

## Ombudsman's Determination

Applicant	Ms T
Scheme	British Transport Police Force Superannuation Fund - 1970 Section ( <b>the Fund</b> )
Respondent	Railpen Ltd ( <b>Railpen</b> )

## Outcome

1. Ms T's complaint against Railpen is partly upheld. To put matters right Railpen shall pay Ms T £500 in recognition of the significant distress and inconvenience which she has suffered dealing with this matter.

## Complaint summary

2. Ms T complained that she was not informed that an early reduction factor would be applied to her pension benefits if she was to leave active service before her normal retirement age (**NRA**). She was also unhappy with the time taken to respond to her complaint.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Railpen (formerly RPMI) is the administrator of the Fund.
5. Ms T joined the Fund in January 2008.
6. On 10 September 2020, Ms T wrote to Railpen. She asked:

“Can you please advise what would happen to my pension if I were to leave my current force and move to another force?

The new force offers to pay into my pension at a rate of 7.5% at each year end of my contract.

How would I set this up?”
7. On 22 September 2020, Railpen responded:

“If you were to leave the BTP Pension Scheme, your contributions to the scheme would stop and your benefits would become preserved in the scheme. Your preserved benefits would be payable from your [NRD] of 55 which is the earliest you are eligible to apply for payment. Alternatively, you could request to transfer your benefits out of the scheme to another HMRC registered pension scheme.”

8. On 18 November 2020, Ms T wrote to Railpen to confirm she had resigned from her current employer.

9. On 23 November 2020, Railpen wrote to Ms T:

“Thank you for getting in touch. I would advise you that on leaving your benefits will be preserved in the Fund until age 65. The earliest age you could apply for early retirement benefits would be age 55. Should you be re-employed at a future date it would be up to your employer which scheme you were eligible to join. If you need further information, or have any questions, please visit [www.btp pensions.co.uk](http://www.btp pensions.co.uk) or call us on the telephone number at the top of this letter.”

10. On 28 November 2020, Ms T left her current employer and the Fund.

11. On 30 November 2020, Ms T began working for another police force.

12. On 22 December 2020, Railpen sent a letter and a preserved benefits statement (**the December 2020 statement**) to Ms T. As relevant the letter said:

“We are writing to you as we have been informed that you left the pension scheme on 28 November 2020. Please find enclosed details of your preserved benefits which we hope you find useful.

...

Your benefits will become payable from 31 October 2021. You will have the option to leave your benefits preserved in the pension scheme until age 60.

Your preserved benefits at date of leaving are:

Lump Sum £42,299.44 and Yearly pension £10,574.90

The latest salary information used in this calculation was £43,698.00. This is the most recent salary information provided by your employer. A detailed breakdown of the salaries used in determining your benefits is available at [www.btp pensions.co.uk](http://www.btp pensions.co.uk).

Applying for payment of your benefits

You may apply to take your benefits at any time between 31 October 2021 and 31 October 2026.

The pension must be put into payment on or before your 75th birthday. No further enhancements will be applied to the pension after this time.

If you plan to take your retirement benefits before your 55th birthday, you will be relying on your protected pension age. Certain HMRC regulations will apply - in particular you will be required to take payment of all your benefits in the Railways Pension Scheme...”

13. On 30 April 2021, Ms T wrote to Railpen. Ms T requested:

“I would be grateful if you could prepare my pension benefits for release from 31/10/21. I wish to take the lump sum and yearly pension from my retirement age of 55 years.”

14. On 3 August 2021, Railpen sent an estimate of pension benefits (**the August 2021 estimate**) to Ms T. As relevant:

“You should not rely on this estimate as a guarantee of benefits.

...

Estimated value of your benefits as requested:

**Options available if you retire on 31 October 2021 are:**

...Lump sum: £21,778.90

Yearly pension: £5,444.75”

15. On 5 August 2021, Ms T wrote to Railpen. She said:

“My estimate is almost 50% less than it was a few months ago. Can you confirm why this would be so? I want to ensure it is correct before I formally request my selection for payment.”

16. On 13 October 2021, Railpen replied. As relevant, it said:

“Your query has been referred to the relevant team, who have confirmed that in the main the benefits calculated in both the Annual Benefit Statement and Estimate were correct.

Apart from the usual things that can cause differences in your pension benefits such as salary, service and reduction factors, the whole basis for the calculations changed between the two calculations.

For the Annual Benefit Statement produced in our previous administration system, your status at the time was active. Therefore, the benefits quoted have been based on you building pensionable service up to your normal retirement date (**NRD**) of 31 October 2021. An average salary of £43,212.71 was used at that time from what was held on record. This had no reduction factor applied because the calculation was based on your [NRD].

For the estimate produced on our new administration system, you had left service on 28 November 2020, so your record had a preserved status at the point the

estimate was run. The service was therefore only calculated to your date of leaving rather than your [NRD].

The salaries used in our new system were also different to those used in the previous statement. This time an average salary of £42,299.44 was used in the calculation. In addition to this, for your section of the Scheme, when a member changes their status from active to preserved, their NRD changes from age 55 to age 65. This means that the estimate at age 55 is an early retirement, and therefore a reduction factor of 0.514 was applied.

...”

17. On 15 and 25 October 2021, Ms T wrote to Railpen to complain about the difference between the December 2020 statement and the August 2021 estimate. She said she was not made aware that leaving the Fund eleven months before her NRD would mean a 50 per cent reduction in her pension benefits.
18. On 31 October 2021, Ms T retired. She has not worked since.
19. On 3 November 2021, Railpen wrote to Ms T. It said:-
  - The August 2021 estimate was correct. Members who joined the Fund after April 2007 and who took preserved (deferred) benefits had their NRD adjusted to 65. This was communicated to members in the Member's booklet sent to her in 2008.
  - While the values shown in the December 2020 statement were correct some of the wording was not. The wording said that Ms T had the option to leave her benefits preserved in the Fund until age 60 and may apply to take her benefits at any time between age 55 and 60. This should have said she could leave her benefits preserved in the Fund until age 65 and take her benefits between age 55 and 65. The wording incorrectly said she could take her pension benefits before age 55, which was not possible. It also said she must put her pension benefits into payment before age 75. This should have said age 65.
20. On 3 December 2021, Ms T invoked stage one of the Fund's two-stage Internal Dispute Resolution Procedure (**IDRP**). She enclosed a copy of the December 2020 statement and complained that the statement said her pension benefits were “preserved” and that there was no mention of an actuarial reduction being applied to the benefits, or of her having to work until age 65 to draw her pension.
21. On 15 December 2021, Railpen issued its stage one IDRP decision. In summary, it said:

“For your section of the Scheme, when a member changes their status from active to preserved, their [NRD] changes from age 55 to age 65. This means that the estimate at age 55 is an early retirement estimate, and therefore a reduction factor is applied. This is also confirmed in the Guide for Members booklet.”
22. On 17 December 2021, Ms T submitted her stage two appeal.

23. On 10 March 2022, Railpen wrote to Ms T to inform her that the stage two IDRPs response would be deferred to the next quarterly meeting of the Fund's Management Committee (**the Committee**) to allow Railpen to provide further information.
24. On 16 May 2022, Ms T asked Railpen for an update on her complaint. She said she had been waiting seven months for her pension and had no income so needed to resolve the matter promptly.
25. On 17 May 2022, Railpen wrote to Ms T and said she could apply for payment of her pension and her benefits could be recalculated if necessary, dependent on the complaint outcome.
26. On 18 May 2022, Ms T wrote to Railpen. She said:

“...I do not agree with the last estimate. It is approximately 50% less than the previous estimates.

So, where does this leave me? I left BTP to join another force and have since retired on the back of my yearly estimates.”
27. On the same day, Railpen replied to Ms T. It said:

“The letter and preserved benefits statement dated 22 December 2020 gave details of the value of your preserved benefits before your options were calculated. These values were not an estimate of benefits payable. From these benefits the relevant reduction factor was used based on the date you wished to take payment of your benefits.”
28. On 21 June 2022, Railpen issued its stage two IDRPs decision. It said the Committee had reviewed the evidence. The errors in the December 2020 statement had occurred after Ms T had already left the Fund, so it did not agree that she had made an irrevocable decision based on the incorrect wording.
29. In December 2022, Ms T complained to The Pensions Ombudsman (**TPO**).
30. In May 2023, Railpen issued its formal response to TPO. Railpen quoted from the 'British Transport Police - A guide for members - BTPFSF - 2007 Section' (**the Members' Guide**) which was issued to Ms T when she joined the Fund, and from the December 2009 'Focus' newsletter.
31. The Members' Guide states:

**“Normal retirement benefits**

These can be taken at your Normal Pension Age (NPA), which is age 55 for active members.

### **Preserved benefits**

If you leave the Fund before you are able to take your benefits, you become a 'preserved' (or 'deferred') member. This means you don't pay any more contributions, and your benefits are based on membership and your final average salary over the 12 months before your leaving date.

Your preserved benefits increase each year in line with Orders made under the Pensions (Increase) Act 1971 and in line with Fund Rules, from the date that your active membership ends...

...

The age from which your preserved benefits (sometimes referred to as 'deferred benefits') are payable, is 65. You can claim your benefits from age 55 but these will be reduced by an early retirement factor."

32. The Focus newsletter, under the section 'Reminder: changes to early retirement age' says:

"As we told you early last year, new legislation requires that a minimum retirement age of 55 is introduced from 6 April 2010. This will affect you in different ways depending on when you joined the Fund, when you claim your benefits, and whether you want to take early retirement immediately in leaving service or at a later date.

...

If you joined the Fund on or after 1 April 2007, your retirement benefits are payable unreduced from age 55 immediately on leaving service. If you leave service and you do not take immediate payment of your pension, your benefits are payable without reduction from the age of 65. You can apply to take payment of your deferred benefits early from the age of 55 with the consent of the Management Committee. It is important to remember that if you take your benefits early they will be reduced because it is likely that they will have to be paid for longer."

33. As part of TPO's investigation, Railpen were asked if Ms T could have remained a member of the Fund when she joined her new employer in November 2020. Railpen confirmed that because her new employer was not part of the Railways Pension Scheme, there was no option for Ms T to remain an active/contributing member of the Fund, therefore, her benefits were preserved, until such time that she applied to take payment, under the Rules of the Fund (**the Rules**).
34. Relevant extracts from the Rules are provided in Appendix 1 and from BTP's website<sup>1</sup> in Appendix 2.

### **Ms T's position**

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<sup>1</sup> [www.btpensions.co.uk](http://www.btpensions.co.uk)

35. Ms T submits:-

- Her decision to leave her employer was made based on Railpen's email of 22 September 2020, stating that her pension would be "preserved" and payable at age 55.
- She is unhappy that her projected pension benefits decreased by nearly half because she left the Fund eleven months before her NRA.
- There was no mention of the reduction factor or having to work until 65 to reach her NRA in the December 2020 statement, which said she could take her pension at 55 or 60.
- Railpen took over seven months to respond to her IDRPs complaint.

**Railpen's position**

36. Railpen submits:-

- When members of the Fund who joined after April 2007 change their status from active to preserved, their NRA changes from 55 to 65. Ms T was sent the Members' Guide when she joined the Fund in 2008 and the Focus newsletter in December 2009 which both contained this information. The information is also on the Fund's website.
- The reduction factor of 0.514 applied to Ms T's pension benefits in the August 2021 estimate was correct.
- There were wording errors in the December 2020 statement. The statement said Ms T had the option to take her preserved benefits from anytime between her then age of 54 and 60. It should have said she could take her preserved benefits between age 55 and 65. The statement also said she must put her pension benefits into payment before age 75. This should have said age 65.
- Nonetheless, Ms T was sent multiple communications which correctly confirmed her NRA would be 65 if she left employment and preserved her benefits.

**Adjudicator's Opinion**

37. Ms T's complaint was considered by one of our Adjudicators. The Adjudicator concluded that Railpen did not misinform Ms T that she could take her pension benefits unreduced at age 55 if she resigned from her employer and became a deferred member of the Fund. However, errors in the December 2020 statement amounted to maladministration. For this, and delays in responding to Ms T's stage two IDRPs appeal, the Adjudicator recommended an award of £500 in recognition of the non-financial loss experienced by Ms T. The Adjudicator's findings are set out below:-

- The Rules state that an active member of the Fund has a NRA of 55. If a member who joined after April 2007, such as Ms T, leaves active membership of the Fund before their NRA, their benefits become deferred (or preserved) and their NRA is adjusted to 65. In other words, to receive pension benefits without an actuarial reduction applied, a member can either remain employed and an active member of the Fund until at least age 55, or a deferred member and take their pension benefits unreduced at age 65.
- The Members' Guide, the 2009 Focus newsletter and the Fund's website explained the relevant rule.
- Ms T said she was specifically told in correspondence from Railpen dated 22 September 2020 that she could still take her pension benefits unreduced at age 55 if she left the Fund and ceased her pension contributions before her NRA.
- Railpen sent Ms T an email on 22 September 2020 which said:

“your contributions to the scheme would stop and your benefits would become preserved in the scheme. Your preserved benefits would be payable from your normal retirement age of 55 which is the earliest you are eligible to apply for payment”.
- Ms T was under the misapprehension that “preserved” meant her benefits would be maintained in their original or existing state. This was not the case. Preserved or deferred pension benefits simply meant they were held in the Fund to be paid at a later date.
- In the Adjudicator's opinion, Railpen did not misinform Ms T that she could take her pension benefits unreduced at age 55 if she resigned from her employer and became a deferred member of the Fund. In the Adjudicator's view, this aspect of Ms T's complaint should not be upheld.
- The December 2020 statement contained several errors. Railpen had acknowledged the errors and apologised. The statement was provided after Ms T had resigned from her employer. So, while it included wording errors, it did not impact on her decision to leave her employer and become a deferred member of the Fund. Nonetheless, the errors amounted to maladministration, and it was reasonable to accept they added to Ms T's concerns about her pension benefits. In the Adjudicator's view, this aspect of the complaint should be upheld.
- The Pension Regulator expects that an IDRPs decision should be made within a maximum of four calendar months from receiving an IDRPs complaint application. Applicants should be notified of the decision no later than 15 working days after the decision has been made.<sup>2</sup> It took the Committee over six months to provide its decision. This was not reasonable.

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<sup>2</sup> <https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/code-11-dispute-resolution.ashx>



- Although Railpen sent Ms T a letter explaining the reason for the delay, the additional time taken would have added to Ms T's concerns at a time when she had no income. In its IDR response, the Committee gave no apology for the delay and offered no compensation. In the Adjudicator's opinion, this aspect of the complaint should be upheld.
- The errors within the December 2020 statement and the delay in responding to Ms T's stage two appeal would have caused Ms T significant distress and inconvenience. An award of £500 was appropriate and in line with the Ombudsman's guidance on non-financial injustice.

38. Ms T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms T provided her further comments which are summarised below:-

- As a lay person, she expects all correspondence sent to her regarding her pension to be in a language that is unambiguous, clear and accurate. Therefore, when Railpen told her that her fund was "preserved" until her NRA of 55 in its email of 22 September 2020, it should mean exactly that. Had she not received that email, she would not have left the Force or the Fund eleven months before her NRA.
- She still does not understand if she can draw her pension unreduced from age 60 or 65.
- When she joined the Fund in 2008, she bought additional years of service in the Fund. She believes the backdated service in the Fund should mean she "joined" the Fund in 2003, so the post 2007 Rules should not apply to her.
- The stress caused by this matter has had an enormous impact on her mental health and her physical well-being.

39. I have considered Ms T's comments but they do not change the outcome, I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

40. The main issue in this complaint is Ms T's interpretation of Railpen's email to her on 22 September 2020. It said that if she were to leave the Fund, her benefits would become preserved and would be payable from her [NRA] of 55, or later.

41. In pension terms, "preserved" and "deferred" benefits are interchangeable, they mean the same thing. When a member is no longer contributing to a pension scheme but has not yet drawn their benefits from it, the benefits are referred to as preserved or deferred in the scheme.

42. I note that the Members' guide specifically refers to "preserved benefits (sometimes referred to as 'deferred benefits')". An internet search for preserved benefits would also have clarified that the two terms are interchangeable.

43. It is unfortunate that Ms T was not aware of the term and assumed preserved was meant in a literal sense. However, since there was no misinformation in Railpen's email, I do not uphold this aspect of the complaint.
44. As explained by the Adjudicator, as a deferred member, to receive her full pension benefits unreduced, Ms T cannot take her pension benefits before her NRA, which is 65.
45. Although Ms T did buy additional service in the Fund, which increased her total pensionable service, it did not alter the start date of her pensionable service in the Scheme. The date she joined the Fund was January 2008 and so the post 2007 Rules apply to her.
46. While I sympathise with Ms T's health problems and I appreciate how strongly she feels that misinformation from Railpen impacted her decision to leave her job and the Fund before her NRA, I do not agree that Railpen misled her about the Scheme Rules.
47. I acknowledge that Ms T will have suffered significant distress and inconvenience, as a result of the errors within the December 2020 statement and the delay in responding to her stage two IDR appeal, which should be recognised.
48. For this reason, I partly uphold Ms T's complaint.

## **Directions**

49. Within 28 days of the date of this Determination, Railpen shall pay Ms T £500 in respect of the significant distress and inconvenience she has suffered as a result of its maladministration.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

25 March 2024

## Appendix 1

### The Trust Deed and Rules for the Fund

1. As relevant, Part VIII of Schedule 1A provides:

**“21 Special Provisions Regarding Deferred Benefits; Reduced Immediate Benefits**

(1) This rule applies to a former Member who has...not yet become a Pensioner.

...

(3) (a) the former Member, if he has left Service or, if he has not left Service, if the Trustee consents, may elect, subject to the provisions of this sub-rule, that instead of the benefits he is entitled to under rule 20 he shall receive a pension payable from age 65 and ceasing on his death, and a lump sum payable on the day his pension becomes payable.

(b) benefits may not be payable under this sub-rule before his normal minimum pension age (which has the meaning given to it in section 279 of the Finance Act 2004)...

(c) elections under this sub-rule shall be subject to the consent of the Trustee.

(d) the basis on which the election may be made shall be determined by the Trustee after obtaining advice from the Actuary and after agreement with the Employers.

(e) if an election under this sub-rule would result in the pension payable to the former Member being less than whichever is the lesser on the date his pension would become payable:

(i) his Contracted-Out Pension, or

(ii) his Forecast Guaranteed Minimum Pension,

the election shall not be permitted.”

2. As relevant, section 279 of the Finance Act 2004 provides:

“normal minimum pension age” means—

...

(b) in relation to, and to a member of, a uniformed services pension scheme—

- (i) before 6 April 2010, 50, and
- (ii) on and after that date, 55,”

## Appendix 2

### From THE FAQ section of the BTP Pensions website

#### 1. “What is my Normal Retirement Age (NRA)?

Your NRA is the age from which you can take your full pension benefits without any reduction factors applied for early retirement. You may be able to take your benefits earlier than your NRA, but they will be reduced depending on how early you take them.

The table below shows when members of each Section can take their benefits without any reductions.

...

2007 Section [ <sup>3</sup> ]	55 if taking benefits immediately upon leaving service. 65 if taking benefits from preserved status.”
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<sup>3</sup> The 2007 section is for members who joined between 1 April 2007 and 31 March 2015.