

Ombudsman's Determination

Applicant	Mr S
Scheme	Silver Line Pension Scheme (the Scheme)
Respondents	Trustees of the Silver Line Pension Scheme (the Trustees) V Ships UK Limited (the Employer)

Outcome

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

Complaint summary

3. Mr S' complaint about the Employer and the Trustees is that they have stopped awarding annual increases to his pension from 1 January 2014.

Background information, including submissions from the parties

4. Mr S was employed by Silver Line (the Employer is the holding company of Silver Line) from May 1971 to November 1975, when he became a deferred member of the Scheme.
5. In February 1993, the following notice (**the 1993 Notice**) was sent to deferred members:

"The Directors are pleased to announce that with effect from 1st January 1993 your pension will now be increased, when it comes into payment on each 1st January following the date of commencement at the rate of 5% per annum compound or the rise in the Retail Prices Index [RPI] over the relevant period if this is less than 5%".
6. Mr S started taking his pension in December 2002.
7. On 2 October 2013, following consultation with legal Counsel (**Counsel**), the Trustees wrote to members and announced changes to the Scheme. The letter said that the current practice, of increasing pensions by a fixed rate of 5% every year for

pre-January 2000 service, was discretionary and would end from January 2014. From then on, members that left the Scheme before 1 January 1989 would only receive statutory increases to the Guaranteed Minimum Pension (**GMP**) portion of their pension (the **Changes**).

8. On 20 January 2014, Mr S complained to the Trustees about the Changes (he did not have a GMP element). He asked for a copy of the instructions to Counsel and a copy of the opinion provided by Counsel (**Counsel's Opinion**). On 21 February 2014, the Trustees said that they had requested this from the Employer and would reply once a response was received.
9. Mr S followed up his request on 23 May 2014 and received a summary of Counsel's Opinion from a meeting held on 18 July 2013. Counsel's Opinion said that the Employer was not under an obligation to continue with 5% annual increases for pre-2000 pensions and can revert to increases provided by the Trust Deed and Rules dated 10 March 1994 (**the 1994 Rules**) i.e. the Retail Price Index (**RPI**) subject to a minimum increase of 3% and maximum increase of 5%. Counsel's Opinion said that the Employer may have provided 5% increases on the basis of a mistake and suggested that no action is taken to recover past awards.
10. On 18 July 2014, Mr S wrote to the Employer stating that Counsel's Opinion did not mention any decision to stop increases for members that left the Scheme before 1 January 1989. He also asked for copies of other correspondence.
11. The Employer replied on 4 August 2014. It said that Mr S would receive increases to his pre-January 2000 pension based on RPI, subject to a minimum of 3% and maximum of 5%.
12. On 16 January 2015, the Employer wrote to Mr S and said that his benefits were governed by the Scheme Deed and Rules dated 16 September 1982 (**the 1982 Rules**). Rule 3(F)(2) provides that increases were at the discretion of the Employer. The letter said that his pension would not attract further increases.
13. Mr S wrote back to the Employer on 23 February 2015. He said that a retirement quotation received from Prudential before his retirement in December 2002, informed him that his pension would not increase in payment. He also provided a letter from Prudential to the Employer received in March 2003, which said that, as he left the Scheme before 1 January 1986, his pension would not increase while in deferment. However, the letter said that his pension would increase in payment each year, in line with RPI subject to a maximum of 5% per annum. Mr S said that the situation was confusing and asked if the Employer would exercise its discretion to award increases to his pension, as it had done for recent pensioners in the Scheme.
14. Mr S did not receive a response from the Employer so he took his complaint to the Pensions Advisory Service (**TPAS**). TPAS wrote to the Employer on 7 August 2015, asking for clarification on Mr S' position. The Employer replied in October 2015, stating that Mr S was bound by the 1982 Rules, which only allow for discretionary

increases. It apologised for previous incorrect correspondence sent to Mr S, saying that these do not override the rules governing the Scheme. It maintained that the pension increase, announced in the 1993 Notice, was a discretionary augmentation which could be withdrawn at any time. It said that the Scheme booklets also refer to the formal Scheme documentation. The Employer apologised for the confusion and offered Mr S a voucher for £50 as compensation.

15. On 12 May 2016, the Employer wrote to Mr S in accordance with the Scheme's internal dispute resolution procedure (**IDRP**). It said that the Employer and Trustees jointly decided to ask for legal advice due to the realisation that the pension increases awarded for many years were not in accordance with the rules governing the Scheme. It continued that, although pre-1989 leavers like him were not specifically referred to in Counsel's Opinion, all pension increases should be paid in accordance with the rules governing the Scheme. The Employer stated that pension increases were discretionary for pre-1989 leavers, and the increases he had received up to January 2014 were more generous than what he was entitled to.
16. The Trustees replied separately on 28 October 2016 and apologised for the delayed response. They said that the 1982 Rules were not considered in Counsel's opinion and, as Mr S was only entitled to discretionary increases, the Employer's decision to withdraw increases from January 2014 was valid. They explained that the Employer still had discretion to award increases, but it was not obliged to do so. The Trustees acknowledged that the letter of 4 August 2014 would have caused confusion, and offered Mr S £250. They also offered an additional £250 for mishandling his complaint.

Adjudicator's Opinion

17. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees and the Employer. The Adjudicator's findings are summarised briefly below:-
 - The Scheme Deed and Rules dated 16 September 1982 (**the 1982 Rules**), confers a discretionary power on the Employer to award pension increases. Accordingly, the decision by the Employer and Trustees to limit the pension increases applicable in respect of Mr S does not amount to maladministration.
 - The 1993 Notice was an exercise of that discretionary power, but it did not amount to a guaranteed right to future increases.
 - It is acceptable for different groups of members to be subject to differing sets of rules; this does not constitute a breach of the Trustees' duty to treat all members fairly. It is a matter for the Employer to consider whether to grant annual increases.
 - The Scheme booklets do not override the 1982 Rules.

- The complaint is partly upheld in so far as Mr S was provided with incorrect information and his complaint was mishandled. However, the offer of £500, already made to Mr S by the Trustees is reasonable, in the circumstances to settle the complaint.
18. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, and I will therefore only respond to the key points made by Mr S for completeness.

Ombudsman's decision

19. Mr S suggests that he should receive more compensation because the Trustees made a series of errors, and not just one error. There has been a lack of understanding of the Scheme by the parties involved. The minutes of the Trustee meeting of 13 November 1990, says that the Trustees have a duty to look after past and future employees. The Trustees must treat all beneficiaries in an equitable manner, and ending pension increases for pre-2000 retired members, but not for pensioners who retired after this date, is inequitable. Furthermore, the expectation that he would continue to receive annual pension increases of 5% was relevant to his decision not to transfer his benefits before starting his pension.
20. Clearly, there has been maladministration in relation to the information provided to Mr S about whether his pension would increase in deferment or in payment. The Trustees accept this. The position has now been clarified to him. Notwithstanding this, Mr S is only entitled to the correct level of benefits from the Scheme.
21. The Trustees have a duty to treat all members fairly, but this does not mean that all members will receive the same benefits or be subject to the same rules. The Trustees can treat classes of members differently, in accordance with the rules applicable to those members. In this case, it is a matter for the Employer whether to exercise discretion to award pension increases to members such as Mr S. I am satisfied that its decision not to exercise that discretion is in accordance with the 1982 Rules.
22. Mr S suggests that he may have transferred his benefits elsewhere, had he been aware that he would lose the annual pension increases. In the first place, it is unclear whether Mr S would have been able to get a similar level of pension to the pension he has received from the Scheme to date. Furthermore, even if he had been aware that the pension increases were discretionary, Mr S could not have known, in advance, whether that would cease, and if so, when. In any event, the Employer still has discretion to grant annual pension increases in the future, and I remain unconvinced that Mr S would have transferred his benefits had he known that this was solely a discretionary benefit.

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23. Mr S has received confusing information and suffered a loss of expectation, but no actual financial loss, I find that the Trustees' offer of £500 for non-financial injustice is reasonable. It is up to Mr S whether to accept the offer. If he decides to do so, then he should contact the Trustees directly.
24. I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
9 April 2018

Appendix

Rule 3(F) - 'Discretionary Benefits', of the 1982 Rules:

"At the request of the Principal Employer and upon payment under Rule 2 of such additional contributions (if any) as the Trustees may...require the Trustees may grant under the Scheme such of the following benefits as they shall determine...namely:-

...

(2) (a) a pension or an increase in the amount of any pension payable to a person on or after his retirement from the service of a Participating Employer".

Rule 49 of the Trust Deed and Rules dated 10 March 1994 (**the 1994 Rules**):

"The benefits for Members whose Normal Retiring Dates occurred on or before the 1st day of January 1989 or who ceased to be in Service before that date (and the benefits payable on their deaths) shall be as described in the rules of the Scheme from time to time in force before that date".