as explained in its letter dated 13 April 2021.
50. According to his calculations, application of Government's annual Pensions Increase (Review) Orders covering the period between 2010 and 2020 provided for increases totalling 24.81%. That level of increase was also required to comply with Section 150 of the 1992 Act and "maintain the pension purchasing power". Instead, the annual PILs had provided for increases totalling only 21.29%, which had caused him to suffer a cumulative loss of 3.52% over the period between 2010 and 2020, and did not maintain the expected "purchasing power."
51. The 2020 Explanatory Note also showed that public service pensions, including the Scheme, were required to ensure that a member's benefits increased annually to take account of inflation.
52. The PILs he received each year between 2010 and 2020 carried forward the NAP from the previous year rather than the new annual rate of pension, which was not consistent with Section 150 of the 1992 Act or the Appeal Court Decision. Under Section 59(5) of the 1975 Act it is the increases calculated from the basic rate of pension that are to be reduced, not the public service pension to which the pensioner has become entitled.
53. The Treasury Guidance was overridden by Section 59(5) of the 1975 Act which was consistent with the Appeal Court Decision. Paragraph 11.9 of the Treasury Guidance

stated that under Section 59 of the 1975 Act, GMPs should be deducted, before calculating total annual inflation increases. That was incorrect as Section 59(5) of the 1975 provided that, “The increases in the rate of a pension that may be provided for by an order under this section are to be calculated by reference to the basic rate of the pension as authorised to be increased...”.

54. Section 59(5) confirmed that “the amount by reference to which any increase authorised by that or any subsequent order is to be calculated shall be reduced by an amount equal to the rate of the guaranteed minimum pension”. However, there is a significant difference between “a public service pension to be reduced” and “any increase authorised.”

Ombudsman’s decision

55. Mr S contends that the Council has failed to act in accordance with the interpretation of Section 59(5) of the 1975 Act that he says was reached in the Appeal Court Decision. Mr S essentially contends that the Council has not applied the correct increases to his pension because, once he reached SPA, they deducted the value of his GMP from his public service pension before calculating his annual increases. The Council contends that it has applied the increases correctly. It is not disputed that the Council is required to act in accordance with the regulations governing the Scheme and any related pensions legislation. The only issue is as to the correct calculation of increases under Section 59(5) of the 1975 Act.

56. Section 59 of the 1975 Act (see Appendix One) provides for the Minister of the Civil Service to make orders in respect of annual increases on public service pension arrangements, including the Scheme. Section 59(5) of the 1975 Act provides as follows:

“The increases in the rate of a pension that may be provided for by an order under this section are to be calculated by reference to the basic rate of the pension as authorised to be increased [...] by this section; but where—

a person is entitled to a guaranteed minimum pension when an order under this section comes into force; and

entitlement to that guaranteed minimum pension arises from an employment from which either directly or by virtue of the payment of a transfer credit entitlement to the official pension also arises;

the amount by reference to which any increase authorised by that or any subsequent order is to be calculated shall be reduced by an amount equal to the rate of the guaranteed minimum pension.” (emphasis added)

57. Pension increase orders have been made annually under Section 59 of the 1975 Act from 1979 to 2024. The provision of the relevant orders and their application to Mr S’ pension is not in issue. The only issue is whether the Council was correct to deduct Mr S’ GMP from his NAP before applying the increase.

58. I can see no alternative interpretation of Section 59(5) of the 1975 Act. It is clear that the amount to be reduced by the GMP is “the amount by reference to which any increase (...) is to be calculated” which mirrors the beginning of the provision which states that the increase is to be calculated “by reference to” the basic rate of the pension authorised to be increased. So, the pension to be increased must be reduced by the GMP and the net amount is then the amount by reference to which the increase is to be calculated under the relevant increase order.
59. I take note of the requirement to interpret legislation by orientating from the purpose of the legislation¹ and against the statutory context at the time the provision was adopted. The statutory context, at the adoption of section 59(5) of the 1975 Act, was that the State pension payable was increased in line with inflation after deducting GMPs payable by contracted out occupational pension schemes. GMPs earned before 6 April 1988 do not increase. GMPs earned from that date are required to be increased by inflation up to 3% by the relevant scheme (see Appendix 4). The effect is that, to the extent that no increases apply to the GMP, an amount equivalent to the GMP was increased through the State pension. I agree with the explanation given by the Council (see paragraphs 30 and 32 above) and summarised in the Treasury Guidance referred to above.
60. I have reviewed the Appeal Court Decision. It does not deal directly with the application of the GMP reduction but rather as to whether the increase orders apply to the basic rate or the increased rate of pension. In any event, the Appeal Court Decision concludes that the reduction applicable in that case was to be applied before the application of the increase. As such, it does not lead me to a different conclusion.
61. I find that the deduction of the GMP before the calculation of the increase is coherent having regard to arrangements for the increase of the State pension and the GMP and is in my view what is provided for in the language of Section 59(5) of the 1975 Act. The increases applied to the whole pension until the GMP came into payment when Mr S reached age 65, and thereafter, because there were other provisions for the increase of the GMP (including the requirement for the post-1988 element to be increased by the lower of inflation or 3%), only the excess above the GMP (or the basic pension reduced by the amount of the GMP) was to be increased in accordance with pension increase orders under Section 59 of the 1975 Act.
62. I find that the Council appropriately applied the Government’s annual Pensions Increase (Review) Orders under the 1975 Act, and Sections 150 and 151 of the 1992 Act (see Appendix Two), in calculating the annual increases to Mr S’ pension. Consequently, the PILs that the Council sent to Mr S annually between 2010 and 2020 were not understated, and he did not suffer financial detriment resulting from the calculations in those letters. There was no maladministration by the Council.

¹ Virgin Media Ltd v NTL Pension Trustees Ltd [2024] 049 PBLR

CAS-74362-C5X1

63. I do not uphold Mr S' complaint.

Camilla Barry

Deputy Pensions Ombudsman
30 September 2025

Appendix One

The 1975 Act provides that:-

59 Increase of official pensions.

- (1) Where by virtue of section 151 of the Administration Act a direction is given that the sums mentioned in section 150(1)(c) of that Act are to be increased by a specified percentage the Minister for the Civil Service shall by order provide that the annual rate of an official pension may, if a qualifying condition is satisfied or the pension is a derivative or substituted pension or a relevant injury pension, be increased in respect of any period beginning on or after the date on which the direction takes effect—
[...]
- (5) The increases in the rate of a pension that may be provided for by an order under this section are to be calculated by reference to the basic rate of the pension as authorised to be increased by section 1 of the said Act of 1971 or by any order under section 2 of that Act or this section; but where—
- (a) a person is entitled to a guaranteed minimum pension when an order under this section comes into force; and
- (b) entitlement to that guaranteed minimum pension arises from an employment from which either directly or by virtue of the payment of a transfer credit entitlement to the official pension also arises;

the amount by reference to which any increase authorised by that or any subsequent order is to be calculated shall be reduced by an amount equal to the rate of the guaranteed minimum pension.

Appendix Two

The 1992 Act states:-

150 Annual up-rating of benefits

- (1) The Secretary of State shall in each tax year review the sums—
- (a) specified in the following provisions of the Contributions and Benefits Act—
 - (i) Schedule 4 (excluding the provisions of Parts 1, 3 and 5 of the Schedule that specify amounts mentioned in section 150A(1) below); and
 - (ii) section 44(4) so far as relating to the lower rate of short-term incapacity benefit; and
 - (iii) paragraphs 2(6)(c) and 6(2)(b) of Schedule 8;
 - (aa) specified in regulations under section 30B(7) of that Act;
 - (ab) specified in regulations under section 39(2A) or section 39C(1A) of that Act;
 - (ac) specified in regulations under section 52(3) of that Act;
 - (b) specified in regulations under section 72(3) or 73(10) of that Act;
 - (c) which are the additional pensions in long-term benefits;
 - (ca) which are shared additional pensions;
 - (d) which are the increases in the rates of retirement pensions under Schedule 5 to the Contributions and Benefits Act;
- [...]

151 Up-rating—supplementary

- (1) Any increase under section 150 above of the sums mentioned in subsection (1)(c) of that section shall take the form of a direction that those sums shall be increased by a specified percentage of their amount apart from the order and shall apply subject to section 156 and only in relation to additional pensions calculated under section 45 of the Contributions and Benefits Act by reference to final relevant years which are—

Appendix Three

The FAQs in the 2009 PIL stated:-

“Who calculates the Pension Increase rate?”

...The Government assess the rate of increase by reference to the Consumer Prices Index (CPI) over the 12 months up to the preceding September. This increase is the same rate as that applied to the Additional Pension (AP) paid by the State Pension Scheme. You should note that it is not a discretionary award, and the [Council] does not have the authority to pay any additional increase.

What is GMP?

...The GMP relates to the part of your pension for the period between April 1978 and April 1997 for which you were 'contracted-out' of the State Earnings Related Pension Scheme (SERPS). For this period, the Scheme has to guarantee that your pension will be at least the same as it would have been, had you not been 'contracted-out'.

Who pays the GMP?

[...]

If you reached State Pension Age before 6th April 2016, and you have service before 6 April 1988...your GMP will be increased, but instead of being paid by the Scheme, it will be paid with your State pension. For any service after 6 April 1988, the Scheme will pay up to 3% of the increase of your GMP. Any increase over 3% will be paid with your State pension.”

Appendix Four

The 1993 Act provides that:

109 Annual increase of guaranteed minimum pensions

- (1) The Secretary of State shall in each tax year review the general level of prices in Great Britain for the period of 12 months commencing at the end of the period last reviewed under this section.
- (2) Where it appears to the Secretary of State that that level has increased at the end of the period under review, he shall lay before Parliament the draft of an order specifying a percentage by which there is to be an increase of the rate of that part of guaranteed minimum pensions which is attributable to earnings factors for [F1the tax years in the relevant period] for—
 - (a) earners who have attained pensionable age; and
 - (b) widows, widowers and surviving civil partners].
- (3) The percentage shall be—
 - (a) the percentage by which that level has increased at the end of the period under review; or
 - (b) 3 per cent.,whichever is less.
- (3A) The relevant period is the period—
 - (a) beginning with the tax year 1988-89, and
 - (b) ending with the last tax year that begins before the principal appointed day
- (4) If a draft order laid before Parliament in pursuance of this section is approved by a resolution of each House, the Secretary of State shall make the order in the form of the draft.
- (5) An order under this section shall be so framed as to bring the alterations to which it relates into force on the first day of the next tax year after that in which the order is made.
- (6) Where the benefits mentioned in section 46(1) to (7) are not increased on the day on which an order under this section takes effect, the order shall be treated for the purposes of that section as not taking effect until the day on which those benefits are next increased.

Appendix Five

The Treasury Guidance states:-

11.8 To prevent double pensions increase on the GMP element, section 59(5) of the 1975 Act limited public service pensions increase to the part of the public service scheme pension which exceeds the GMP (which is either in effect uprated by DWP, or, in respect of GMP earned between 6 April 1988 and 5 April 1997, wholly or partly uprated by the scheme under general occupation pensions legislation)...

11.9 Section 59(5) of [the 1975 Act] requires a public service pension to be reduced by the amount of the GMP to which the public service pensioner is entitled before pensions increase is calculated...

Appendix Six

The 2020 Order states:-

The Secretary of State for Work and Pensions has, by virtue of section 151 of the Social Security Administration Act 1992, given a direction that the sums mentioned in section 150(1)(c) of the Act are to be increased by a specified percentage.

The Treasury make the following Order in exercise of the powers conferred by sections 59(1), (2), (5) and (5ZA) of the Social Security Pensions Act 1975 and now vested in them.

Citation and Commencement

1. This Order may be cited as the Pensions Increase (Review) Order 2020 and comes into force on 6th April 2020.

Interpretation

2.—(1) In this Order, “the Act” means the Social Security Pensions Act 1975.

(2) In this Order, any reference to a pension is a reference to a pension which began before 6th April 2020.

Pension increase: annual rate and lump sums

3.—(1) This article applies to an official pension if—

(a) a qualifying condition is satisfied; or

(b) the pension is—

(i) a derivative pension;

(ii) a substituted pension; or

(iii) a relevant injury pension.

(2) In relation to any period on or after 6th April 2020, the pension authority may increase the annual rate of the pension—

(a) for a pension which began before 8th April 2019, by 1.7 per cent;

(b) for a pension which began on or after 8th April 2019, by 1.7 per cent multiplied by—

where A is the number of complete months in the period between the beginning date of the pension and 6th April 2020.

(3) In relation to a lump sum which is payable on or after 8th April 2019 but before 6th April 2020, the pension authority may increase the lump sum by 1.7 per cent multiplied by—

where A is the number of complete months in the period between the beginning date for the lump sum (or, if later, 8th April 2019) and the date on which it becomes payable.

Reductions in respect of guaranteed minimum pensions

4.—(1) Where—

(a) a person is entitled to an increase in a guaranteed minimum pension on 6th April 2020; and

(b) entitlement to that guaranteed minimum pension arises from an employment from which (either directly, or indirectly by virtue of the payment of a transfer credit) entitlement to the official pension also arises;

the amount by reference to which any increase is calculated for the purposes of article 3(2) must be reduced by an amount equal to the rate of the guaranteed minimum pension unless the Treasury otherwise direct in accordance with the provisions of section 59A of the Act.

(2) Where on the death of a deceased spouse or civil partner a person becomes entitled to a guaranteed minimum pension in relation to a surviving spouse's pension or a surviving civil partner's pension, the amount by reference to which any increase is calculated for the purposes of article 3(2) must be reduced in accordance with section 59(5ZA) of the Act.