PO-14177

Ombudsman's Determination

Applicant	Mr N
Scheme	ICL Group Pension Plan (the **Plan**)
Respondents	The Trustees of the ICL Group Pension Plan (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's complaint against the Trustee is about its decision to backdate a change to the 'Late Retirement Factor' (**LRF**) that is applied to an element of his entitlement.

Background information, including submissions from the parties

4. The current rules of the Plan are set out in the Trust Deed and Rules dated 25 September 2013 (the **Rules**). The relevant rules are rule 42.5 and 44.5 and these are set out in the Appendix.

5. Mr N joined Fujitsu and became a member of the Plan on 30 August 1978. His date of birth is 5 May 1955.

6. In 2004 the normal pension age (**NPA**) for the Plan was changed from 60 to 65. As a result of this change, members became entitled to that part of their pension (Part B benefit) accrued before the date of the change (the **Change Date**) to be calculated with reference to a NPA of 60. The part of their pension accrued after the Change Date (Part A benefit) was calculated by reference to the new NPA, i.e. age 65.

7. An email, dated 1 February 2005, from the Trustee to the members of the Scheme says:

> "ICL Group Pension Plan – Change in Late Retirement Factor (LRF)
>
> In law the Trustees must ensure that all members are treated fairly and equally. This responsibility means that one particular category of member should not benefit from the Plan at the expense of the rest. It is clear that the

continuation of Late Retirement Factors at their current level gives an unfair benefit to late retirees. Therefore, the Trustee, having taken professional advice, has decided to change the current rate.

This note is to inform members of a decision of the Trustee of the ICL Group Pension Plan, following an actuarial review based on prevailing economic and life expectancy factors, that the Late Retirement Factor will change from the current 1% to 0.75% per month with effect from 1st April 2005.

This will immediately affect:

Those whose 60th birthday has already passed and who are currently either non-contributing or, if affected by the recent Pension Review, are earning the 1% LRF on their Part B pension

Those whose 60th birthday falls in the year ahead and who are anticipating earning the 1% on their Part B

Plan members in these categories whose 60th birthday is before April 2006, have been written to individually.

Those with 60th birthdays further off will be advised of the initial rate applying at that time when they approach their 60th birthday

Please note that the LRF change applies from April 2005. It does not apply retrospectively."

8. In 2011 the Plan was closed to future accrual and as a result Mr N became a deferred member on 31 March 2011.

9. In April 2016 the Trustee announced to the members that the LRF was being changed from 9% to 5.25% p.a., and the change would have immediate effect in relation to future retirements. The members were also informed that the change would not affect any retirement benefits already in payment or where the retirement process was already underway and retirement was to occur before 1 October 2016.

10. Mr N made a complaint to the Trustee and his complaint was dealt with under the Plan's internal dispute resolution procedures, but it was not upheld. So he brought his complaint to us.

11. Mr N comments are set out below.

- He accepts that the Trustee has the right to change the LRF. However, his complaint is that the change in the LRF is being applied from age 60 rather than from the date the announcement was made of the change. He would like the Trustee to apply a rate of 9% p.a. from his 60^{th} birthday to 31 March 2016 and 5.25% thereafter.

- He was already in the 'retirement process' when the Trustee announced the 2016 change to the LRF. He gave notice to retire in October 2014, when he nominated a retirement date of 5 May 2017. This was accepted by Fujitsu and therefore his retirement date was fixed at that point. The Trustee had said that for members who were already in the 'retirement process' the "existing 9% LRF should be honoured".
- Whilst it is not explicitly stated that the LRF is applied on an ongoing basis, it is very much implied. For example:
  - his pension review statement, dated 1 March 2004, states: "…for those members reaching their NPD of age 60 and ceasing to contribute to the plan, an actuarially neutral late retirement factor is applied to their pension until such time as they leave the Company and draw their pension"; and
  - his leaver statement for the Plan, dated 5 December 2011, states, with regard to his accrued pension, that: "This will increase in deferment…".

12. The Trustee's comments are set out below.

- Following the Plan's actuarial valuation as at 31 March 2015, it took actuarial advice from its advisers and the Plan actuary on various actuarial factors used by the Plan. The advice received was that under the current economic conditions, a 9% p.a. LRF was too generous and a 5.25% p.a. cost neutral factor was to apply. Therefore, a decision was made in 2016 to change from 9% to 5.25% for all retirements on and from the date of the decision.
- The Rules give it discretion to set the LRF from time to time. Its decision to change from 9% to 5.25% p.a. in March 2016 was a properly taken decision under the powers in the Rules.
- Rule 42 deals with the calculation of a deferred pension at NPA (65) and rule 44 deals with the early payment of a deferred pension before NPA. Those rules require a calculation to be made at the time the pension comes to be paid.
- The Rules enable it to consider whether the Plan is overpaying Part B benefits paid after age 60, potentially to the detriment of the wider membership, and, in that context, to consider the views of the employer – whose interests it ought properly to take into account.
- It considered whether a more gradual approach could be adopted when changing the LRF – for example phasing in the change or allowing members already aged over 60 to have some of their benefits calculated using the previous factors – noting that doing so would lead to an additional financial strain on the Plan. It sought the employer's view on this. However, after careful consideration it decided not to adopt a gradual approach because it would materially increase the Plan's deficit.

- The change to LRF has not been applied retrospectively. The change was only applied after the decision to change had been made and was effective only in respect of retirements after the date of the change. The change was made after taking advice from the Plan actuary and lawyer, and after having consulted with Fujitsu.

- It is entirely proper, should it so decide, to apply the new LRF after the date of change to all Part B benefits for new retirees in respect of any 'Post 60 Period'. Members do not have an accrued right to any particular LRF. It is not an entitlement. The member's accrued right is to their deferred pension with revaluation and, in relation to the Part B benefit and for any period of deferment after age 60, the application of the prevailing LRF at the time the benefit is to be put into payment.

- Some members, like Mr N, are disappointed by its decision. It is also mindful of the effect of the decision on such member's retirement planning. However, in light of the circumstances, it took the decision to reduce the LRF in particular the additional cost and risk that would have been placed on the Plan's finances were the change not made.

Adjudicator's Opinion

13. 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.

    - Under rule 42.5 of the Rules the Trustee has the power to apply a late retirement increase in whatever manner it decides subject to receiving appropriate advice from the actuary.

    - Following the actuarial valuation, as at 31 March 2015, the Trustee took actuarial advice from its advisers, including the Plan actuary, on various actuarial factors used by the Plan. A change of the LRF from 9% to 5.25% was made in April 2016.

    - There is no prescribed manner or method for calculating LRF under the Rules. In addition, the Rules do not say that notice has to be given to members; or that a change in the method of calculating LRF; or that the factor can only be a future change.

    - The announcement issued to the members in April 2016 clearly stated that it would not affect any benefits already in payment, or where the retirement process was already underway and retirement was to occur before 1 October 2016. There is no evidence to show that Mr N had applied for his pension, or that his application was being processed and he was retiring before 1 October 2016.

- There is nothing to suggest that the new LRF in 2016 has to be applied from the date it was changed. A change in the LRF for someone who is yet to draw his pension is not a change to an accrued right. Just because a member was over the age of 60 in April 2016, it does not mean that he has a right to the LRF that was applied when he was 60.
- When Mr N retires, his Part B benefit will be increased, from his 60th birthday to the date of his retirement, by the LRF applicable at that time - this is not an unreasonable approach.
- Mr N has provided no evidence to show that he had applied to the Trustee for payment of his pension as from 5 May 2017. However, even if he had provided such evidence, as stated above, the LRF would be the factor applicable at the date of his retirement and not at the date he gave notice. In addition, the 2016 announcement clearly states that the new LRF would not apply where the 'retirement process' was underway **and** (my emphasis) retirement was to occur before 1 October 2016. As his intended retirement date is 5 May 2017, the new LRF would apply to him.
- The reference to the accrued pension increasing in deferment in the leaver statement dated December 2011, is in relation to the revaluation of deferred pensions, between the date Mr N stopped accruing pension and NRA, rather than the increases applied by the LRF.

14. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

15. Mr N's response to the Adjudicator's Opinion is set out below.

- It seems unreasonable to him to be penalised because his intended retirement date of 5 May 2017 is after the somewhat arbitrary date of 1 October 2016. The fact that his retirement was underway should be the only relevant factor.
- The pension review statement which he received states that the LRF **is** applied and not **will be** applied. His interpretation of this is that the LRF is applied on an ongoing basis.
- Rule 42.5 does not make it clear when the LRF is applied. His reading of this rule is that it allows the Trustee to vary the amount not the manner. He has never disputed their right to vary the amount.

16. I can understand why Mr N feels that he has been penalised because his intended retirement date of 5 May 2017 is after 1 October 2016. However, it is clear from the 2016 announcement that the ‘retirement process’ had to be underway and retirement was to occur before 1 October 2016. As his retirement date is after 1 October 2016, the new LRF would apply to him.

17. The pension statement, dated 1 March 2004, which Mr N refers to does state that the LRF is applied. While I can see why Mr N has interpreted this as meaning that the LRF is applied on an ongoing basis, I cannot agree with this interpretation because the pension statement does not state what that factor will be. Examples are given in the pension statement based on 9% and 12%, but there is no suggestion that these are necessarily the factors that would be applied.

18. I would agree that rule 42.5 does not state when the LRF is applied. The Trustee has chosen to apply the LRF applicable at the time the member retires. I do not consider that this is an unreasonable approach.

19. Therefore, I do not uphold Mr N’s complaint.

Anthony Arter

Pensions Ombudsman
25 January 2017

Appendix

Rule 42.5 (Pension at or after NPA) states:

“Where all or part of the Deferred Member’s Deferred Pension is to be calculated by reference to age 60 (see definitions of Normal Pension Age and Change Date), that part of the pension shall be increased over the “Post 60 Period” by not less than such amount as the Trustees may determine, on the advice of the Actuary, to take account of the payment of that part of the pension being made after age 60.

For the purpose of this Rule 42.5 the “Post 60 Period” is that part of the Revaluation Period referred to in Rule 42.2 during which the Deferred Member is aged over 60.”

Rule 44.5 (Early Payment of Pension) states:

“For these purposes…the Deferred Member’s pension is his Deferred Pension increased in accordance with Rule 42 but:

(i) For the purpose of Rule 42.3 and Rule 42.5, using as the Revaluation Period, a period which ends on the date on which the Deferred Member’s pension is to be put into payment rather than the date on which he reaches Normal Pension Age.”