

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Caterpillar Pension Plan (the <b>Scheme</b> )
Respondents	Caterpillar Pension Trust Limited (the <b>Trustee</b> ) Caterpillar Pension Fund (the <b>Administrator</b> )

## Outcome

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

## Complaint summary

3. Mr Y has complained that the Administrator and Trustee have incorrectly applied a different and more severe early retirement factor to his fixed pension. This was obtained via a transfer in of previous service and that he was not sufficiently informed, at the time of the transfer that a different early retirement factor would apply.
4. Mr Y has also complained that for a number of years he has been provided with incorrect information regarding his correct pension entitlement.

## Background information, including submissions from the parties

5. Mr Y joined the Perkins Works Section (**Perkins Section**) of the Scheme on 17 October 1988. His Normal Retirement Date (**NRD**) was 31 January 2028, at which point Mr Y would have passed age 65.
6. On 29 March 1989, Mr Y elected to transfer a previous pension arrangement with McCain Food (UK) Ltd into the Scheme. The transfer value paid was £1297. This secured a specific fixed pension, payable at NRD, of £2,486.10 per annum.
7. In 1996, Mr Y was sent a "Your Pension Report 1996" (the **1996 Report**) which provided basic scheme information and various estimated values payable from the Scheme.

8. This 1996 Report also carried the following warning:

“This report is for your guidance only. All benefits will be paid in accordance with the Trust Deed and Rules.”

9. In 2015, Mr Y received an “Annual Benefit Statement” (the **2015 Benefit Statement**), calculated as at 5 April 2015. This provided a relatively detailed breakdown of Mr Y’s benefits and other scheme information. The information provided was broadly consistent with the 1996 Report. An additional piece of important information was detailed under the heading “Important Information”:

“You should check your individual circumstances with the Pensions Team if you are considering retiring early. Details of how the early retirement deduction is calculated can be found in your Plan Booklet.”

10. The Plan Booklet mentioned in the 2015 Benefit Statement however makes no mention of different early retirement factors only saying that:

“Currently, the rate at which pensions paid early are reduced is 3% for each year that the pension is paid before NRD.”

11. The Plan Booklet does however carry the following caveat on the first page:

“We have tried to keep the explanation of the benefits as simple as possible, so you should consider this booklet as only a guide to the Perkins Works Section... Although every effort has been made to ensure that it is accurate, this booklet cannot include every detail and does not confer any rights to benefits under the Plan. It will, therefore, be overridden by the Trust Deed & Rules of the Plan.”

Pensions are complex and, after reading this booklet, you may still have questions about the Plan or your own benefits.”

12. The **2015 Benefit Statement** also contained the following warning under the heading “Legal Notes”:

“The purpose of this benefit statement is to give you an indication of your benefits under the Plan. This statement is an estimate only and not a guarantee of benefits. It does not confer rights to benefits of any nature. All benefits quoted are subject to the rules of the Plan and rights to benefits are only conferred in accordance with the trust Deed and Rules of the Plan.”

and

“...the benefits that you receive will be based upon your personal circumstances, the trust Deed and Rules of the Plan and applicable legislation.”

13. In February 2016, Mr Y requested an estimate of his pension benefits payable from his 55<sup>th</sup> birthday.

14. The figures provided by the Administrator differed from Mr Y's expectations and he felt they were inconsistent when compared to previous figures provided in his benefit statements. Mr Y therefore contacted the Administrator asking for confirmation that the figures were correct and for a copy of the calculation method.
15. Once the figures were confirmed and Mr Y received a copy of the calculation method, he passed these to an Independent Financial Advisor (**IFA**). The IFA advised that a different early retirement reduction factor was being applied for each year he was drawing his benefits early. The reduction applied to his fixed pension was equal to approximately 6.5%, while the rest of his benefits were being reduced by 3%.
16. On 15 February 2016, Mr Y wrote to the Administrator to complain that he was never informed that a separate factor would be applied to his fixed pension.
17. On 3 March 2016, the Administrator wrote to Mr Y with a comprehensive explanation regarding the different early retirement factors that are used when calculating benefits in the Perkins Section. The Administrator explained that:

“...there is an established historic practice for members of the Perkins Works Section to receive more favourable reduction factors to benefits for active service within the Plan. This is a discretionary practice operated by [the] Company which could change in the future.”

and

“The liability in the Plan for such a member at the point of retirement includes a provision for future salary increases. [However]...a fixed pension in relation to a transfer received from a previous employer...is not linked to their projected final salary.”
18. Not satisfied with this explanation Mr Y subsequently raised a complaint with the Trustee on 10 March 2016.
19. In both his complaint to the Administrator and the Trustee, Mr Y explained that he had not previously been informed that a different early retirement factor applied to his fixed pension. He also explained that all the relevant scheme literature he had seen made no mention of different early retirement factors. As such, he felt he had not been adequately informed in a “clear and open manner”.
20. On 21 March 2016, The Administrator issued a holding letter to Mr Y in respect of his complaint on 15 February 2016. The Administrator also provided Mr Y with a copy of the form he signed when he agreed to transfer in his previous service in 1989. No mention was made of any early retirement factors only that the transfer would secure a “fixed pension” of “£2,486.10 payable at NRD”.
21. On 15 May 2016, the Administrator responded to Mr Y's complaint of 15 February 2016. This response said:

“...[the] transfer-in from McCain Foods was done on the basis of a fixed pension being agreed at the point of transfer of £2,846.10 payable from Normal Retirement Date (NRD) aged 65. This is quite separate from the pension which you are building up through your pensionable service...”

and

“...different reductions are applied to early retirement pensions attributable to individual transfers in, under Rule D2.4 of the Trust Deed and Rules”.

22. The relevant rule in this case relates to the Perkins Section, and gives rights that allow the Trustee the authority to apply retirement factors, subject to adequate actuarial advice. Rule D2.4 says:

“(1) Subject to Rule D2.4(2) and (3), the Member’s pension under Rule D2.2 (Member’s election (voluntary early retirement)) will be equal to his Formula Pension reduced by such amount as the Trustees, after obtaining the Actuary’s advice, decide is reasonable having regard to the period between the date on which the pension starts and the Member’s NRD.

Note: Clause 8(5) of the relevant Merger Deed provides, subject to certain conditions, for the reduction factor to be 3 per cent a year (simple).

(2) The reduction made to the pension in respect of Pensionable Service completed in the Works Scheme or the Staff Scheme or in the relevant Old Perkins Scheme, as applicable, for the period prior to 1 February 1991 for female Members will be based on a NRD of age 60.

(3) The reduction made to the pension in respect of Pensionable Service completed in the Works Scheme or the Staff Scheme or in the relevant Old Perkins Scheme, as applicable, for the period on and from 17 May 1990 to and excluding 1 February 1991 for male Members will be based on a NRD of age 60.”

23. The Administrators response also confirmed that the Scheme would close to future accrual from 31 December 2019, and that the various early retirement factors had been agreed by the Scheme Actuaries as being “reasonable”.

### **Adjudicator’s opinion**

24. Mr Y’s complaint was considered by one of our Adjudicators who concluded that no further action was required by either respondent. The Adjudicator’s findings are summarised briefly below:-

- The Scheme is only bound to pay the correct benefits, calculated according to its Trust Deed and Rules (the **Rules**).
- The Rules supersede any other scheme literature provided and so, although the booklet Mr Y refers to does not explicitly mention a different revaluation rate for

transferred in service the Administrator has not acted incorrectly in applying one (as the Rules allow this).

- The scheme booklet is ambiguous and shows that there are different methods of working out and revaluing pension benefits, depending on periods of service.
- Rule D2.4 of the Rules allows the Trustees to reduce a member's benefit by a set amount providing actuarial advice has been obtained. In this case the Scheme Actuary has provided a different reduction factor for fixed pension accrued from transferred in service.
- Given Mr Y's age at the date of transfer he is unlikely to have acted differently if he had been made aware that a different reduction factor would be applied to his transferred in service.
- The booklet Mr Y refers to carries significant caveats, the most important of which says the booklet will be "overridden by the Trust Deed & Rules of the Plan, as from time to time amended, should there be any discrepancy between the two".
- No further action was needed by the respondents in regards to the misinformation Mr Y had received because he is still able to retire early should he so wish and he is now in receipt of correctly calculated pension information.
- Mr Y was not able to adequately demonstrate how he had relied to his detriment on the basis of the incorrect annual benefit statements other than general disappointment.
- Despite there being maladministration in that the annual benefit statements had over quoted Mr Y's benefits his loss of expectation is not so great as to warrant a significant compensation payment.

25. Mr Y did not accept the Adjudicator's opinion and the complaint was passed to me to consider. Mr Y has provided his further comments which are summarised below: -

- He only relied on the sections of the booklet relevant to his period in the Scheme, so 1989 onwards.
- The Scheme provides a handbook for individuals, who will undoubtedly have limited knowledge of pensions, and as such this handbook should not display any ambiguities.
- It would seem unfair and unreasonable to expect every individual to read through the handbook and determine if there is any aspect that needs clarification and seek specialist advice in relation to the wording used.
- As the handbook confirmed the 3% annual deduction, and there is no caveat suggesting otherwise, there would not appear to be any need to seek clarification on this.

- It was to be expected that the handbook would give all relevant information to allow members to calculate how much they could expect to receive on early retirement.
- It had always been his intention to retire early, even in his mid-20's.
- Statements should be expected to be reasonably accurate as they are not influenced by shares/market movements.
- The Administrator and Trustee clearly misinformed him over consecutive years, up to 2016, by sending inaccurate statements. Those are supposed to be statements are a key communication document between the Pensions Administrators and the individual.

26. I agree with the Adjudicator's opinion, and I will therefore only respond to the key points made by Mr Y for completeness.

### **Ombudsman's decision**

27. The Perkins Section is a defined benefit arrangement. Therefore the level of benefits payable is calculated by reference to the member's pensionable earnings, length of pensionable service and a scheme approved accrual rate. If an active member, having reached the minimum required age, chooses to retire before NRD, an early retirement reduction factor is then applied for each year the benefit is being taken early, to take into account the longer period over which the pension will be paid.
28. In this case, in addition to his standard defined benefits pension, built up in the normal way described above, Mr Y has secured an additional benefit by transferring in previous service. This transferred service was converted, with Mr Y's agreement, into a fixed pension amount payable at NRD.
29. This fixed pension amount is not calculated in the same way as Mr Y's defined benefit pension and therefore not affected by his earnings or length of service. It is a fixed amount calculated independently, but does still count towards his overall pension entitlement. It stands to reason then, that this fixed pension stands apart from any main scheme, standard benefits that as such it may be subject to different rates of revaluation.
30. Under the Perkins Section of the Scheme the Trustee has discretionary power to choose the early retirement factors applied to member's benefits. In the case of the Perkins Section the Trustee recognises that, given the nature of the work members of the Scheme carry out, it might be expedient at times to reduce the work force and as such has elected to provide a relatively generous set of early retirement factors for active service.
31. However, the Trustee has set a different, less beneficial, early retirement factor for fixed pensions accrued as a result of service with other employers. This is a

legitimate decision by the Trustee as it has the right to set the various factors used to calculate scheme benefits, so long as advice is sought from the Scheme Actuary.

32. In all cases, the Scheme is subject to, and governed by, the trust deed and rules. It cannot be said there has been maladministration in applying the factors which it did, or that the Trustee and Administrator has acted incorrectly in conforming to the schemes trust deed and rules.
33. Mr Y has argued that had he known at the time of the transfer that a less beneficial factor would be applied to his fixed pension then he may not have continued with the transfer. This statement appears to be based on the belief that had he remained a deferred member of the McCain Food (UK) Ltd Scheme Mr Y would necessarily have benefited from a more beneficial early retirement factor. However there is no evidence that this is the case and therefore no basis to conclude that he is in fact worse off as a result of the decision to transfer. I note the Trustee's explanation that the reduction of 3% for each year of early retirement applied to Mr Y's main scheme Perkins Section benefits (non-transferred in pension) recognises active service. There is no reason to conclude that a comparable rate would be applied by McCain to deferred service.
34. Further, all the available scheme literature that was available to Mr Y carried clear and obvious warnings that the information provided was for general consumption and that members with specific queries, concerns or questions should contact the Pensions Team directly. Mr Y knew he had a transfer in with a fixed pension and as such that he fell into a different category than the generic ones catered for in the scheme literature.
35. Despite Mr Y's assertion that he was not correctly informed of how his pension would be calculated he is still able to retire early if he so wishes and he has not been able to point to any particular steps he has taken in reliance on the information contained in either his benefit statements or the other scheme literature referenced above. In any case, even if he had done so the information he was provided with was never guaranteed and was often general in nature. It would therefore not have been reasonable to rely upon to make significant financial decisions without taking specific additional advice.
36. Regarding the misleading or incorrect statements Mr Y received relating to his pension entitlement, I acknowledge that these were prepared on a standardised basis which did not reflect his particular circumstances and he may have suffered a loss of expectation in this regard. However, I do not believe any further action is warranted in this case because the caveats on the statements were clear, the raised expectation was corrected before he made any decisions based upon it, I am satisfied that the information that Mr Y has now been provided with is consistent with the Rules and I therefore do not consider that he has suffered significant injustice as a result of the inaccurate statements. .
37. Therefore, I do not uphold Mr Y's complaint.

**PO-13624**

**Karen Johnston**

Deputy Pensions Ombudsman  
30 June 2017