

Ombudsman's Determination

Applicant	Mr R
Scheme	Vickers Group Pension Scheme (the Scheme)
Respondents	Vickers Pension Trustees Limited (the Trustees)

Outcome

1. I do not uphold Mr R's complaint and no further action is required by the Trustees.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr R's complaint is that he is unhappy that the Trustees switched from using the Retail Prices Index (**RPI**) to the Consumer Prices Index (**CPI**) as the basis for pension increases. In addition, he is unhappy that the Trustees failed to inform him that this change would be made.

Background information, including submissions from the parties

4. In February 1987, Mr R became a member of the Crown Service Section of the Scheme.
5. In April 1993, the Trustees sent Mr R a report detailing various benefits within the Scheme. It referred to 'Guaranteed annual increases in line with the Retail Prices Index'.
6. In March 1995, the Trustees sent Mr R an annual report saying 'Our 10-year record on pensions increases for Crown Service Section members – fully in line with the Retail Prices Index.'
7. The rules governing the Crown Service Section were incorporated into the main Scheme Rules via a Consolidated Deed in 1996. Section 8.1 of the 1996 Deed states among other things: -

'Pensions in payment and deferred pensions under the Scheme will be increased to the same extent as set out in the Pensions (Increase) Acts or by Orders made under section 59 of the Pensions Act but such increases will not apply to the GMP.'

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8. In October 1997, Mr R left Vickers Plc and became a deferred member of the Scheme.
9. In the 2009/10 annual report, the Trustees referred to guaranteed increases in line with RPI. They also said the Government had announced it would change from RPI to CPI to re-value benefits. They said they would advise members of any effect this would have on their benefits.
10. In the 2010/11 annual report, the Trustees explained RPI remained applicable for most members.
11. In 2011, the Trustees changed the basis of increases from RPI to CPI.
12. In the 2011/12 and 2012/13 annual reports, the Trustees provided details of the Scheme benefits, referring to guaranteed increases in line with RPI, however there was no mention of the change to CPI.
13. In the 2013/14 annual report, the Trustees said 'The Members' Handbook explains the benefits payable by the Scheme'.
14. In May 2014, following his request, the Trustees wrote to Mr R with information about the rules governing the Scheme and his entitlement to benefits under the Scheme. In terms of increases to payments, the Trustees said: -

'ii. The Rules governing Crown Service were incorporated into the main Scheme Rules under a specific section via the Consolidated Deed in 1996. The Rules confirm that Crown Service Section members should receive pension increases as follows:

in line with the Pension (Increase) Acts or by Orders made under section 59 of the Pensions Act'.

This refers to Pension Increase (Review) Orders published by HM Government. The Orders are used in a number of Public Sector pension arrangements (including the Civil Service Pension Scheme), and traditionally followed the previous September's Retail Prices Index (RPI). From 2011, the Government changed the basis from RPI to Consumer Prices Index (CPI) inflation.

As the Rules governing pension increases for the Crown Service Section of VGPS specifically refer to 'Orders' and not the measure of inflation to be applied, the Scheme has continued to use these Orders to increase pensions accrued in the Crown Service Section.'

15. In June 2014, Mr R wrote to the Trustees saying he believed they had broken their own rules. The key points were: -
 - They were required to follow due process before making a change such as RPI to CPI, but they had not.

- Section 2 of the 1993 report referred to 'guaranteed annual increases in line with the Retail Prices Index'; section 2 of the 1995 report referred to Trustees' '10 year record on pensions increases... fully in line with the Retail Prices Index'.
 - The 2009/10 report stated the Trustees would advise members of any impact on the Scheme following the change to CPI, but they had not.
 - Annual reports sent from 2009/10 to 2012/13 referred to guaranteed pension increases in line with RPI.
16. The Trustees responded to Mr R's complaint under Stage 1 of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). The key points were: -
- They were satisfied that they had applied increases in line with the 1996 Consolidated Rules, which included references to orders that changed the index from RPI to CPI.
 - Mr R's reference to page 13 of the Scheme Rules was in fact page 13 of the Crown Service Section booklet of February 1996, which was relevant because it was only a booklet. The Rules alone determined how benefits would increase, and the booklet included a disclaimer to that effect.
 - Reports Mr R received in 1993 and 1995 were only summaries. They did not override the provision for increases as outlined in the Scheme rules.
 - The 2010/11 annual report was generic and confirmed that RPI remained applicable for most Scheme members, but did not override the Scheme rules.
17. In November 2014, Mr R wrote to the Trustees asking to go to Stage 2 of their IDR. He said he disagreed with their previous letter. The key points were: -
- The Trustees should not have dis-regarded the 1993 and 1995 reports. They included statements from the CEO that RPI would be used for indexation.
 - The Trustees were permitted to amend the Scheme Rules, but this should not affect the benefits Mr R was promised when he became a deferred member.
18. In December 2014, the Trustees responded to Mr R. The key points were: -
- His benefits were determined according to the Scheme Rules.
 - Statements in booklets and other literature could have been clearer, but they were not definitive; only the Scheme rule were definitive.
 - Its decision not to uphold his complaint remained unchanged, but he could refer his complaint to the Pensions Ombudsman.

Adjudicator's Opinion

19. Mr R's complaint was considered by one of our Adjudicators. He concluded no further action was required by the Scheme or Trustees. The key points were: -
- The Scheme rules allowed the Trustees to vary the index used to measure inflation. Rule 8.1 of the 1996 Deed referred to the Pensions (Increase) Act, e.g. by Orders made under Section 59 of the Pensions Act 1995.
 - In 2011, the Government changed the relevant index to CPI, so, in accordance with Rule 8.1, the Scheme's basis for measuring inflation changed to CPI.
 - Booklets, summaries and other literature the Trustees sent to Mr R after he became a deferred member did not override the Scheme rules.
20. Mr R did not accept the Adjudicator's Opinion. He pointed out errors in the Adjudicator's opinion. The key points were: -
- It was untrue that he thought booklets and other material should override the Scheme rules and had never said that. He had never seen a copy of the full Scheme rules.
 - The booklet was derived from the 1996 Deed, and was provided after he became a deferred member, not when he first joined the Scheme.
 - Numerous documents he had received referred only to RPI, so Vickers should increase his benefits in line with RPI.
 - The Adjudicator should have reviewed the Trustees' letter of May 2014, since it was the foundation of his case. This had been supplied at the start of the complaint and mentioned several times thereafter. The Adjudicator had not referred to the fact that, while the Trustees had relied on the booklet to substantiate the GMP, they had not relied on it to substantiate increases.

Ombudsman's decision

21. I appreciate Mr R feels aggrieved with how his pension increases have been changed. However, it is a fact that, in his particular case, the Scheme Rules included provision for the Trustees to give effect to a change in the official measure of inflation. The specific provision is Rule 8.1 in the 1996 Deed.
22. Booklets, reports and summaries with information about Scheme benefits should always be as accurate and as up to date as possible. However, if any discrepancy exists between the Scheme rules and Scheme booklets, it is the Scheme rules that prevail. Content within Scheme booklets cannot add to or detract from the Scheme rules; it can only provide commentary, and so should not be relied upon.

23. I have considered the May 2014 letter. Having done so, my opinion is that it correctly explained why the Trustees changed the revaluation basis from RPI to CPI. That is, because the 1996 Deed referred specifically to 'Orders', when such an Order was made in 2011, the Trustees implemented the new revaluation basis automatically in accordance with Rule 8.1, there is no discretion to permit the retention of RPI. Whilst the Trustees do not refer to the booklet to justify the change from RPI to CPI, that does not change the fact they are entitled, under the 1996 Deed, to make this change.
24. It is clear that the information the Trustees provided from 2011 onwards, once the revaluation basis had been changed from RPI to CPI, was incorrect or at least incomplete. Whilst RPI may have remained applicable for most members, that was no longer true for Crown Service members such as Mr R. So I consider that Trustees' communication fell short of the standard I would have expected, and I sympathise with Mr R's frustration.. Clear, unambiguous member communication is essential. The Trustees failed to provide this in respect of the Crown Service Section members. They ought to have made it clear that the revaluation basis had changed for this section of the Scheme. However, the annual reports were not guaranteed and did not confer any rights to receive benefits. So while I recognise that Mr R has suffered distress and inconvenience in this case, I do not find that they were significant enough to justify an award of compensation. .
25. Therefore, I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman
16 March 2017