

Ombudsman's Determination

Applicant	Mr R
Scheme	Pension Protection Fund
Respondent	The Board of the Pension Protection Fund (the Board)

Outcome

- I do not uphold Mr R's referral and no further action is required by the Board.

Referral summary

- Mr R has referred an appeal of a decision by the Board's Reconsideration Committee (**the Committee**) dated 29 March 2022. Mr R's referral is that when he asked for retirement quotes in March 2021, the PPF was not open and transparent about possible changes to the compensation figures. Mr R says he could have brought forward his retirement date had he been made aware the figures could change.

Background information, including submissions from the parties

- In March 2021, Mr R requested and received six retirement illustrations. As relevant, the illustrations quoted:

Indicative retirement date	Annual compensation	Tax-free lump sum
20/6/21	£12,136.92	£80,911.99
20/12/21	£12,378.78	£82,524.36
20/6/21	£13,500	£47,360.00
20/6/21	£14,000	£35,050.00
20/12/21	£13,500	£55,500.00
20/12/21	£14,000	£43,430.00

4. The covering letters to the illustrations included the caveats:

“These figures are estimates only and in no way guaranteed.”

and

“We usually look at how we calculate compensation benefits each year to make sure we take into account any changes in financial conditions during the previous year. However, changes can happen at any time which could mean the figures we’re quoting here could go up or down. If you decide you want an updated illustration closer to your chosen retirement date, please contact us and we can arrange for one to be sent to you. The figures could also change if the information we hold about you is incorrect.”

5. Following an annual review in June 2021, PPF commutation factors were reduced from 1 October 2021. The adjusted actuarial factors were published on its website¹.

6. Later the same month, Mr R requested further illustrations and option forms based on the retirement date of 20 December 2021. As relevant, the illustrations quoted:

Indicative retirement date	Annual compensation	Tax-free lump sum
20/12/21	£12,173.52	£81,156.65
20/12/21	£12,500	£73,750
20/12/21	£13,000	£62,450
20/12/21	£13,500	£51,150
20/12/21	£14,000	£39,850

7. Mr R complained to the PPF that he was not notified in advance of the adjustment to the commutation factors. Mr R said:-

- He had decided to take his compensation from December 2021 based on the March 2021 illustrations.
- He did not learn about the adjustment to the commutation factors until he received additional quotes and paperwork allowing him to submit his retirement request on 28 October 2021.
- The PPF was aware of the pending change in June 2021. So, there were ample opportunities for the PPF to notify him directly of the adjustment well before it came into effect. If that had occurred, he would have submitted another retirement

¹ <https://www.ppf.co.uk/news/actuarial-factors-2021>

date to minimise the effect of the commutation change and maximise his compensation entitlement. He would also have had the opportunity to use the 20 June 2021 retirement date.

- The PPF should permit him a retirement date of 30 September 2021, with the compensation calculated using the commutation factors that applied to the March 2021 illustrations.

8. In reply the PPF said:-

- It would not backdate Mr R's retirement to June 2021, or issue an illustration as of 30 September 2021 based on the previous commutation factors, as it had not received completed option forms that would have meant he was eligible to receive his benefits based on those factors. The illustrations issued in March 2021 included two caveats (see paragraph 7 above) to precisely inform members that factors can and do change, so members should consider the implications of that when making their retirement decision.
- The factors used to calculate compensation were reviewed annually to make sure that they were fair, so members were financially no better or worse off whenever they chose to retire and whether they took a lump sum. The factors were actuarially equivalent, as required under the PPF's governing legislation².
- The main reason for the lower commutation factors was financial market movements, particularly the rise in long-term interest rates since the last set of factors were calculated. Higher interest rates made it less expensive to provide compensation over time. So, a member should receive a lower cash sum in return for giving up part of their compensation so that the cost of paying the cash lump sum was the same as the cost of paying the compensation over time.
- Typically, it introduced new factors, when needed, on 1 October each year. It published a news article explaining the change in factors on its corporate and member websites on 1 July 2021. This was to provide members with plenty of notice of the factor changes, so that members who were planning to start receiving payments in the next few months could consider whether the upcoming factor change would affect their retirement decisions. From 1 July 2021, the new factors were used in producing retirement quotes for all retirement dates on or after 1 October 2021.

9. Mr R appealed. He said:-

- The PPF had not addressed his complaint. It was seeking to push the blame, unfairly, onto him for not knowing about the adjustment to commutation factors. The PPF was at fault. It sent quotes in March 2021, knowing that any factor

² Paragraph 24 of Schedule 7 to the Pensions Act 2004.

changes would impact only on the 20 December 2021 illustrations, but did not tell him.

- The same caveats were included for the illustrations with a June and a December 2021 retirement date and the PPF did not identify what factors may change so that he could consider the implications. The December 2021 illustration should have included a warning that it could be rendered invalid as of 30 September, because it was based on factors that were going to change and potentially devalue his lump sum on this date.
- It was incumbent on the PPF to make him aware of the potential changes to the commutation factors. Publishing a news article and expecting him to come across it would not do.
- He was misled into thinking he could make a judgment on the most beneficial retirement date based on the March 2021 illustrations.
- The PPF had assumed he had access to and use of the internet.
- The PPF was specifically set up to provide existing and prospective pensioners with a retirement income following the collapse or abandonment of their defined benefit schemes, so he had a perfect right to expect the highest of standards from it. In failing to do its job with clarity, openness and transparency, it had also denied him the opportunity to take his compensation on 20 June 2021, or to consider a later date that would have maximised his benefits before the commutation factors were changed.
- The PPF should allow him to take his compensation from 20 June 2021, using the commutation factors, applicable when the illustration was produced and sent to him in March 2021, or a slightly later date that minimised the reduction to his lump sum.
- From what he knew about the PPF website, the online benefit modeller did not work for members like him who had two Normal Retirement Ages (60 and 65). So, all the quotes he requested were made over the telephone.

10. The PPF did not uphold Mr R's appeal. The PPF said:-

- Defined benefit pension schemes were required to regularly review the factors used in their calculations and the PPF had undertaken such a review each year since its inception. As specified in all its quotations, figures were only confirmed when a member retired, and any figures quoted were not guaranteed and could go down or up when there was a change to factors or financial conditions.
- It reviewed the actuarial factors to make sure that they were fair to members, regardless of whether they chose to take a full pension or a tax-free lump sum and reduced pension. It was required to do this by its governing legislation. The key requirement was to make sure the cost of providing compensation to any of its

members stayed broadly the same regardless of whether they took a full pension or a lump sum and a reduced pension. This was cost neutral and kept things fair between different members and between members and its levy payers. It also helped with predicting its future liabilities.

- When it reviewed the factors, the assumed investment returns were slightly higher than the previous year due to long-term interest rates being higher. This led to commutation factors reducing. Its mortality assumption had also changed, which had reduced the commutation factors slightly. Early and late retirement factors were also affected by the same considerations. The different late retirement factors had also slightly reduced Mr R's pension. But the factors had been updated in accordance with the PPF's regulations and there was no evidence to support maladministration.
- The process to calculate new factors began at the start of each tax year and took 2-3 months to undertake, review and complete. When it produced the March 2021 illustrations, it did not know what the new factors would be, or which way the factors would move. For this reason, it included the caveats (see paragraph 9 above, second caveat) in every illustration it sent to members. Once the analysis had been completed and it had agreed the new factors and it had looked at how this might impact members of different ages and situations, it then published a news story on its corporate website on 1 July 2021 to explain what this might mean for members considering retirement.
- It was dedicated to continually improving its processes and its service to members, while providing value for money. It was also aware of the environmental impact of paper usage and like many other companies, had, where practical, made changes to reduce this. Currently, it was responsible for paying over 193,000 members each month, and also had over 110,000 members due to receive benefits when they retired. Its website allowed quick communication with its members who were located around the world. For the 110,000 members who were yet to retire, an average of around 500 retired each month. Many took early or late retirement. To advise each member individually by letter of the upcoming factor changes when the vast majority were not planning to retire was simply not cost effective.
- It encouraged members to use its member and corporate websites, where possible, thereby reducing paper communication, and giving members swifter access to the information they needed. Nonetheless, it was aware that some members could not or did not want to use the website as a method of communication. So, it could still always be contacted by telephone or post.
- The current benefit modeller was unable to deal with multiple retirement ages.
- It was unable to allow members to backdate their retirement date to a point where the member received more than they were currently entitled to.

- In recognition of the effort Mr R had put into his retirement planning and how upsetting the reduction in his compensation must be a consolatory payment of £200 was offered.

11. Mr R submitted a further appeal. Mr R said:-

- The PPF had again failed to address his specific complaints about its behaviour and its failure to qualify the illustrations it sent in March 2021.
- The illustrations for 20 June and 20 December 2021 retirement dates used the same commutation factors, when the PPF knew quite possibly that these would not apply to the latter illustration by the time he came to claim his benefits. He did not know this because the PPF failed to tell him.
- While the PPF said it did not know at the time the March illustrations were produced which way the factors might move, it did know the factors would or could change and had a responsibility to make him aware that there were imminent and specific changes afoot of which he should be aware.
- The PPF sought to excuse not informing him in writing on the grounds of the number of members it had and the environmental impact, etc. But he had numerous telephone conversations with the PPF during the period in question and it sent out the retirement quotes to him in paper form.
- Had the PPF done its job properly, he would have been in receipt of his compensation before the factors were changed.
- The PPF had caused him a financial loss because of its negligence, failings, and/or maladministration. It was legally obliged to remedy his loss by either backdating his retirement date or compensating him.

12. The Committee turned down Mr R's final appeal. The Chair of the Committee said:-

- In the three months prior to the factors changing, once the impact of the change was known, the PPF included additional wording on all quotes that were sent to members to inform them. As Mr R's quotes were requested in March 2021, six months before the factor change, when the impact was not known, the quotes included the generic caveat (the second caveat, see paragraph 7 above). So, the PPF did explain to Mr R that his entitlement could change.
- It was simply not cost effective to notify 110,000 members by letter before a factor change. While the PPF's approach to communicate information digitally may not benefit all members, the Committee was satisfied that the PPF's stance on this matter was reasonable.
- The Committee did not accept Mr R's request for his retirement to be backdated to before the new factors came into effect, as the PPF could not pay monthly compensation or cash lump payments of more than a member's entitlement.

13. Mr R completed forms for a retirement date of 20 March 2022. These were processed, but later reversed following instruction from Mr R.
14. Mr R retired from 20 June 2022 with annual compensation of £12,455.52 and a tax-free cash lump sum of £83,036.64.

Mr R's position

15. Mr R submits:-

- He accepts that the PPF has the right to adjust commutation factors.
- His complaint is that had the PPF been open and transparent with him at the time the March 2021 illustrations were produced, either orally or in writing by informing him that the December 2021 illustrations could be impacted by the annual review, he would have been able to maximise his compensation entitlement by bringing forward the 20 December 2021 retirement date a few months before the commutation factors changed on 1 October 2021. Alternatively, he could have opted to retire on 20 June 2021.
- The PPF has relied on the caveat (the second caveat - see paragraph 4 above), but it has failed to mention that the annual review could only have impacted on the 20 December 2021 illustration.
- He made the PPF completely aware that he was going to make a retirement decision based on the March 2021 illustrations and finds it unacceptable that the PPF adds extra wording to illustrations sent out within three months of a pending change to factors.
- The PPF acknowledges that not all members can or do access the PPF digitally. He falls into that category. If access to the PPF's website is unavailable to him, or rarely accessible to him, he must rely on correspondence being sent to him. The PPF seems happy to disenfranchise some members and thinks its digital approach is ok, so hard lines for him.
- He delayed his retirement into 2022 to try and mitigate his financial loss.

16. Mr R has submitted an email he received from the PPF on 1 July 2022 informing him that it had recently reviewed its factors and had made some changes which would come into effect for anyone retiring on or after 1 October 2022. If he planned to take late retirement, the new factors would result in a higher level of compensation each year than would have been calculated using the current factors. The email provided a link to the new late retirement factors on the PPF's website. Mr R says the email is an admission on the part of the PPF that it acted unfairly and unreasonably in 2021.

The Board's position

17. The Board submits:-

- Its position is unchanged from that set out in the Committee's decision (see paragraph 15 above).
- The PPF calculated Mr R's compensation in accordance with its governing legislation. It reviews factors annually and makes changes as and when appropriate. It also monitors the factors monthly, and should market conditions move materially, this will trigger an additional review, on an ongoing basis and updates them when appropriate. It is required to publish tables setting out the commutation factors³ and the commutation lump sum must be the actuarial equivalent of the commuted compensation given up⁴.
- The illustrations issued to Mr R in March 2021 expressly stated that they were estimates and not guaranteed and included the caveat that each year it reviewed the calculation of compensation benefits and changes could happen at any time. Mr R could have asked why the illustrations were not guaranteed and what he would need to do to receive a guaranteed quotation.
- Mr R has drawn a distinction between the March 2021 illustrations, on the basis that the factors were more likely to change before 20 December 2021. Mr R is relying on hindsight and the change to the factors as a result of changes to investment markets in 2021. But it was not inevitable that the factors would change and reduce before 20 December 2021.
- It does not accept Mr R's argument that it should have proactively alerted him to the new commutation factors when it published the changes on its website:-
 - The March 2021 illustrations were not guaranteed and at that time he had not confirmed, by returning completed retirement forms, when he was exactly planning to retire or how much he wished to take as tax-free cash.
 - It has over 110,000 deferred members due to receive benefits from the PPF when they retire. Many retire earlier or later than their normal retirement date and request illustrations in advance of their retirement. To notify each member by letter of any pending factor changes is simply not cost effective, when the majority are not planning to retire it is common for members to request an illustration but then decide not to retire. It uses its website to enable quick

³ Paragraph 24(5) of Schedule 7 to the Pensions Act 2004 states:

"The Board must publish in such manner as it considers appropriate the tables designated by it for the purposes of sub-paragraph (4)".

⁴ Paragraph 24(4) of Schedule 7 states:

"Where a person opts to commute any part of his periodic compensation under this paragraph, the lump sum payable under sub-paragraph (1) is the actuarial equivalent of the commuted portion of the periodic compensation calculated from tables designated for this purpose by the Board."

communication with all members on matters such as factor changes. It publishes changes to factors on its website at least 3 months before they apply. The 1 October 2021 factor changes were made available from 1 July 2021.

- The PPF is not legally obliged to communicate with individual members about a pending change to applicable factors.
- In a similar context, in the British Steel Determinations, the Pensions Ombudsman confirmed there is no legal obligation on scheme trustees to inform members in advance of a change to lump sum commutation or other retirement factors.
- It does not agree with Mr R's suggestion that the PPF's email of 1 July 2022 is an admission that it acted unfairly and unreasonably in 2021. Mr R emailed the PPF on 7 and 11 March 2022, requesting a number of retirement quotes together with information on the factors used to calculate his entitlement. He specifically requested to be informed of any changes which may impact his retirement quotes. The PPF responded on 17 March 2022 and explained how it uses factors in the calculations and when these may be adjusted. As part of this explanation, the PPF confirmed that new factors would come into effect on 1 October 2022 and be available on its website by 1 July 2022. By June 2022, Mr R had still not made a decision regarding his retirement date and remained in contact with the PPF about retirement quotes. Its records indicate that on 6 June 2022, Mr R called the PPF's Contact Centre to seek assurances that, if he was provided an illustration for retirement before 1 October, the figures would not be changed, although he understood that the factors may change after 1 October. On or around 15 June 2022, the PPF's Member Services Manager requested that Mr R be informed of the new factor changes. The PPF wrote to Mr R on 22 June 2022 to confirm that factors would be changing from 1 October and that any illustrations and forecasts after 1 October would have the new factors applied. The PPF also emailed the member on 1 July 2022 with a link to the relevant website address. It is reasonable to conclude, based on the above and the background to Mr R's complaint, that the PPF's email of 1 July 2022, was sent as a follow up to Mr R's call on 6 June 2022 and further to the PPF's letter of 17 March 2022, and Mr R's requests in March 2022. It is also reasonable to conclude that the email was sent with the intention of volunteering the information to Mr R in light of his ongoing requests for assurances regarding his retirement quotes. There is no legal obligation on the PPF to communicate with individual members about a change to applicable factors and it would not be reasonable for the PPF to do so. This position is not affected by the PPF subsequently volunteering the information in its email of 1 July 2022 to Mr R in the above context.
- It remains of the view that no maladministration has taken place. If Mr R now wishes to accept its offer of £200, as an acknowledgment of how upsetting the reduction has been for Mr R, he should contact the Resolutions Team.

Adjudicator's Opinion

18. Mr R's referral was considered by one of our Adjudicators who concluded that no further action was required by the Board. The Adjudicator's findings are set out in paragraphs 19 to 27 below.
19. The Adjudicator noted that Mr R accepted that the PPF had the right to adjust commutation factors. His complaint was that the PPF failed to notify him that the December 2021 illustrations could be impacted by the annual review. Mr R said if he had been notified, he would have maximised his compensation by retiring before 1 October 2021.
20. The Adjudicator's view was that Mr R was applying the benefit of hindsight. When the illustrations were issued the PPF did not know whether or how the factors would change. The PPF only knew that the factors were reviewed at least annually, and this information was included as a caveat in the illustrations that Mr R received in March 2021. The review could have resulted in no change to the factors or their increasing.
21. Under paragraph 24(5) of Schedule 7 to the Pensions Act 2004, it was for the Board to publish in such manner as it considered appropriate the commutation factors. The PPF's policy was to notify members of changes to the factors via its website and illustrations issued within three months of a pending change to the factors included a notification of the change. The Adjudicator's view was that the Ombudsman would not deem this to be unreasonable.
22. The changes effective from 1 October 2021 were published on 1 July 2021. Prior to 1 October 2021, Mr R had not confirmed his retirement (by returning completed retirement forms) or notified the PPF that his intention was to retire in December 2021. As the Board had explained, it was common for members to request retirement illustrations, but then not proceed to retire.
23. Mr R was informed that the March 2021 illustrations were estimates and not guaranteed and that the compensation quoted as pension and tax-free cash could go up or down at any time. Mr R did not ask the PPF for further information about this, such as, when was it usual for the annual review of factors occur and any resultant changes take effect, or what was required to receive a guaranteed illustration?
24. Mr R said the email he received on 1 July 2022 from the PPF advising the forthcoming change to factors from 1 October 2022 supported his assertion that the PPF should have similarly informed him the year before of the pending change to the factors used.
25. The Adjudicator did not agree as the circumstances were not the same. In March 2022, unlike the previous March, Mr R specifically requested to be informed of any changes which might impact the retirement illustrations he was requesting. The same month the PPF informed Mr R that the factors used might change with effect from 1 October 2022 and that these would be available on its website by 1 July 2022. In June 2022, Mr R telephoned the PPF for assurances that if he received a retirement

illustration before 1 October 2022 the factors used would not change. Later that month, the PPF informed Mr R that any illustrations provided from 1 October 2022 would have new factors applied. On 1 July 2022, the PPF emailed Mr R the relevant link to its website. Mr R could have similarly requested to be informed and sought assurances the year before, but he did not.

26. The Adjudicator empathised with Mr R and appreciated that he would find it very disappointing, but it was the Adjudicator's opinion that no further action was required by the Board.
27. The Adjudicator said If Mr R now wished to accept the Board's offer of £200, as an acknowledgment of how upsetting the reduction had been for him, he should contact the PPF's Resolutions Team⁵.
28. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R has provided his further comments which I have considered but they do not change the outcome, I agree with the Adjudicator's Opinion.

Mr R's further comments

29. Mr R submits:-

- The only event that impacted on the compensation that he believed he might receive, was the annual review of the actuarial factors used to calculate his entitlement.
- The caveats in the March 2021 illustrations (for retirement dates in June and December 2021) are full of generalisations and fail to identify the date of the annual review or the date on which any resultant changes to these factors would take effect.
- While he accepts that the illustrations could have been impacted by unknown events, and therefore could have gone up or down, the annual review was a known event. Instead of saying the PPF undertake an annual review beginning in March, concluding in June and implemented on 1 October, it chose to exclude these important dates. If the dates had been included, he would have then known that the annual review could only impact the December 2021 illustrations and not the June 2021 illustrations. The PPF knew this and chose not to tell him. This was unfair, lacked transparency and openness and compromised his ability to make an informed decision on his retirement date.
- The Adjudicator's view is that the PPF is not legally obliged to communicate with individual members about a pending change to applicable factors. But when he requested the March 2021 illustrations the changes to the factors were not pending, they were months away. Nonetheless, his issue is that the PPF failed to

⁵ ResolutionsTeam@ppf.co.uk

inform him when it provided the illustrations, the date the annual review would take place and when changes (if any) to the factors used to calculate his entitlement would be effective. He did not expect the PPF to tell him what the impact of the annual review might be.

- His referral does not rely on hindsight. He requested the March 2021 illustrations for the two different retirement dates early so he could plan his retirement. He told the PPF that he wanted the illustrations to determine which retirement date would be the most financially beneficial. To do this, it was imperative that the PPF gave him the date of the annual review.
- The Adjudicator accepted the PPF's argument that if he had asked it why the March 2021 illustrations were not guaranteed, it would have told him. But why was it necessary for him to try and second guess what was going on. The PPF should have voluntarily informed him of the annual review rather than rely on vague statements in the caveats.
- He did not have access to the PPF's website in 2021 and had informed the PPF to communicate with him in writing. So, he could not access details about the annual review and review dates online.
- The PPF had learnt its lesson by 2022, because it emailed him on 1 July 2022 advising that the factors would be changing from 1 October. The Adjudicator's view was that the circumstances that led to the PPF sending out this advisory communication were prompted by his calls seeking assurances that the new illustrations he had requested for retirement in June 2022, would not be changed. But this did not factor-in that the situation had changed between 2021 and 2022. In 2022, he knew when the review would take place and when and how it might impact on the illustrations he had requested and that the PPF was unlikely to update him unless prompted.
- The PPF stated it could not backdate his retirement date to 20 June 2021, because it had not received the appropriate forms. But he did not return the forms because the illustrations showed him a 20 December 2021 retirement date was more financially beneficial and available. The PPF did not inform him that the annual review would impact on the 20 December 2021 illustrations.
- Based on his decision in 2022 to take maximum tax-free cash of £83,036.64, he gained £2,124.65, over the amount (£80,911.29) he would have received on 20 June 2021. The annual compensation he was entitled to on 20 June 2021 was £12,136.92, and when he took his annual compensation on 20 June 2022, it had risen to £12,455.52, an increase of £318.60. So, his loss is £9,694.07 for the period 20 June 2021 to 19 June 2022. That is: (£12,136.92 - £318.60) - £2,124.65.

- The PPF's offer of £200 "as an acknowledgement of how upsetting the reduction has been for him", should be paid to him, but it hardly recompenses him for the upset this situation has caused him.

Ombudsman's decision

30. Mr R's referral is that the PPF failed to provide in the March 2021 illustrations the date of the annual review, by when it was expected to be completed and the date the outcome of the review would be implemented. He says if the PPF had provided these dates he would have known that any change to the factors used to calculate his compensation could only affect the December 2021 illustrations.
31. The covering letters to the March 2021 illustrations expressly state that the illustrations are estimates and not guaranteed and that each year the PPF reviews the calculation of compensation benefits and changes could happen at any time. In the circumstances I consider that the caveats were reasonable.
32. Mr R says he told the PPF that he wanted the March 2021 illustrations to compare them and determine which retirement date would be the most financially beneficial. He says to do this, it was imperative that the PPF gave him the date of the annual review. He says he did not have access to the PPF's website in 2021.
33. Nonetheless, Mr R could have asked the PPF for this information and when changes to the factors (if any) were likely to apply.
34. Mr R says that had he been notified, he would have maximised his compensation by retiring before 1 October 2021. But, as the Adjudicator said in his Opinion, that is applying the benefit of hindsight. When the illustrations were provided it was not known if or how the factors would change.
35. The factors applicable from 1 October 2021 were published by the PPF on 1 July 2021. Prior to 1 October 2021, Mr R had not confirmed his retirement by returning completed retirement forms or notified the PPF that it was his intention to retire in December 2021. So, the new factors apply to the calculation of Mr R's compensation and there is no financial loss.
36. While I empathise with Mr R's position, I do not uphold his referral and no further action is required by the Board.
37. If Mr R now wishes to accept the Board's offer of £200, he should contact the PPF's Resolutions Team.

Anthony Arter CBE

Deputy Pension Protection Fund Ombudsman
24 April 2024