

Ombudsman's Determination

Applicant	Professor N
Scheme	TPS Benefits Scheme (the Scheme)
Respondent	The Trustee of the TPS Benefits Scheme (the Trustee)

Complaint Summary

1. Professor N's complaint concerns the failure to provide an uplift to his deferred pension between ages 60 and 62 and the information that was provided to him which he considered to be misleading by not stating that he would lose benefit if he did not draw his benefits at 60. He complains that in relation to the above the Trustee has failed to act in his best interests and has been subject to a conflict of interest.

Summary of the Ombudsman's Determination and reasons

2. The complaint should be upheld against the Trustee because an uplift should have been applied to his deferred pension. To matters right, the Trustee shall follow the steps set out in the section 'Directions'. concerns the information he was provided about the uplift to his deferred pension between ages 60 and 62.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
4. In January 1985, Professor N began employment with National Engineering Laboratory (**NEL**), part of the Department of Trade and Industry (**DTI**). He was a member of the Principal Civil Service Pension Scheme (**PCSPS**).
5. In the 1990s, Professor N's employment was transferred to TUV SUD Limited (**TUV SUD**¹) and his accrued PCSPS benefits were transferred to the Siemens Benefits Scheme, and, in 1999, to the Scheme. He was a 'Plan 60 Plus' member of the Scheme.² The Scheme is administered on behalf of the Trustee by Buck Consultants (**Buck**) (formerly known as Conduent).

¹ TUV SUD Limited is also referred to as "the Company" by Professor N and the Trustee on occasion during this Opinion.

² 'Plan 60 Plus' is also known as 'Plan 60+' or 'Plan 60'

6. In August 2016, Professor N was sent his annual benefits statement (**ABS**) for the Scheme, showing his projected benefits as at 31 December 2015. The ABS stated:

“Normal Retirement Date (**NRD**) [October] 2018

...YOUR BENEFITS AT AGE 60

As you are a Plan 60 Plus member you have a right to retire from age 60 with no reduction in your benefits. These are the benefits that you can expect to build up if you remain in the Scheme until age 60.

Your Total Annual Pension as at age 60: £34,408.63

...

YOUR BENEFITS AT AGE 65

As a Plan 60 Plus member you have the right to retire from age 60 with no reduction in your benefits. However, you can also continue in the Scheme after age 60. For illustration purposes the benefits that you can expect to build up if you remain in the Scheme until age 65 are shown below.

Your Total Annual Pension as at age 65: £42,359.11

...”

7. In April 2017, Professor N opted out of the Scheme but remained in the employment of one of the Scheme’s participating employers.

8. On 6 August 2018, Buck sent Professor N his ABS. Buck’s covering letter said:

“As a member of the Scheme who had been a member of the [PCSPS] and whose employment was transferred to one of the Scheme’s Participating Employers, you have enhanced retirement rights.

...

Under these enhanced retirement rights, you may retire from age 60 with no reduction being applied to your benefits. In addition, your retirement from age 60 does not require the consent of your employer or the Scheme’s Trustee.

As such, the Trustee has asked us to provide you with a retirement quotation as at your next birthday so that you are aware of the options available to you. Accordingly, we are pleased to enclose a retirement quotation.

If you do not want to retire at this time, you need take no action...”

9. In October 2018, Professor N turned 60 years old.
10. On 18 April 2019, Buck sent Professor N his ABS. Buck’s covering letter said:

“As a member of the Scheme who had been a member of the [PCSPS] and whose employment was transferred to one of the Scheme’s Participating Employers, you have enhanced retirement rights.

...

Under these enhanced retirement rights, you may retire from age 60 with no reduction being applied to your benefits. In addition, your retirement from age 60 does not require the consent of your employer or the Scheme’s Trustee.

As such, the Trustee has asked us to provide you with a retirement quotation as at your next birthday so that you are aware of the options available to you. Accordingly, we are pleased to enclose a retirement quote as at your next birthday.

If you do not want to retire at this time, you need take no action...”

11. On 16 November 2020, Buck sent Professor N his ABS, an ‘Option selection’ form, payment mandate, and a ‘Details of Other Benefits’ form. Buck’s covering letter said:

“As a member of the Scheme who had been a member of the [PCSPS] and whose employment was transferred to one of the Scheme’s Participating Employers, you have enhanced retirement rights.

...

Under these enhanced retirement rights, you may retire from age 60 with no reduction being applied to your benefits. In addition, your retirement from age 60 does not require the consent of your employer or the Scheme’s Trustee.

As such, the Trustee has asked us to provide you with a retirement quotation as at your 62nd birthday so that you are aware of the options available to you. Accordingly, we are pleased to enclose a retirement quotation.

If you do not want to retire at this time, you need take no action. However, the Trustee has asked us to provide you with a quotation like this going forward each birthday from age 60...”

12. On 3 December 2020, Professor N wrote to Buck. He said:

“I have just been talking to [TUV SUD] about a pension query and I think he has answered it, but thought I would just double check, and also ask for some additional info.

I am a deferred member of the defined benefit scheme having ceased contributions in 2017, at age 59. The pension is not activated, but the three pension statements I have received annually indicate a pension per annum as follows:

Age	Full Pension	Spouse Pension
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62	£35,075	£21,045
61	£34,432	£20,659
60	£33,601	£20,161

I had the right to commence the pension at age 60 but decided not to at that time. If I had, the above table suggests payment of around £68k would have been made (age 60 and 61). I thought that this £68k would be rolled into a higher future annual payment, but clearly that appears not to be the case. [TUV SUD] seem to have confirmed that the increases shown in the table come solely from RPI, albeit in some split way due to changing scheme terms over the years.

It seems a very odd outcome to me, and one that clearly indicates that the pension should be activated immediately, simply because substantial sums are being effectively lost from the 'pot'. I am not looking for financial advice per se, but could you just confirm that payments that would have been made from October 2018 to October 2020 are now effectively lost, i.e. the future annual pension will not include an element to make good the £68k over some defined period like 20 years or so..."

13. On 8 December 2020, Buck replied to Professor N. It said:

"My understanding of the Scheme's Rules is that all members of the Scheme have a Normal Retirement Age (**NRA**) of 65, although a group of members have a right to retire early from age 60 without the need for consent from their employer or with an actuarial reduction to reflect early payment. This option is typically at its most valuable at age 60 and its value reduces between ages 60 and 65. This is, as you have noted, because the pension that has not been paid does not get respread with future pension payments. The only increase that has been applied since you ceased to be an active member of the Scheme is that your benefits have increased each year in line with the Consumer Prices Index (CPI).

I can understand why this may appear odd, and it is primarily due to this being an option to members to retire early without reduction. It is not the case that you have a [NRA] of 60 and so any retirement after age 60 would be classed as a late retirement. It's also my understanding that the Scheme's Rules do apply a late retirement uplift after age 65 – this late retirement uplift essentially respreads pension payments that would have been paid between age 65 and a later retirement date..."

14. On 9 December 2020, Professor N wrote to TUV SUD and said:

"I got a reply from [Buck] which confirms that while activating the pension aged 60 is possible without penalty, if that option is not taken then deferment does not attract uplift beyond RPI until deferment after age 65. It is a bit annoying

that this subtlety was not made clear, so it may be worth getting this info out to NEL people in the scheme who choose to stay working beyond 60 and do what I have done.

...

Assuming they won't backdate my ability to retrospectively activate the pension, even on higher rate tax this will have cost me about 40k unnecessarily. Definitely think others need to be made aware. [It would be] nice if the Scheme offered a bit of flex on my situation, given that the Scheme is 100% the beneficiary of this consequence."

15. TUV SUD agreed to share Professor N's correspondence with the Trustee.

16. On 11 December 2020:-

- The Trustee responded to Professor N. It said:

"1. All scheme trustees are distant from individual member data for security and privacy reasons. I know your name, age and eligibility for the early uplift, nothing more.

2. Your early retirement benefit from age 60, without a normal cost neutral early reduction, is an option. It isn't compulsory.

3. Because this benefit is an option, and not compulsory, I'm afraid that late retirement factors don't apply if it is not taken up.

4. Late retirement factors are historically and currently higher than CPI but that isn't guaranteed.

5. The scheme trustees can't change the Rules in respect of this benefit or option.

6. I'm afraid the scheme can't quote "what ifs" in future e.g. future late retirement factors.

7. For funding purposes the option is indeed assumed to be taken at age 60 but that is just the trustees being "prudent" as required by the Pensions Regulator. The trustees make many similar prudent assumptions around life expectancy etc.

8. I agree that the situation should be highlighted to other members both over and under age 60. I'll be asking Buck to draft an appropriate communication for the trustees to consider."

- Professor N replied to the Independent Trustee. He said:

"Most disappointing, but I am glad that at least you agree in point 8 that such information should be properly communicated because it is a highly logical assumption that if you defer benefit, then it is not benefit lost. The fact that I

have a right to take the pension from age 60 without penalty is highly indicative of this assumption.

So in my case, am I able to exercise my right to no penalty applied at age 60 and retrospectively request activation of my pension from age 60. The funds are in the scheme to do this, so it is zero cost to the scheme.”

- The Trustee replied to Professor N. It said:

“I would certainly not want to raise any expectations around retrospective activation of pension payment from age 60.

I think the trustees would need legal advice on any such move. I’m not aware of an enabling power in our Rules, I’ve never encountered comparable action or sanction in over 40 years in the pensions business and as a minimum I would envisage you having a disproportionate tax bill in the year of payment of “arrears”!

I have briefed my fellow trustees on the suggested communication and I’d be happy to extend that discussion if you wanted to submit a formal retrospection activation request.”

- Professor N replied to the Trustee. He said:

“Thanks for the prompt reply and please take this email as formal notification of my wish to activate my pension from aged 60.

...

I am only too aware of the tax issue, and that is the reason why I did not activate the pension at my 60th birthday (others will no doubt consider a similar option if they remain working beyond 60). Regarding my tax bill, it will only wipe out circa 40% of the retrospective payments, which is still a somewhat better outcome for me than losing the entire payments for two years!...”

17. Buck confirmed it would put Professor N’s request to receive his pension backdated to age 60 to the Trustee Board.

18. On 29 January 2021:-

- Buck wrote to Professor N and confirmed that the Trustee Board had decided that it could not pay him a pension backdated by two years. It said:

“I refer to our call yesterday in relation to your benefits in the Scheme and specifically your recent query regarding whether the Trustee would agree to uplifting your benefits at age 62 or agree to them being paid from age 60 retrospectively. You made this request when you noted that the value of your benefits has reduced as a result of not commencing receipt of your pension at age 60. The Trustee met to discuss your request last week and, whilst sympathetic to your situation, are unable to agree to your request.

In reaching their decision not to backdate your retirement or apply a late retirement uplift, the Trustee consulted with their legal and pensions advisors to understand the position with regards the Rules and what options were available in relation to your request.

The Scheme's [NRA] is 65, although some members of the Scheme that were previously members of the PCSPS have the option to retire from age 60 without reduction for early payment. This option was included into the rules to facilitate employees that had transferred employment from the DTI and retained a retirement age from employment of 60 without a reduction being applied for payment of their pension before the Scheme's [NRA]. So whilst you are retiring late from employment, you are retiring early from the Scheme's perspective and why a late retirement factor is not applied to your pension.

Based on the advice received, it was viewed that your request for a late retirement uplift or being paid retrospectively from age 60 would constitute an augmentation to your benefits in both circumstances, which would also require the consent of [TUV SUD] and an additional contribution from [TUV SUD] to cover the cost of the augmentation.

The Trustee also reviewed with their legal advisors the paperwork issued to you when you left active service and in the retirement quotations issued to you at ages 60, 61 and 62 to confirm that the wording was not misleading in terms of how your pension benefits would be increased between leaving active membership and retirement date and did not find anything that set an expectation for a late retirement uplift to be applied before age 65...”

- Professor N signed and returned the ‘Option selection’ form and payment mandate, and the ‘Details of Other Benefits’ form to Buck to confirm he wished to take his pension backdated from October 2020, when he turned age 62. He opted for a pension commencement lump sum of £178,096.89 and an annual pension of £26,714.53.

19. On 1 February 2021, Professor N made a complaint to the Scheme under its Internal Dispute Resolution Procedure (**IDRP**). He enclosed a copy of his 'Certificate of membership' of the Scheme (**the Certificate**), which he labelled 'Annex 1 – Original commitment'. Professor N circled part of the 'Early retirement' section of the Certificate, which stated:

"Early retirement

You have the right to retire early at age 60 or above with unreduced benefits, You retain this right whether you are retiring directly from service or with deferred benefits. You do not need the consent of the Trustees or of the Company."

20. Professor N said:

"[the Certificate of membership] provides documentary evidence of that commitment made when the pension scheme was formed, and the pertinent part of the commitment was: "You have the right to retire at age 60 or above with unreduced benefits"

...The crux of this dispute comes down to whether the TPS Scheme Administrators and Trustees adequately communicated that their interpretation of the circled statement in Annex 1 was in fact: "You have the right to retire at age 60 or above but benefit outcomes will reduce if you do not activate the pension on your 60th birthday". Having read all documentation provided since 1999, I find no reference at all to such a statement, or one that resembles it, or any explanation pertinent to it by way of examples etc. It is my firm belief that neither the Administrators nor the Trustees adequately communicated this (new) interpretation. It is the fundamental issue in this dispute, because if I had known of this interpretation, I would have activated the pension at age 60 and thereby avoided a reduction in benefit of £68,033."

21. On 26 February 2021, the stage one decision-maker replied to Professor N under the IDRP. She said the Trustee could only pay benefits in line with the Trust Deed and Rules (**the Scheme Rules**). To allow him to backdate his pension by 24 months would constitute an augmentation of his deferred benefits under the Scheme Rules. Such an augmentation would require the consent of the Principal Employer, as well as the Trustee. She would refer his request to the Principal Employer to consider. She did not uphold his complaint that Buck had misled him with regard to his option to take unreduced retirement benefits from age 60.
22. On 15 July 2021, TUV SUD, as Principal Employer, wrote to Professor N and advised that it had declined his request to backdate his pension to age 60. It said:

"As a member of TPS Benefits Scheme Plan 60+, I understand that you had the right to retire early from age 60 without actuarial reduction and without requiring either Company or Trustee approval. I also understand that this right was put in place to ensure that former Civil Servants retained the right to

commence their pension at aged 60. It is recorded that you were aware of this right and made a decision not to take your benefits at that time, but subsequently decided to take your benefits at aged 62. As advised by the Trustee, the Company is not in a position to augment your pension benefits, nor to allow backdating or the enhancement of your pension. I can now advise that the Company does not bear any responsibility for your pension decisions, financial or otherwise, and will not separately make any settlement with you in this respect.”

23. On 11 October 2021, Professor N wrote to the Scheme and enclosed a copy of Buck’s letter dated 6 August 2018. He said that it was misleading, for the following reasons:

“[it] has a statement at the start of the 4th paragraph: “If you do not wish to retire at this time, you need take no action”. I took this statement at face value and took no action. My interpretation of this letter was there was no major impending financial loss if I took no action. I was wrong. It has now transpired that the Trustee[s] were in fact operating a definition of the age 60 guarantee...which could be written as: “You have the right to retire at age 60, or above, but benefits will reduce year-on-year if the pension is not activated”.

24. Professor N also raised a concern about the directors on the Trustee Board. He said:

“Trustees simultaneously holding important corporate roles - one as (Chief Financial Officer (**CFO**) and one as HR Director who reported to the CFO. When linked to the financial issue I will describe, it is easy to see how the dual roles created potential for conflict of interest coming into play in the Trustee management of the Scheme.

...

Turning to the business landscape behind the dispute, the pension scheme concerned requires ongoing financial support from the German-based parent company]. It has for many years, not unlike many other defined benefit schemes in the UK. As the Managing Director of a major Division of the UK company, I was aware this situation provided numerous challenging financial discussions over the years. The situation was (and remains) one where any benefits clawed-back from members directly reduces the financial commitment required by the Company. This is clearly a tension that needs very careful and transparent operation of the scheme. In this respect, having as a Trustee Director the CFO of the UK Company created a situation of two different masters being served, both with conflicting wishes. It is now easy to see how the lack of clarity over the operation of the age 60 guarantee could be exploited as one means of reducing the distress felt by the parent company in having to support this pension scheme. Perhaps somewhere in the [Scheme Rules] there is a statement that allows such creative exploitation, but that does not excuse the fundamental lack of communication by the Trustees with

members – if acting in their best interests – and especially not when large amounts of benefit were being clawed-back in total silence. Painted against a backdrop of Trustees serving two masters, what has happened has blindingly obvious conflict potential.”

25. On 9 August 2022, Professor N appealed the stage one IDRPs decision. He said that the communications he received from the Scheme, before he drew his pension, were misleading. Specifically, the statement “If you do not wish to retire at this time, you need take no action”. In his view, this was grossly misleading. Buck should have informed him that if he took no action, and did not take his pension from aged 60, this would lead to a reduction in his pension benefits.
26. On 24 August 2022, the Trustee responded to Professor N under stage two of the Scheme’s IDRPs. It did not uphold his complaint and said in summary:-
- Professor N’s benefit options were appropriately communicated to him.
 - It could not have told Professor N to draw his pension from age 60. It was not authorised to advise members on their options. It had intentionally outlined the Scheme benefits and options, but could not provide personal advice.
 - It was constrained by the Scheme Rules in terms of what benefits it could pay, so it could not pay Professor N’s pension backdated to age 60.
27. Following the complaint being referred to The Pensions Ombudsman, Professor N and the Trustee made further submissions that have been summarised below.

Summary of Professor N’s position

28. Professor N submitted:-

- The wording in the communications he received from Buck was misleading about when he could take his pension unreduced.
- It should have been made clearer to him that he could draw his pension unreduced from age 60. He did not draw his pension until he was aged 62. Based on his calculations, he had incurred a financial loss of £68,033 in pension benefits over a period of 24 months. The Trustee should pay him an equivalent sum in redress.
- The wording used in the annual Scheme Newsletters, issued from 2018 to 2021 (see Appendix 1), was later changed. The revised wording was similar to wording which he had suggested to the Trustee. This indicated that it was possible for the Trustee to communicate information, about the option to receive an unreduced pension from age 60, without it constituting financial advice. If he had seen a similar statement in the annual Scheme Newsletters he received prior to October 2018, it would have prompted him to draw his pension from age 60.
- This issue had adversely impacted many more members of the Scheme.

- The fact that one of the Trustees holds the role of CFO and one of the other Trustees is also the HR Director at the Company, created a potential conflict of interest in the Trustee's management of the Scheme. Since the Scheme required ongoing financial support from the Company, any benefits it could stop members receiving would reduce the financial commitment of the Company. So, it would be in the Company's interests if there was a lack of clarity over the Scheme Rules for members in his situation.

Summary of the Trustee's position

29. The Trustee submitted:-

- The communications regarding early retirement were not incorrect or misleading.
- It was not appropriate, or even legal, for the Trustee to make leading statements on a member's course of action, as this could have constituted tax or financial advice.
- Members of the Trustee Board did not collude with the Company to disguise or misrepresent the rights of members to draw an unreduced pension from age 60. The Trustee maintains a Conflicts of Interest Register and the Directors regularly discuss and manage conflicts in line with this policy and their fiduciary duties to Scheme members. The Trustee took independent legal and actuarial advice to ensure benefits were paid in line with the Scheme Rules, and that there was nothing misleading in the member booklet or ABSs regarding early retirement rights.
- It acknowledged that the August 2016 ABS incorrectly referred to Professor N's NRD as being in 2018 rather than 2023.

Adjudicator's Opinion

30. Professor N'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:-
31. There was no dispute that the Scheme Rules³ allowed Professor N, and other Plan 60 Plus members, to draw their pension unreduced from age 60. Professor N contended that the information he received from the Scheme concerning the above option should have been clearer. If it had been, he, and other members in a similar situation, would have drawn their pension from age 60.
32. The Adjudicator confirmed he could only consider the merits of Professor N's complaint as far as it personally applied to him. His main complaint concerned the interpretation of wording contained in correspondence he received prior to electing to draw his pension in January 2021. Professor N's view was that the statement "You

³ The relevant rules are set out in Appendix 2.

have the right to retire at age 60 or above with unreduced benefits” was misleading and suggested that more appropriate wording would have been: should he choose not to draw his pension at age 60, his pension benefits would be reduced.

33. In the Adjudicator’s view, the wording was not misleading. The correspondence that was sent to Professor N in August 2016, August 2018, September 2019 and November 2020 with his ABSs, and the Certificate, specifically highlighted the option to retire from age 60 with no reduction being applied to his pension benefits. This information was accurate, because it reflected the position under Rule 6.5 of the Scheme Rules. In the Adjudicator’s opinion, the wording left no room for misinterpretation.
34. Professor N considered that the wording “If you do not want to retire at this time, you need take no action” was also misleading. Again, in the Adjudicator’s view, the statement was accurate. It clearly conveyed that should Professor N not want to draw his pension he would not need to take any action.
35. The Trustee subsequently decided to include the revised wording⁴ in the December 2021 Scheme Newsletter, under the heading ‘Early retirement’. Nonetheless, the Adjudicator’s view was that this did not mean that the wording used in the ABSs was incorrect or misleading.
36. The Adjudicator said he had not found any evidence to support Professor N’s contention that he was provided with correspondence that contained misleading wording. Specifically, concerning the rights of Plan 60 Plus members to draw an unreduced pension from age 60. So, in the Adjudicator’s view, the complaint that the Trustee Directors colluded to misinterpret or disguise those rights should not be upheld.
37. Professor N indicated that his decision not to draw his pension at age 60 was at least partly because of potential tax implications. However, the Adjudicator also accepted that Professor N was unaware at the time that he was entitled to take his benefits unreduced from age 60, so this would have been a factor in his decision making.
38. The Adjudicator fully appreciated that it would have come as a disappointment when Professor N later realised that he could have taken his unreduced pension sooner. That said, his misunderstanding appeared to have arisen either from not fully reviewing the relevant correspondence or from a misinterpretation of its contents.
39. The Adjudicator said he had not seen any evidence that the Trustee, or Buck on behalf of the Trustee, misled Professor N regarding his pension entitlement. It was the Adjudicator’s opinion that Professor N’s complaint should not be upheld.
40. Professor N did not accept the Adjudicator’s Opinion and provided his further comments which are summarised below:-

⁴ The revised wording explained that for Plan 60+ members there was no additional uplift between age 60 and 65 (beyond the statutory inflationary increases)

41. Former PCSPS members who were TUPE'd to the Scheme, as he was were able to access the full value of their pension from age 60⁵. This was agreed to protect the NRA of 60 held in the PCSPS at the time.
42. At no point was he told, by the Trustee or the Company, that he would lose part of his pension by not drawing it at age 60.
43. His decision not to draw his pension aged 60 was guided by:
 - “(a) the spirit of the TUPE transfers that provided protection for ex-PCSPS members not to lose the financial benefit [of approximately £170,000 over five years of pension];
 - (b) the lack of any specific terms of application of the Guarantee which could indicate a different outcome; and
 - (c) the statement in the annual pension letter that said “if you didn’t want to retire, you need do nothing.”

However, by not drawing his pension he was effectively losing £33,601 per year.

44. The 2018 pension statement should have stated “... receipt of this full value will only be possible, if the pension is activated on, or before your 60th birthday. Activation after that date will incur an irretrievable reduction of 1/365th of £33,601, for each day past your 60th birthday that the pension remains not activated”. Such wording would have led him to activate his pension immediately.
45. He has lost 40% of the pension income that would have been payable to him between ages 60 and 65 – income which he believed was effectively guaranteed by virtue of the TUPE transfer of the pension into the Scheme.

Preliminary Decision

46. On 22 July 2025, I sent my Preliminary Decision (**the Decision**) on this complaint to the parties. I disagreed with the Adjudicator’s Opinion and upheld Professor N’s complaint.
47. Professor N accepted the Decision without further comment.
48. The Trustee’s representatives submitted further comments in response to the Decision that are summarised as follows:
 - 48.1. It substantially agrees with the Decision and has made an offer to Professor N on the basis of the Directions in the Decision;
 - 48.2. Communications with Professor N regarding his benefits reflected the Trustee’s understanding of the benefits payable to Plan 60 Plus members and did not attempt to deliberately mislead him, or to apply the Scheme Rules with a view

⁵TUPE refers to the Transfer of Undertakings (Protection of Employment) Regulations.

to making a cost saving. There was no misrepresentation of the true preservation requirement-compliant position to Professor N.

TUPE and the Fair Deal requirements are not relevant to Professor N's complaint. No accrued rights under either of Professor N's prior schemes were transferred to the Scheme. He retained deferred membership in respect of those arrangements. His benefits in question are therefore those calculated with reference to service in the Scheme only, from service beginning on 1 January 1999. Additionally, the Trustee understands that Professor N's original transfer from public to private sector in 1995 took place prior to the introduction of the 'old fair-deal' policy in 1999. Therefore, whilst there was no requirement for a 'broadly comparable benefit' to be provided post-transfer for Professor N, in practice that has taken place to allow him the opportunity to be able to retire at 60 with an unreduced pension (being the Normal Pension Age in the PCSPS at the time of the transfer of his employment).

Conclusions

49. Professor N is of the view that the annual pension entitlement of £33,601, payable unreduced from age 60, constituted a guaranteed benefit, irrespective of whether he chose to access it at that time. His complaint concerns the failure to provide an uplift to his pension in respect of its deferral from age 60 to age 62 and the information that was provided to him which he considered to be misleading by not stating that he would lose the value of unpaid pension instalments if he did not draw his benefits at 60. He complains that in relation to the above the Trustee has failed to act in his best interests and has been subject to a conflict of interest.
50. When Professor N's membership was transferred from the PCSPS to the Siemens Benefit Scheme and then to the Scheme he was granted enhanced retirement rights effectively replicating the terms of his pension under the PCSPS. The transfers were made in connection with the transfer of his employment under TUPE. TUPE does not in fact protect the value or terms of old age pensions. I accept the Trustee's evidence that the transfer took place prior to the adoption of the government's "Fair Deal Policy" so that provision of similar terms was not based on compliance with that policy and that no transfer of Professor N's accrued benefits under the PCSPS to the Siemens Pension Scheme took place. However, it appears and is not disputed that the terms agreed for Professor N's membership of the Siemens Pension Scheme were nevertheless on a basis that provided for Professor N to have a normal retirement age of 60 in line with applicable terms of the PCSPS at the time. I do not however need to make any finding on the terms of the transfer to the Siemens Benefit Scheme.
51. It is not disputed and indeed clear from the Scheme Rules that Professor N was entitled to retire at 60 with an unreduced pension and without the approval of the Trustee or his Employer. Rule 6.5 provided that a "Plan 60 Member who immediately before joining the Siemens Benefits Scheme was a member of the Principal Civil Service Pension Scheme and whose employment was transferred to a Siemens

group company at that time" (...) shall be entitled to retire, without the approval of the Employer or the Trustee at any time after attaining the age of 60". It also provided that: "On retirement, such a Member shall receive a pension and lump sum in accordance with the provisions of Rules 6.2 and 6.6, with no reduction applied for early payment in respect of years between 60 and 65, but a reduction will be applied in respect of Years by which retirement precedes age 60 of such amount as the Trustee may decide and as shall be certified as reasonable by the Actuary tendering Actuarial Advice to the Trustee."

52. Rule 6.3, as referred to by the Trustee, provided for a late retirement uplift, where a Member has reached Normal Retirement Date and remains in Service and chooses to defer his pension until he leaves Service (with the consent of the Principal Employer and Trustee). It provides that: "When the pension comes into payment the Member shall be entitled to receive the same pension in all respects as he would have received on attaining Normal Retirement Date but increased by such amount as the Trustee acting on Actuarial Advice shall decide having regard to the period of deferment."
53. The Trustee's position is essentially that Professor N's Normal Retirement Date was age 65 and not age 60 and that as such, Rule 6.3 did not apply to provide an uplift when in respect of the deferral of his pension from age 60 to age 62 because it only applied in respect of deferral after age 65.
54. I agree with the Trustee that this is what Rule 6.3 provides. However, it appears that the Trustee has not taken account of legislation requiring the Scheme to ensure fair value on late retirement where a member is entitled to "short service benefits" under the Pension Schemes Act 1993 ("**PSA1993**").
55. Section 71 of the PSA1993 requires that the Scheme make provision for "short service benefits" for members whose pensionable service terminates before their "normal pension age". "Normal pension age", in relation to a scheme and a member's pensionable service under it, is defined for this purpose in section 180 of the PSA1993 as, "the earliest age at which the member is entitled to receive benefits (...) on his retirement from such employment". The definition provides a disregard for "any scheme rule making special provision as to early retirement on grounds of ill-health or otherwise".
56. I find that the right of Plan 60 Members to retire on an unreduced pension is not a special provision within the meaning of this definition. I have considered the analysis of Andrew Simmonds QC (as he then was) of the similar provision in paragraph 34(1) of Schedule 7 of the Pensions Act 2004 in his published opinion to the Pension Protection Board where he advised as follows:

"In my opinion, the expressions "special", "early" and "on the grounds of ill-health [or otherwise]"(...) collectively indicate a provision pursuant to which a member or category of members has the right to draw an unreduced pension at an age earlier than that otherwise provided for on fulfilment of a contingency over and above the

attainment of that earlier age. Thus, rules providing for unreduced early retirement pensions in the event of permanent ill-health or redundancy or with employer consent or trustee consent would all constitute “special provisions” for the purposes of paragraph 34(1). 16. It follows, however, that rules providing for the payment of an unreduced early retirement pension which is conditional only on surviving to a particular age do not count as “special provisions” for this purpose.”

57. I adopt the above reasoning in relation to section 180(2) of the PSA1993 and find that Professor N’s “normal pension age” in relation to the Scheme was age 60 as the “the earliest age at which [he was] entitled to receive benefits (...) on his retirement from such employment”. As such, while Professor N’s Normal Retirement Date under the Scheme Rules was 65, his normal pension age in relation to the Scheme for the purpose of the PSA1993 was age 60.
58. It is also not disputed that Professor N opted out of pensionable service at 59 before he reached his normal pension age. As such, he qualifies under section 71 of the PSA1993 for “short service benefits”. Short service benefits are required to be payable as provided under the other provisions of Chapter 1 of Part IV of the PSA1993. Provision is made under section 73 for regulations on alternatives to short service benefits. Regulation 8(4) of the Preservation of Benefits Regulations⁶ provides that: “any scheme rule that allows [early or deferred retirement] must require the trustees (...) of the scheme to be reasonably satisfied that, when the member’s benefit becomes payable, the total value of the benefits to be provided under this regulation is at least equal to the amount described in regulation 11”. Regulation 11 provides that the amount referred to “is an amount equal to the value of the benefits (...) that have accrued to or in respect of the member under the applicable rules” (known as the “fair value rule”). The fair value rule requires an actuarial uplift to be applied where scheme rules permit deferred retirement, i.e. allow a member with short service benefits to draw their pension after their normal pension age.
59. Insofar as the Scheme Rules did not include an appropriate fair value rule, I consider that they should either be deemed to include one or the Trustee is liable to pay compensation to Professor N for the failure to ensure the Scheme Rules did include one in breach of statutory duty as the requirement in regulation 8(4) is sufficiently specific and was passed to protect members with short service benefit from the risk of receiving less than the full value of their benefits on deferred retirement.
60. As such, I find that the Trustee had an obligation to provide an uplift (or compensation if no uplift is payable under the Scheme Rules in breach of the PSA1993 and the Preservation of Benefit Regulations) to Professor N’s benefits on his retirement at age 62 to ensure that the value of his benefits at age 62 were equal to the value of his benefits at age 60 (being his normal pension age for the purposes of PSA1993).
61. As I find that Professor N is entitled to compensation or to the uplift to ensure that he suffers no loss from not having requested retirement at age 60, I do not need to make

⁶ The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991

any determinations in respect of the information that was provided to Professor N. I note, however, that information can be misleading not only in what it states but also in what is omitted. I find that, in the context of a pension statement that included the statement “If you do not want to retire at this time, you need take no action”, a failure to state that not retiring immediately or taking no action would result in the loss of the value of the pension instalments that the member was otherwise entitled to, was misleading. The effect of the Scheme Rules, as interpreted and understood by the Trustee, i.e. without provision for compliance with the fair value rule, was that Professor N would lose the value of any instalment of benefit which he could receive from age 60 until the date of his actual retirement or age 65 if he did not retire immediately. However, the covering letter said nothing about this. It told him that if he did not want to retire immediately, he did not need to do anything. In context, and in the absence of a clear warning that he would lose the value of unclaimed instalments of pension to which he was otherwise entitled, I find that the statement “if you do not want to retire at this time, you need take no action” was misleading as it suggested that doing nothing would not impact his rights. It was a misleading assurance that he did not need to take any action to protect his rights or receive the value of his entitlements.

62. If I had not determined that Professor N was entitled to an actuarial uplift under the fair value rule under the PSA1993 and the Preservation of Benefits Regulations, I would find that the covering letters sent to Professor N were misleading and misrepresented his retirement options in omitting to state that he would lose the value of pension instalments if he took no action and I would find that he relied on that misrepresentation to his detriment in deciding to defer his retirement. However, as I find that he is entitled to an actuarial uplift under the fair value rule (or equivalent compensation for the failure to ensure the Scheme Rules included provision for an uplift), I find that Professor N suffered no loss in reliance on the covering letters.
63. I make no findings in respect of any conflict of interest. I find that the Trustee has failed to act in Professor N’s best interests to the extent of their failure to ensure the Scheme Rules include a fair value rule and to provide an uplift to ensure that the value of his benefits at age 62 was equivalent to the value of his benefits at age 60.
64. I uphold Professor N’s complaint and the Trustee shall recalculate and pay Professor N’s pension entitlement applying an actuarial uplift to ensure that the value of his benefits at age 62 is equal to the value of the benefits he would have received at age 60. The Trustee shall pay any shortfall in the payments he has received since his pension commenced at age 62 with interest at Bank of England base rate plus 1%. I understand the Trustee has commenced implementation on the basis of the Decision.

Directions

Within 28 days of the date of this Determination, the Trustee shall:

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- recalculate and pay Professor N's pension entitlement applying an actuarial uplift to ensure the value of his benefits at age 62 is equal to the value of the benefits he would have received at age 60;
- pay any shortfall in the payments he has received since his pension commenced at age 62 with interest at Bank of England base rate plus 1%.

Camilla Barry

Deputy Pensions Ombudsman
08 October 2025

Appendix 1

Extract from the Scheme Newsletter for the year ending 31 December 2018

“The Trustee took the decision in 2015 to once again consider applications for early retirement. The Trustee will keep this matter under review, reflecting their obligations to act in the interests of all members.

Early retirement will require the consent of your Employer (TUV SUD Limited, TUV SUD Services (UK) Limited or TUV SUD BABT) and the Trustee. If you are an active member, please contact your HR department in the first instance if you are interested in applying for early retirement. Deferred members should contact Buck using the details on page 11. Members of Plan 60+ retain their Civil Service right to retire at age 60 or later without requiring the consent of the Trustees or the Employer.”

Extract from the Scheme Newsletter for the year ending 31 December 2021

“If you are a Plan 60+ Member, you have the option to receive your benefits from age 60 without the usual reduction being applied to your benefits to take account of the early payment before age 65, and without needing to ask for approval of the Trustee. Please note that there is no additional uplift to your benefits between age 60 and 65 (beyond the statutory inflationary increases) where you do not exercise the option to receive your benefits early without reduction in any particular year (and your benefits cannot be backdated or paid in arrears when they come into payment).”

Appendix 2

Consolidating and Updating Trust Deed and Rules between TUV SUD (UK) Limited (as the Principal Employer) and TPS Benefits Scheme Limited (as Trustee) (2013)

“Normal Retirement Date means the last day of the month in which the Member attains the age of 65.”

“6.5 Early retirement in other cases

Any Member who has attained Minimum Pension Age and who leaves Pensionable Service otherwise than in the circumstances referred to in Rules 6.2 or Rule 6.4 may retire subject to the approval of the Employer and the Trustee. On retirement he shall receive a pension and lump sum in accordance with the provisions of Rules 6.2 and 6.6, but his pension will be reduced in such manner as the Trustee may decide and as shall be certified as reasonable by the Actuary tendering Actuarial Advice to the Trustee.

However, a Plan 45 Member or Plan 60 Member who immediately before joining the Siemens Benefits Scheme was a member of the Principal Civil Service Pension Scheme and whose employment was transferred to a Siemens group company at that time, or a Plan 99 Member who immediately before joining this Scheme was a member of the Principal Civil Service Pension Scheme (or then had the option to join the Principal Civil Service Pension Scheme) and whose employment was transferred to an Employer, shall be entitled to retire, without the approval of the Employer or the Trustee at any time after attaining the age of 60. Retirement between the Minimum Pension Age and 60 will be subject to the approval of the Employer and Trustee. On retirement, such a Member shall receive a pension and lump sum in accordance with the provisions of Rules 6.2 and 6.6, with no reduction applied for early payment in respect of years between 60 and 65, but a reduction will be applied in respect of Years by which retirement precedes age 60 of such amount as the Trustee may decide and as shall be certified as reasonable by the Actuary tendering Actuarial Advice to the Trustee...”