Ombudsman's Determination

Applicant	Mr R
Scheme	Unilever UK Pension Fund (**the Fund**)
Respondent	Unilever UK Pensions Department (**Unilever**)

Complaint Summary

1. Mr R's complaint is two-fold. His first complaint concerns a guarantee he was given by Unilever, in 1978 (**the Guarantee**). He does not believe that Unilever is adhering to the Guarantee and as a result, he has incurred a financial loss.

2. His second complaint concerns the pension he has been granted from the Uniac Fund. He believes that he has been granted a pension from the Uniac Fund, contrary to the Uniac Fund's Rules (**the Uniac Rules**).

Summary of the Ombudsman's Determination and reasons

The complaint is not upheld because:

- it has not been proven that the Guarantee has not been met; and
- the Trustee of the Fund (**the Trustee**) can exercise its discretion whether to grant Mr R a pension from the Uniac Fund.

Detailed Determination

Material facts

3. Between 1972 and 1975, Mr R was employed by Unilever Limited (**the Company**), and he was an active member of the Unilever Superannuation Fund (**USF**). The USF is now known as the Fund. Unilever administers the Fund on behalf of the Trustee.

4. In 1975, Mr R was seconded to a country outside of the UK. He could not remain in the Fund while working abroad so he became a member of the Uniac Fund. While an active member of the Uniac Fund, Mr R also made contributions to the French State Scheme.

5. On 16 May 1978, Unilever wrote to Mr R and provided him with the Guarantee. The letter said:

> "…
>
> On your eventual termination of service your total benefits from all sources (including State Schemes) in respect of your Pensionable Service will not be less in value than those that would have been payable at age 65 if you had been a member of the Unilever Superannuation Fund for the whole of that service. The part of the benefits available to you as a lump sum will not be less than if all your temperate Zone Pensionable Service had been under the Rules of the Unilever Superannuation Fund…"

6. In May 1978, Mr R returned to, and commenced work in the UK. He also restarted contributions into the Fund. In November 1978, Unilever wrote to Mr R again, and reiterated the Guarantee stated in the 16 May 1978 letter, but added:

   > "In the unlikely event of your losing any Social Security Benefit as a result of your period of employment by Niger France, the shortfall would be made up by the Company under the Terms of this guarantee."

7. In May 1982, Mr R was made redundant and he became a deferred member of both the Fund and the Uniac Fund.

8. On 15 June 1982, the Trustee wrote to Mr R and informed him of the deferred benefits he was entitled to from the Fund.

9. On 21 July 1982, Unilever sent Mr R a letter, informing him that, as a result of his membership in the Uniac Fund, he had become entitled to a deferred retirement pension from this Fund of £81.36 per year, from age 65.

10. On 1 March 1989, the Trustee sent Mr R a letter in response to a query he had raised, concerning his deferred benefits. Among other things, the letter said:

    > "In answer to your queries I can confirm your personal contributions paid to [the Fund] amounted to £2,162.10 at your date of termination (14 May 1982). There are no personal contributions from [Uniac] and the ordinary contributions paid to [Uniac] by the employers is the annual amount required to cover the cost of the benefits under the rules…"

11. On 18 May 2013, Mr R reached his normal retirement age (**NRA**), which was 65. Unilever wrote to him and informed him that he was entitled to a pension of £262.56 per year, in relation to the benefits he had accrued over the three years he had been a member of the Uniac Fund.

12. The actual value of Mr R's Uniac Fund pension was £924.24 per year, but a reduction was applied to take account of the benefits he was entitled to from the French State Scheme.

13. Disappointed with the amount of pension he was entitled to from the Uniac Fund, Mr R queried the figure with Unilever. Unilever responded and informed Mr R that "the

benefits that now come into payment are correct and in accordance with the Rules of the Unilever pension arrangements."

Summary of Mr R's position

14. Mr R said:-

- Unilever has refused to honour the Guarantee and he has incurred a financial loss as a result.
- Between January 1972 and May 1975, he was a member of the Fund. After May 1975, he went to work abroad and became a member of the Uniac Fund. During his time abroad, he was required to pay into foreign social security funds.
- In May 1978, he returned to, and commenced work in the UK. He also re-started contributions into the Fund.
- In 1982 he was made redundant and became a deferred member of both the Uniac Fund and the Fund.
- On 18 May 2013, he reached the retirement age of 65, and the Trustee informed him of the pension to which he was entitled, in respect of the seven years he was a member of the Fund.
- However, he has also been offered a pension of £262.56 per year from the Uniac Fund for the three years he worked outside of the UK. This offer is an insult and fraud.
- Unilever has applied the Uniac Rules, in order to reduce the Fund's liability under the Guarantee.
- He does not think Unilever has calculated his pension in accordance with the Uniac Rules. He also does not believe he should receive a pension from the Uniac Fund because he does not qualify for one under the Uniac Rules.
- He believes his pension from the Fund should be based on ten years and four months' service, as per the Guarantee he was given.
- He is approximately £3,000 per year worse off because of Unilever's failure to apply the Fund's Rules.
- It is obvious the Uniac Rules have not been met. Therefore, the reduction for other rights is illegitimate.
- The Uniac Rules require an actuarial valuation of amounts of reduction for other rights.
- He has not been provided with a copy of the actuary's certificate in relation to how his Uniac Fund pension had been calculated so the reduction for other rights is illegitimate.

- The burden of proof is on Unilever and should not be on him. Unilever has continually refused to answer his questions.

- As far as he is aware, he receives the full UK State Pension and he receives a French State pension.

- This situation has caused him great stress.

- He would like an oral hearing to conclude the matter.

Summary of Unilever's position

15. Unilever provided copies of the Fund Rules and the Uniac Rules and said:-

- It has been confirmed that Mr R's Uniac Fund benefits were calculated correctly at his date of leaving the Company's employment and has been subsequently increased in accordance with the Rules.

- The Guarantee will be met by the provision of the overall benefits from two separate pension funds plus the state pension accrued in France during the period which Mr R was a member of the Uniac Fund.

- The Guarantee was a comparison of overall Fund benefits, calculated as if those Fund benefits covered all of Mr R's total employment with the Company of ten years and four months, against benefits from the separate service periods in both the Fund which amounted to seven years and four months, and the Uniac Fund which amounted to three years.

- This calculation was fulfilled at termination of Mr R's employment, and the overall promised value of benefits expected at age 65 was taken into account.

- Mr R is entitled to a pension from four sources, namely; the UK State, the French State, the Fund, and the Uniac Fund. The total of all four at the date of his termination was not less than what he would have received, had he been in the Fund and UK State Scheme for the whole of his service.

- The separate service benefits are greater than he would have received had he been a member of the Fund for the full period. Therefore, they become payable at retirement under the overall Guarantee.

- Unilever provided a calculation of the split and full benefits which showed that, had Mr R remained in the Fund for the full duration of his service, the overall benefits he would have been entitled to was a pension of £1,619.70 at retirement. However, his split benefits showed that he was entitled to a total pension of £2,064,36 at retirement.

- Under the Uniac Rules, Mr R did not meet the five years pensionable service to qualify for a pension from Uniac but, using its powers to augment benefits, the

Trustee chose to give Mr R a pension from the Uniac Fund, despite him not meeting the requirements.

- This has resulted in him receiving a higher pension than he would have received, had he only been granted a pension from the Fund, for his full length of service of ten years and four months.
- The French State benefits are offset from Mr R's Uniac Fund pension at the date of leaving in accordance with Rule 6 (f) of the Uniac Rules.
- It no longer holds a copy of the actuary's certificate used to calculate Mr R's benefits when he left service, as the calculation was done over 30 years ago.

Conclusions

16. The Deputy Pensions Ombudsman previously sent her Provisional Decision on this complaint to Unilever and Mr R. Unilever did not provide any further comments and neither did Mr R, despite being given ample opportunity to do so.

17. Mr R's complaint is two-fold so I will address each part in turn.

Mr R's first complaint

18. Mr R's first complaint concerns Unilever's failure to adhere to the Guarantee. The Guarantee was that on his eventual termination of service, the total benefits from all sources including State Schemes would not be less than those that would have been payable at age 65, had Mr R been a member of the Fund throughout the whole of his pensionable service. The November 1978 letter also said: "In the unlikely event of your losing any Social Security Benefit as a result of your period of employment… the shortfall would be made up by the Company under the Terms of this guarantee."

19. Unilever has said that, had Mr R remained a member of the Fund for ten years and four months, the benefits he would have received from the Fund, would have been less than his split service benefits. That is, the benefits he would have received had he been a member of the Fund for the duration of his employment with the Company, would have been less than the benefits he is currently entitled to, from both the Fund and the Uniac Fund combined.

20. Unilever has provided calculations to demonstrate that Mr R is in a better financial position than he would have been, had he been awarded a pension from the Fund only. Mr R has confirmed that, as far as he is aware, he is in receipt of the full UK State Pension. He also confirmed that he receives a French State pension.

21. I find that the Guarantee has been fulfilled.

22. I accept that Unilever has been unable to provide an actuary's certificate, in relation to the calculations of Mr R's benefits. These calculations were completed over 30 years ago. It is not unreasonable that Unilever no longer holds a copy of the actuary's certificate in this regard.

23. Further, the letter that Mr R was sent in July 1982 informed him of the amount of pension he would be entitled to from the Uniac Fund at age 65. So, he could have requested a copy of the actuary's certificate at that time if he had doubted that the amount of pension he was entitled to from the Uniac Fund had been calculated correctly. There is no evidence that Mr R requested a copy of the certificate at that time.

24. Having considered the information that Mr R and Unilever have provided I do not find that there has been maladministration by Unilever in relation to the Guarantee. Mr R has not provided any evidence that he has suffered a financial loss as a result of being paid a pension from the Fund and the Uniac Fund.

25. While I understand Mr R's disappointment that he has not been awarded a pension from the Fund alone, based on membership of ten years and four months, I do not find that this has resulted in him incurring a financial loss.

26. I do not uphold this part of his complaint.

Mr R's second complaint

27. Mr R's second complaint appears to concern a breach of trust, as it concerns the Trustee's decision to award him a pension from the Uniac Fund. He believes he was awarded this pension contrary to the Uniac Rules, as he was a member of the Uniac Fund for less than the required five years. Relevant sections of the Uniac Rules are set out in the Appendix.

28. He further asserts that, as he was awarded this pension, it should have been awarded for five years' service, as that is the minimum number of years required to be eligible for a deferred pension from the Uniac Fund.

29. Unilever says that the Trustee used its discretion to award Mr R a pension from the Uniac Fund and that Mr R has not incurred a financial loss because of this. In fact, he is financially better off as a result.

Limitation

30. Under section 21 (3) of the Limitation Act 1980 (**the Limitation Act**), complaints about breach of trust must be made to the Courts within six years of the act or omission taking place. The relevant date for the purposes of the Limitation Act is 21 July 1982. This is when Mr R was sent a letter by Unilever informing him that he had been awarded a pension from the Uniac Fund in respect of the three years he spent overseas.

31. If Mr R were to pursue this issue against Unilever through the courts, he would have needed to have brought his claim by 21 July 1988. In the case of Arjo Wiggins Limited v Henry Thomas Ralph [2009] EWCH 3198 (CH), the court held that powers available to the Ombudsman when investigating a complaint that is time-barred are the same as those which are available under the Limitation Act, except in cases of

pure maladministration (which Mr R’s allegation is not). Any remedy must not go beyond what a court could order.

32. As this part of Mr R’s complaint would be out of time if it were referred to the courts and the courts would be unable to provide a remedy, I am prevented from providing a remedy against Unilever, even in the event that his complaint succeeded on the merits.

33. I do not uphold the second of Mr R’s complaints.

34. I note Mr R’s request for an oral hearing to conclude this matter. However, I am satisfied that I have been able to come to a conclusion based upon the evidence provided by both Mr R and Unilever. So, I do not deem that an oral hearing is necessary.

Anthony Arter

Pensions Ombudsman
13 November 2020

Appendix

Relevant extracts from the 1974 Rules of the Uniac Pension Fund

4. ADDITIONAL CONTRIBUTIONS

(a) The Employer may pay into the Fund and the Trustees accept additional annual or single contributions, and on paying such contributions the Employer shall give and (subject to the Trust Deed and these Rules) the Trustee shall comply with instructions as to their allocation…

(b) The benefits allocated in respect of any additional contributions received by the Fund shall be in the form of

EITHER (i) additional Qualifying Service

OR (ii) additional pensions payable in accordance with the Rules.

and the Actuary shall certify the period of any additional Qualifying Service or the amount of the additional pension allocated.

5. QUALIFYING SERVICE

Qualifying Service shall include the whole period of Service during which a person is a contributory Member and any additional periods certified by the Actuary under Rule 4. A Principal Company in its absolute discretion may direct that, Service during which a person is not a contributory Member shall also be included as Qualifying Service, and on so doing may attach such special conditions as it thinks fit. In particular, it may direct that the scale of benefits set out in Rule 6 shall be reduced in respect of such additional Qualifying Service. Subject to the provisions of the Trust Deed and these Rules the Trustees shall comply with such directions.

6. CALCULATION OF BENEFITS

…

(f) The “Reduction for other Rights” shall consist of the annual amount of retirement pension payable from Normal Retirement Age, which with the other benefits corresponding to it under these Rules, is certified by the Actuary to be equivalent to any State Scheme or other retirement or death benefits payable from a source other than this Fund, which the Member has received or to which he has become entitled as a result of his Qualifying Service, or such lesser amount as the Trustees at the request of the Principal Employer shall direct…

7. RETIREMENT PENSIONS

…

(c) On ceasing service before Normal Retirement Age, and

> (i) After completion of 5 years' membership of the Fund, unless by dismissal for fraud or dishonesty, or constituting a criminal offence…a Member shall be entitled, unless the Trustees decided to apply Rule 11, to a Retirement Pension equal to the Fund Normal Retirement Pension and payable from Normal Retirement Age…