

Ombudsman's Determination

Applicant	Ms N
Scheme	ICL Group Pension Plan (the Plan)
Respondent	The Trustees of the ICL Group Pension Plan (the Trustees)

Outcome

1. I do not uphold Ms N'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. Ms N's complaint against the Trustees is that they improperly backdated a change to the late retirement factor (**LRF**) applicable to part of the pension available to her from the Plan without any advance notice and this has had a detrimental effect on her retirement benefits.

Background information, including submissions from the parties

4. Ms N's complaint relates to the same issues raised by Mr O in his complaint against the Trustees which was determined by the Pensions Ombudsman on 25 January 2017 (Our Ref: PO-14440) after he had contested the Opinion made by a Senior Adjudicator on his complaint. Copies of both the opinion and determination of Mr O's complaint may be found the Appendix.

Adjudicator's Opinion

5. Ms N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:
 - The complaint made by Ms N relates essentially to the same issues raise by Mr O against the Trustees.
 - Mr O's complaint was fully investigated and the Pensions Ombudsman did not uphold it.

- Having considered Ms N's complaint in light of its own particular circumstances, in his opinion, a different conclusion would not be achieved in her case to the one reached in Mr O's case.
6. Ms N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms N provided her 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 Ms N for completeness.

Ombudsman's decision

7. Ms N considers it was unfair and unreasonable that the Trustees announced in April 2016 that the LRF would be reduced from 9% to 5.25% pa with immediate effect for members of the Plan who were not already in the process of taking their late retirement benefits by 30 September 2016.
8. She contends that the Trustees had set a precedent back in February 2005 when they gave all applicable members a two month notice period in order to decide whether or not to retire before the LRF was reduced from 12% to 9% pa in April 2005.
9. Ms N contends that if the Trustees had given her the opportunity to retire prior to 1 October 2016, she would have done so and not now have to continue working in order to mitigate a financial loss of around £10,000 pa which she has suffered as a consequence of the reduction to the LRF.
10. The Plan Trust Deed and Rules do not however stipulate that notice must be given to members of a change in the method of calculating the LRF.
11. The decision to change the LRFs to a cost neutral position was taken to ensure that the age at which members drew their benefits had no financial impact on the Plan. The Trustees, however, recognised that when making their decision there would be a cut-off and some members such as Ms N would naturally be disappointed by the change. Their reasons for not adopting a more gradual approach when changing the LRF in April 2016 are summarised in paragraph 13 of the determination of Mr O's complaint (Our Ref: PO-14440).
12. Essentially, after seeking the views of Fujitsu, the employer and careful consideration, the Trustees decided against such an approach because they felt it would be inappropriate to materially increase the Plan's deficit when there were no additional funds to meet the cost.
13. When making their decision, the Trustees took into account that there were some members who were already in the process of taking their pension benefits and allowed these members to retire on the previous terms. There is no evidence, however, to show that Ms N had applied for late retirement by 30 September 2016 before the Trustees made their announcement in April 2016 and so the Trustees unfortunately were unable to offer this concession to her.

14. In my opinion, the Trustees have been clear in their communications at all times about the possibility of changes to LRFs. Furthermore there is no legal requirement on the Trustees to give members advance notices of the changes to the factors they choose to use under an existing discretion and I consider that they advised members of their decision as soon as possible after making it.
15. Although I fully sympathise with Ms N's circumstances, I do not consider that there was any maladministration on the part of the Trustees and therefore I do not uphold Ms N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
17 May 2017