

## Ombudsman's Determination

Applicant	Mr Z
Scheme	Whitbread Group Pension Fund ( <b>the Scheme</b> )
Respondents	Whitbread Pension Trustees ( <b>the Trustees</b> )

### Outcome

1. I do not uphold Mr Z'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 Z has complained that he was promised by the Scheme administrators if he delayed taking his pension beyond his normal retirement age, late retirement factors would apply which would increase his benefits by 8% plus RPI each year. Mr Z would now like the Trustees to honour that promise.

### Background information, including submissions from the parties

4. Mr Z is a deferred member of the Scheme. During phone calls in 2009 and 2010, Mr Z was told by Mercer, the Scheme administrators, that if he didn't start taking his pension at his normal retirement age of 60 it would have late retirement factors applied to it. This would mean his benefits would increase by 8% plus RPI each year, until they were put in to payment.
5. Mr Z received a benefits statement in 2014, which showed that his pension had not had a late retirement factors applied to it. Instead he was quoted a lump sum that was made up of the backdated payments from his normal retirement age plus interest.
6. The Scheme Rules do not provide for deferred members to have late retirement factors applied to their benefits. Instead if they choose not to take their benefits at normal retirement age, when they are put in to payment they will receive backdated payments plus interest.

7. The Trustees have acknowledged that Mr Z was given incorrect information during these phone calls. Therefore, they have offered Mr Z two options for now drawing his pension benefits:
  - The Trustees have offered to honour the incorrect information given to Mr Z and apply a late retirement factor to his pension benefits. Mr Z's benefits will be increased by 6% per year plus RPI. The Trustees said that the late retirement factors were reviewed and changed in 2011 from 8% to 6%, and have provided evidence to support this. So, they did not think it was reasonable to apply a historic factor to Mr Z's benefits, as this was not consistent with the benefits awarded to active members currently. Or;
  - The Trustees have also offered to pay Mr Z his benefits as if he had not received incorrect information, and begun drawing his pension in 2009. He would be paid a lump sum of the backdated pension payments from 2009 until the date of payment, and interest would be added. The Trustees would also provide Mr Z with a breakdown of when these payments should have been received, so he can ensure is taxed correctly by HMRC.
8. The Trustees have also offered Mr Z a payment of £100 for distress and inconvenience.
9. Mr Z believes the Trustees should be increasing his pension by 8% per year plus RPI, because he was promised this during the phone call with Mercer. Mr Z has completed his own calculations and believes his annual pension should be at least £12,745.17 per year.

### **Adjudicator's Opinion**

10. Mr Z's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings were communicated to Mr Z on 28 July 2016 during a phone call. The findings are summarised briefly below:
  - Mr Z was given incorrect information and told he was entitled to have late retirement factors applied to his pension if he did not draw them at his normal retirement age. Under the Scheme Rules deferred members are not entitled to have late retirement factors applied to their pensions benefits. Therefore, this amounts to maladministration.
  - Being given incorrect information does not entitle Mr Z to the incorrect benefits. The Trustees must put Mr Z back in the correct position, had the incorrect information not been given. In this case the Trustees' offer to backdate Mr Z's pension payments and add interest puts matters right, and ensures Mr Z has not suffered a financial loss.

- The Trustees' offer to honour the incorrect information and apply late retirement factors, is very generous and is above what is required of them given the circumstances of this case. If the Ombudsman were to determine this complaint, he would not direct the Trustees to make this offer. So Mr Z's complaint that the Trustees should apply increases of 8% instead of 6% won't be considered.
  - The offer of £100 for distress and inconvenience is reasonable. If the Ombudsman were to determine the complaint, he would not consider the circumstances to be significant and therefore would not award any further compensation.
11. Mr Z did not accept the Adjudicator's Opinion in the phone call on 28 July 2016 and Mr Z asked for the complaint to be passed to me to consider. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr Z for completeness.

### **Ombudsman's decision**

12. My role as Ombudsman is to determine firstly if there has been maladministration, and if there has, what steps need to be taken to put matters right. In this case Mr Z was given incorrect information and told his pension benefits would have late retirement factors applied if he did not begin drawing his pension at age 60. This is not a benefit he is entitled to under the Scheme Rules. Therefore, the Trustees must take steps to put matters right and ensure Mr Z has not suffered a financial loss because he received incorrect information.
13. The Trustees have offered to backdate Mr Z's pension payments to his normal retirement age and add interest. If I were to have determined the complaint without any offer having been made, these are the directions that I would have asked the Trustees to complete. This puts Mr Z back in the position had he not been given incorrect information. Mr Z will receive the pension payments he would have taken had he known they would not be increased, and he will be compensated for the fact he has not had the benefit of this money since age 60.
14. The provision of incorrect information does not give Mr Z an entitlement to receive the incorrect benefits. However, the Trustees have offered to honour the incorrect information and apply a late retirement factor to Mr Z benefits. I consider that this offer is very fair and more than I would have directed to put matters right..
15. As the Trustees are not required to make this offer, I will not be directing that the pension is increased by 8% instead of 6%. However, if I were to hold that the Trustees should honour the incorrect information and apply late retirement factors, I would still only direct they should increase the pension by 6% per year. This is because 6% is the current late retirement factor. So, even if Mr Z was entitled to this benefit, and the information given in 2009 and 2010 was correct, he would still only

**PO-12573**

be receiving increases of 6% per year. Mr Z is not entitled to receive higher benefits, purely because of an error.

16. Mr Z has said that the offer of £100 does not compensate him for the amount of distress and inconvenience that he has suffered. I will only direct compensation where I believe there has been significant distress and inconvenience. Although, I appreciate that given incorrect information may have caused Mr Z distress, the Trustees offered to honour the incorrect information and provide Mr Z with an increased pension almost immediately. Therefore, the period during which Mr Z can be said to have been distressed by this was not significant in my view and as such I will not direct that any further compensation should be paid.
17. Therefore, I do not uphold Mr Z's complaint.

**Anthony Arter**

Pensions Ombudsman  
21 September 2016