

Ombudsman's Determination

Applicant	Mr N
Scheme	Jaguar Land Rover (the Scheme)
Respondent	Jaguar Land Rover Pension Trustees Limited (the Trustee)

Outcome

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

Complaint summary

3. Mr N has complained about the revaluation rate to be applied to an element of his pension, which he says is not in accordance with the information he received from the Scheme.

Background information, including submissions from the parties

4. In September 1994, Mr N was sent a certificate of entitlement in relation to his deferred benefits in the Scheme (**the 1994 statement**). In the notes which accompanied this, point 3 said:

“Your Post 5th April 1990 Escalating Pension at Date of Exit will be increased at Normal Pension Age by 5% or, if less, the increase in the Retail Prices Index over the same period for each complete year between Date of Exit and age 60 and, by 14% for each complete year between age 60 and Normal Pension Age. For illustration purposes, it has been revalued at 5% until age 60 and 14% there after [sic] to Normal Pension Age.”
5. The notes also define Normal Pension Age as age 65.
6. Mr N's certificate of entitlement from 1997 (**the 1997 statement**) reflects the same position in regard to his post 5th April 1990 Escalating Pension.
7. Around this time, Mr N met with an independent financial adviser (**IFA**) for advice on his benefits from the Scheme. He was advised to remain in the Scheme.

8. In July 2015, Mr N queried a retirement quotation dated 22 June 2015, saying that a part of his pension should have increased by 14% a year.
9. On 22 July 2015, the Trustee responded, saying that the breakdown and calculations it had provided were accurate.
10. On 7 September 2015, following a letter Mr N had sent enclosing a copy of his Certificate of Entitlement, the Trustee responded saying:

“I have now reviewed your benefits and can confirm that the retirement quotation issued on 22 June is correct.

The 14% increase to which your Certificate refers is actually the increase for late retirement applied to those benefits which are payable unreduced from age 60. At the time you left the Plan, the late retirement factor was 14% for each complete year after age 60.

Periodically the assets of the Plan are valued and this includes a review of the actuarial factors that are applied to benefits. Late retirement factors are currently lower than when you left the Plan in 1991...

I confirm that the retirement illustration you received correctly reflected revaluation up at age 60 and then a 43.2% increase for the five years between ages 60 and 65.”

11. Mr N subsequently submitted a complaint under the Scheme’s two stage Internal Dispute Resolution procedure (**IDRP**).
12. On 4 November 2015, the Trustee responded under stage one of the IDRP. It said: -
 - Mr N’s pension under the Plan was made up of three elements: a GMP; a pension in excess of the GMP in relation to pensionable service accrued before 6 April 1990; and, a pension in respect of pensionable service accrued between 6 April 1990 and 31 October 1991 (**post-1990 benefits**).
 - The figure of 14% referred to in the 1994 statement reflected an actuarial “late retirement factor” applied in respect of post-1990 benefits where a member retired after age 60. This was to ensure there was no discrimination between male and female members.
 - The 14% figure was the late retirement factor used when the 1994 statement was issued. However, this was not a fixed amount; it was subject to review.
 - There had been considerable demographic changes since 1994, as a result of which the Trustee has revised the late retirement factors. Whilst the actuarial increase to Mr N’s post-1990 benefits had changed, it reflected the current actuarial value of these benefits. The Trustee must administer the plan in accordance with its fiduciary duties; honouring the 1994 statement in Mr N’s case would be unfair to other members.

13. Mr N appealed this decision.
14. On 1 February 2016, he received a response under stage two of the IDR. This reiterated the points made in the stage one response.
15. Mr N subsequently referred the complaint to this Office. In a letter of 22 February 2016, Mr N highlighted that the Trustee was “trying to renege on the commitment” to increase his pension by 14% for each complete year between age 60 and 65. He said this figure was given without any reference to a changing RPI or future actuarial valuations and; at no point since 1994 had it been communicated that the terms could be changed. Mr N said that he had reviewed his decision to leave his deferred pension in the Scheme several times, and remained on the basis that specific elements of this offered a significant degree of certainty.
16. On 6 April 2016, Squire Patton Boggs provided a formal response on behalf of the Trustee. This said: -
 - Rule 15(a)(i) of the Trust Deed stated that the pension would be “adjusted as determined by the Actuary,” although the express provisions within this did not provide for how post-1990 benefits would be revalued.
 - The 14% late retirement factor used in the 1994 statement was accurate at the time.
 - Mr N claimed that he was not told that late retirement factors could be subject to change, however, there is no statutory obligation to notify members of any changes made to this.
 - Although Mr N suggested that he relied on the 1994 statement, he did not make any further enquiries about his benefits under the Scheme until 2009, when he requested an early retirement quotation. It was not reasonable for Mr N to have relied upon the factors set out in the 1994 statement without clarifying this with the Trustee.
17. In response, Mr N made the following comments: -
 - Although a member’s pension must be subject to regular revaluations, once a member’s benefits were certified, it is reasonable to assume that these would be locked in, subject to clear caveats.
 - He understood that the figures in the 1994 statement were for illustration purposes, which made sense when considering inflation. However, he believed that the statement had fully set out which figures would change and on what basis.
 - When he approached an IFA in 1997, he was advised to remain in the Scheme; the recommendation appeared to be heavily influenced by escalations in the 1997 statement.
 - He had no reason to contact the Trustee to establish the accuracy of figures in the 1994 statement as he could establish RPI numbers independently.

- The loss he had suffered was the difference between the Trustee's calculation and his own. He was made redundant in November 2012. He could not say for certain that he would have opted for early retirement had he known the Trustee would try to impose a less generous late retirement factor but knowing the facts would have helped inform his decision.

Adjudicator's Opinion

18. Mr 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 briefly below:-

- The Scheme rules in place when Mr N received the 1994 statement were set out in the 1989 definitive trust deed and rules (**the Trust Deed**). This remains the case. Although the 1994 statement did not reference the Trust Deed, its application remained. Any perceived omissions in the 1994 statement did not override the requirement that the calculation must be based on the rules of the Scheme.
- The Trust Deed allowed the actuary to change the factors used for the purposes of revaluation. In relation to a deferred pension, this said, in summary, that a member could have their Final Pensionable Pay and Pensionable Service "adjusted as determined by the Trustee with the advice of the Actuary." Therefore, in changing the late retirement factor, the Trustee had acted in accordance with its governing rules.
- Mr N had suggested that as the 1994 statement caused him to be misled on how the late retirement factor would apply, he was not able to make an informed decision on his pension benefits. Therefore, the Adjudicator considered the principle of negligent misstatement. The 1994 statement was correct at the time it was issued but for the purposes of the test, the Adjudicator construed the document as a whole as a negligent misstatement in respect to the omissions within it, such as the late retirement factor being subject to change.
- Mr N said he relied upon the 1994 statement when making retirement decisions, and that he remained in the Scheme, rather than transferred his benefits, due to the certainty offered by some of the factors used. Yet, broadly speaking, the late retirement factor was one of four quoted revaluation rates, and it only applied between the ages of 60 and 65, which was a shorter period compared with other factors.
- Also, Mr N could have reasonably anticipated a change between the position set out in the 1994 statement and more recently. Before making decisions regarding his pension, he ought to have requested an up to date statement.
- It was unclear what Mr N would have done had he known the late retirement factor was subject to change. He had discussed moving his benefits in 1997, but the analysis conducted found that it would only be worth transferring if the investment performance in the new plan exceeded 11.23%. It was unlikely that the late retirement factor was the main factor in this analysis.

- Overall, the Trustee had acted within the Rules by amending the late retirement factor.

19. Mr N did not accept the Adjudicator's Opinion and made the following comments: -

- He did not agree that the Trust Deed allowed the Trustee to adjust his post-1990 benefits, and provided a letter which accompanied the 1994 statement concerning the Barber v Guardian Royal Exchange ruling. He said that later versions of the Trust Deed made it clear that prior rights cannot be reduced or ignored.
- He felt there was an overemphasis on the 1994 statement and said the fact that the 1997 statement cited the same factors supported his case.
- In respect of his redundancy in 2012, he withdrew a different pension, supplemented by drawing on cash balances and other investments at this time. He did so on the basis of the increase applied to his pension from the Scheme. Had he known that his post-1990 benefits would increase at a lower rate, he would have withdrawn this and achieved a better rate by investing in the stock market or real estate.

20. The complaint has been passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

21. Mr N is unhappy that the late retirement factor cited in his 1994 and 1997 statements has changed; he believed this to be a fixed figure.
22. Whilst I agree that the above statements did not explicitly say that the factor could change, the crux of the matter is that the Trust Deed allows the Trustee to adjust its calculation of a deferred pension. Despite the impression Mr N was given by the statements in question, and possibly other statements, Mr N's benefits must be paid in accordance with the Scheme's governing rules.
23. Mr N has said, had he known in 2012 that the late retirement factor had decreased, he would have withdrawn his pension and invested it gaining more favourable returns. However, I do not agree that such a statement can be made unequivocally, as investments are subject to highs and lows.
24. I am sympathetic to the fact that Mr N held an expectation which years later, he realised was incorrect. However, I do not find that there is clear evidence that the information provided to Mr N by the Scheme caused him to incur a financial loss.

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25. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman

26 September 2017