

Ombudsman's Determination

Applicant	Mr N
Scheme	Nissan Pension Plan (the Plan)
Respondents	Nissan Motor Manufacturing (UK) Ltd (Nissan) The Trustees of the Nissan Pension Plan (the Trustee)

Outcome

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

Complaint summary

2. Mr N complained that the Trustee has not been transparent with how his pension increases have been calculated. He is also unhappy that information and documents he requested were not provided, and that there were long delays in responding to him. To resolve the complaint, Mr N would like the Trustee to provide an increase for all tranches of his pension.

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 main points. I acknowledge there were other exchanges of information between all the parties.
4. Mr N commenced employment with Nissan in 1992 and became a member of the Plan. In 1992 he also transferred his pension benefits accrued with a previous employer, Go Ahead Northern, into the Plan. He continued to accrue benefits in the Plan until he retired in May 2020, when he began taking benefits from the Plan.
5. Mr N's pension is made up of several "tranches" (i.e. pension benefits accrued over different periods of time, where those periods are, in some respects, treated differently to each other) and includes Guaranteed Minimum Pension benefits (**GMP**). The different tranches of Mr N's pension are subject to their own increase rates.
6. On 31 March 2021, Mr N received a letter from Capita, the administrator of the Plan. This informed him that his pension would be increased with effect from 1 April 2021. The letter stated:

“The increase rates for the various tranches of benefits are as follows:-

<u>Tranche</u>	<u>Index used</u>	<u>Increase rate</u>
Pre'88 GMP	does not increase	0%
Post'88 GMP	CPI max 3%	0.5%
Pre'97 non-GMP	discretionary	0%
Post'97	CPI max 5%	0.5%
Post'04	CPI max 5%	0.5%
Post'05	CPI max 2.5%	0.5%
Post'09	CPI max 2.5%	0.5%”

7. On 17 May 2021, Mr N complained to Nissan, which it forwarded to the Trustee. He said, in summary:-

- He was unhappy with the small annual increase that had been applied to his pension for the period 2021/22.
- He had not received his wage slip, nor a calculation of his gross annual income for the period 2021/22.
- Reply timeframes were repeatedly not adhered to and no communication was provided until he chased a response.
- Mr N queried:-
 - What the provisions were for determining any increase on pensions earned before 6 April 1997 and whether they were subject to change.
 - Why was he not provided with the increase rate for pre 1997 GMP?
 - What was the transfer-in value CPI rate that should be applied?
 - Will the monthly CPI rate used remain constant?

8. On 7 June 2021, the Trustee replied under stage one of the Plan's two-stage Internal Dispute Resolution Procedure (**IDRP**). In summary it said:-

- Increases to tranches accrued before 6 April 1997 are made at the discretion of the Trustee. In order to preserve future benefits which will arise, the decision had been taken by the Trustee not to make a discretionary increase for the 2021 year.
- With regards to GMP, once Mr N reached GMP age, statutory GMP increases would be applied.
- The CPI figure that had been used on the tranche transferred in pre 1997 was 0%.

- The CPI used for the remaining tranches was 0.5%.
9. On 10 June 2021, Mr N responded to the Trustee. In summary, he said he felt that there was no transparency relating to pension increases. He said the Plan documentation did not provide any information about this to its members.
 10. On 22 July 2021, the Trustee wrote to Mr N with its stage two IDRPs response. It explained his transfer in from Go Ahead Pensions took place in 1992. Therefore, it fell into the pre 1997 tranche. No increases had been made to this tranche of Mr N's benefits. It included an extract from the 2019 Plan booklet (**the Booklet**), which it also provided to Mr N by email (see Appendix 1). In summary it explained how Mr N's pension would increase once it was in payment and increases to the GMP.
 11. On 16 September 2021, the Trustee provided an additional response to Mr N, under stage two of the IDRPs. In summary, it said:-
 - The rules on pension increases were detailed in the Booklet and retirement paperwork provided to Mr N.
 - Pensioners received annual letters detailing their pension increases and how much each tranche of their accrued benefit had increased.
 - The pre-1997 tranche was subject to discretionary increases and is reviewed annually by the Trustee. In that year the Trustee had decided not to increase the tranche.
 - The part of the pension relating to GMP would be fully inflation proofed in line with CPI after Mr N reached the State Pension Age.

Adjudicator's Opinion

12. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Nissan or the Trustee. The Adjudicator's findings are summarised below:-
 - Under the Rules of the Plan (**the Rules**), pension increases relating to tranches accrued before 1997 would be reviewed by the Trustee each year to determine whether or not an increase would be applied. This therefore applied to the pension benefits Mr N transferred into the Plan from Go Ahead Northern in 1992. With respect to the year 2021, the Trustee had decided that it would not be applying an increase to pre 1997 tranches, as it was entitled to do.
 - The Adjudicator's view was that according to the Rules, this was a decision the Trustee had discretion to make. The Adjudicator was of the opinion that the reasons for the decision were clearly communicated to Mr N in the response dated 7 June 2021 and no evidence had been provided to suggest the decision was not properly considered by the Trustee. The Adjudicator took the view that

there were no grounds upon which the Trustee could be required to provide an increase to all tranches as Mr N has suggested.

- Each tranche of Mr N's benefits in the Plan were treated differently, as explained in both the letter sent to Mr N dated 31 March 2021, and the Booklet. In the Adjudicator's opinion, the Trustee clearly explained the rules regarding pension increases in its correspondence with Mr N and it provided copies of the necessary documentation. The Adjudicator's opinion was that the Trustee had been transparent in its communications with Mr N, and that it had provided the relevant documents. In the opinion of the Adjudicator, maladministration had not occurred.
- The Adjudicator's opinion was that the Trustee did not take an excessive amount of time to respond to Mr N. He originally made his complaint to Nissan on 10 May 2021. The Trustee responded under stage one of the IDRPs on 7 June 2021. Mr N raised further points on 10 June 2021 and the Trustee responded under stage two of the IDRPs on 22 July 2021. An additional response was provided on 16 September 2021. In the Adjudicator's view, the Trustee responded to Mr N's complaint within a reasonable timescale.

13. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided some further comments in response to the Opinion. Mr N said:-

- There is no reference in the Plan information to non GMP, which is a defined tranche.
- The provisions relevant to the pre 1997 tranche are not known to Plan members on an annual basis.
- Any increases to pre 1997 tranches are based on provisions which are not known and it is not clear whether transfer in values are treated as a separate item.
- Transfers from other pensions are grouped under pre 1997 tranches and are used as a separate calculation for pension amount calculation purposes and defined as a different tranche. This is not transparent until retirement.
- The documentation he was provided with on 7 June 2021 had no reference to tranches or the values of each part of the tranche.
- The Booklet was not issued to staff or loaded onto the Plan's website prior to his retirement. The only available resource was the 2014 booklet which was out of date.
- The information he has subsequently been provided with regarding the tranches should have been available to him from age 50.
- Annual pension statements did not show any tranche or which part of the pension is affected by any inflationary rise information.

- The information he received about his pension benefits was clear on retirement but not transparent before as it should have been for any retirement planning decision to be well made before retirement.

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

Ombudsman's decision

15. Mr N's central complaint is that the increases applied to his pension in payment were unknown to him prior to his retirement (and disappointed him when his pension did come into payment). To put it right, Mr N said that the Trustee should "provide an increase for all tranches".
16. The Rules, together with overriding legislation, set out the increases applicable to different tranches of the Plan. I have not seen that the Trustee applied the increases other than in accordance with the Rules and legislation. For example, Rule 10 of the Plan's governing documentation provides that the "Trustees have the discretion to increase the pension benefits...in excess of the GMP...by such amount as they, having taken the advice of the Actuary, deem to be reasonable...". This provides the Trustee with a discretion to increase a pension in payment that exceeds the member's GMP – subject to the overriding legislative requirement to provide a statutory minimum increase to pensions that accrued on and after 6 April 1997.
17. Accordingly, I am content that the Trustee has applied increases correctly to Mr N's pension, and of course Mr N is only entitled to the benefits set out in the Rules and legislation. However, Mr N has also complained that the Trustee has not been transparent with how his pension increases have been calculated. Mr N feels the information regarding the different tranches of pension should have been available to him from age 50.
18. Mr N has said that the information he received about his pension benefits was clear on retirement (see, for example, Appendix 1) but not transparent before. He has also said there is no reference to non GMP benefits, which is a defined tranche. I have not seen that Mr N made any specific requests for details about his pension benefits after he reached the age of 50. The fact that he was provided with the required information about the different tranches applicable to his pension when he retired, including the non GMP element, shows that this would have been available to him had he asked for it at an earlier date. There was no obligation for the Trustee to automatically provide this information sooner than it did.
19. The Booklet would also have been available to Mr N upon request (see Appendix 2 – which adequately sets out the position), as would a copy of the Rules. Had he requested these at an earlier date he could have raised questions with the Trustee concerning his options at retirement.

20. Mr N has said that his annual benefit statements did not detail the tranches of his benefits, or which part of the pension is increased in line with. I have considered the relevant Regulations (see Appendix 3), which show what information is required to be included in annual benefit statements (which, in any event, for non-money purchase benefits, such as these, are only required to be provided “if the member requests that information”). I find that the statements provided to Mr N by the Trustee met the requirements of these Regulations.
21. In relation to delays by the Trustee in responding to Mr N’s complaint, I note that Mr N raised his complaint on 17 May 2021 and the stage one IDRPs response was provided on 7 June 2021, a period of 14 working days. Mr N raised further points on 10 June 2021 and the stage two IDRPs response was provided on 22 July 2021, a period of 30 working days. The Trustee provided an additional response on 16 September 2021. I find that the Trustee responded to Mr N within a reasonable timescale.
22. I do not uphold Mr N’s complaint.

Dominic Harris

Pensions Ombudsman
11 December 2023

Appendix 1

Relevant extracts of Mr N's 'retirement paperwork', detailing increases applicable to Mr N's his pension increases and GMP increases

"How will my pension increase once it is in payment?

Your pension will be increased by the Plan each April as follows:

<u>Pension Accrued</u>	<u>Increase Amount</u>
Before 6 April 1997:	0%
From 6 April 1997 to 5 April 2005	In line with the CPI, to a max of 5%
After 6 April 2005	In line with CPI, to a max of 2.5%

What is a Guaranteed Minimum Pension (GMP) and how is it increased?

Whilst you were a member of the Plan, you were contracted out of the State Second Pension (S2P), formerly known as the State Earnings Related Pension Scheme (SERPS).

As a result of this you paid lower National Insurance contributions and in exchange the scheme must provide certain guaranteed benefits in respect of any membership prior to 6 April 1997. The guaranteed benefit is known as the Guaranteed Minimum Pension (GMP).

The part of your pension, if any, representing the GMP accrued before 6 April 1998 will not be increased whilst in payment by the Plan. The Plan is not required under legislation to increase this element of your pension.

The part of your pension, if any, representing the GMP accrued after 5 April 1988 will be increased from GMP Payment Age by the Plan each April in line with inflation, up to a maximum of 3% per annum. The Plan is only required under legislation to increase this element of your pension up to a maximum of 3% per annum."

Appendix 2

Relevant extracts of the 2019 Plan booklet detailing increases applicable to Mr N's Plan pension and GMP

Will my pension increase during my retirement?

(a) for membership before 6 April 1997 – the Trustees review all pensions in payment annually and any increases on pension earned before 6 April 1997 are at their discretion subject to certain provisions. That part of your pension that represents your Guaranteed Minimum Pension (GMP) will be fully inflation proofed (partly by the Government) in line with Consumer Prices Index (CPI) after State Pension Age.

(b) All pensions earned between 6 April 1997 and 5 April 2005 will be increased annually in accordance with statutory provisions which currently require increases to be made in line with that year's increase in Consumer Prices Index or 5% whichever is lower. This is called Limited Piece Indexation (LPI).

(c) All pensions earned after 5 April 2005 will be increased annually in accordance with statutory provisions which currently require increases to be made in line with that year's increase in Consumer Prices Index or 2.5% whichever is lower. Note that prior to 2011 Retail Prices Index (RPI) figure was used instead of CPI.

Appendix 3

Relevant extract of The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013

SCHEDULE 5

Statements of benefits: non money purchase benefits

PART 1

Information for active members

1. The amount of any benefits (and how they are calculated) that would be payable on a date specified by the trustees or managers of the scheme if the member of the scheme were to die in service.
2. One of the following amounts, chosen by the trustees or managers of the scheme, of the member's benefits and survivors' benefits calculated without regard to possible increases in the member's salary—
 - (a) the amounts that would be payable from the date benefits are payable if pensionable service were to end on a date specified by the trustees or managers of the scheme,
 - (b) the amounts that would be payable from the date benefits are payable if pensionable service were to end on the member attaining normal pension age, or
 - (c) the amounts that would be payable from the date benefits are payable if pensionable service were to end on a date agreed between the member and the trustees or managers of the scheme.
3. The amount of the member's pensionable remuneration on a date specified by the trustees or managers of the scheme.

PART 2

Information for active and deferred members

4. The date on which the member's pensionable service started.
5. A summary of the method for calculating the member's benefits and any survivors' benefits.
6. Details of how any deduction from benefits is calculated.