PO-17523

Ombudsman's Determination

Applicant	Mr W
Scheme	Carlton Clubs Retirement and Death Benefits Scheme (**the Scheme**)
Respondents	Dalriada Trustees Limited (**the Trustee**) Thomson Dickson Consulting (**TDC**)

Outcome

1. I do not uphold Mr W's complaint and no further action is required by the Trustee or TDC.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr W's complaint concerns the change in the revaluation basis of deferred benefits from Retail Prices Index (**RPI**) to Consumer Prices Index (**CPI**), which was announced to members in March 2017, with an amended announcement being issued in July 2017.

Background information, including submissions from the parties

4. In 2007, Mr W left the Scheme and became a deferred member. The Scheme Rules in force at that date, and that apply to Mr W, are the 1992 Rules.

5. On 27 March 2008, the latest Scheme Rules became effective (**the 2008 Rules**).

6. From 6 April 2011, the Secretary of State changed statutory revaluation from RPI to CPI. Whether a scheme could base future increases on CPI depended on the rules of the scheme. For example, if the scheme's rules referred to the statutory increase revaluation the trustees were obliged to change to CPI, so administering the scheme in accordance with its rules. However, where a scheme's rules specifically referred to increases in line with RPI, then whether it was possible to amend the scheme rules depended upon the wording of the increase rule and other applicable rules. There have been several recent cases concerned with the interpretation of different pension increase rules and whether it was possible, in each case, to either retain RPI or change to CPI.

7. On 30 March 2017, TDC, the Scheme administrator, wrote to all members of the Scheme, including Mr W, enclosing a member announcement from the Trustee. This announcement explained that, due to differences between the Scheme Rules and administration practice, the Trustee had sought advice at the request of the Scheme's principle employer. This advice concluded that anyone who left employment on or after 27 March 2008, when the 2008 Rules became effective, would receive increases in deferment in line with RPI, where applicable. However, anyone leaving service prior to 27 March 2008, such as Mr W, would receive increases in deferment in line with CPI from 1 January 2011 onwards. Although, the covering letter, provided by TDC wrongly stated that Mr W would receive revaluation in line with CPI between his date of leaving and retirement date.

8. In addition to the application of the Rules in respect of the deferred members, the announcement in March 2017 also detailed increases to pensions in payment for those members governed by the 1992 Rules. These were CPI increases capped at 5% for service between 1997 and 2005, and capped at 2.5% for service post 2005. Previously, service between 1994 and 1997 attracted a fixed 3% increase and post 1997 service was increased in accordance with RPI at a minimum of 3% and maximum of 5%.

9. Mr W raised several queries following the announcement, including: -

   - That previous information he was provided with stated that his benefits would be subject to RPI revaluation between his date of leaving and his retirement date.

   - He should be entitled to RPI increases up to the point the Trustee announced the change on 30 March 2017, in accordance with Section 67 of the Pensions Act 1995.

   - When his pensionable salary was frozen in 2006 the question of revaluation was raised and it was confirmed that this would be RPI up to 5%.

   - That he was entitled to rely on the previous quotation he received and that the calculation in that quotation had been performed in accordance with the Rules.

10. In May 2017, the Trustee considered Mr W's queries as a complaint under the Internal Dispute Resolution Procedure (**IDRP**). The Trustee explained that, because increases by RPI were written into the 2008 Rules, it could not automatically change to CPI for members who left after 27 March 2008. In contrast, the 1992 Rules referred to increases, as specified by the Secretary of State, meaning statutory revaluation, which had been changed from RPI to CPI, so, in accordance with the 1992 Scheme Rules, the Trustee had no option but to apply CPI for these members. In 2011, when the change to legislation was made, the Trustee discussed the issue only in respect of the current 2008 Rules which refer to RPI. However, legal advice was sought in 2016, following consultations which highlighted the difference between the 1992 and 2008 Rules. The Trustee can only provide the benefits set out in the Scheme Rules and to rectify any error where this has not been done.

11. The Trustee maintained that it had not made any changes to the Scheme that disadvantaged members so Section 67 of the Pensions Act 1995 does not apply. It said that documentation issued prior to 2011 was correct at the time of issue and that it could not predict the change in statutory revaluation from RPI to CPI. In any event any documents or literature issued do not override the Scheme Rules.

12. Mr W was not satisfied with the Trustee's response and raised a number of further points, including the following: -

    - The legislation allowed the Trustee to change to CPI, but the Trustee decided to continue using RPI in 2011. The Trustee has since been influenced by those requesting the Scheme review in 2016.

    - The 1992 Rules specify a cap of 5% yet the announcement shows the cap was reduced to 2.5% in 2005. There was no notification of this change.

    - The 2008 Rules specify RPI and this should have applied to all members as it was clearly accepted to be appropriate. This has resulted in some members being penalised which is unfair.

13. The Trustee explained that its IDRP had been exhausted and referred Mr W to this Office. However, in June 2017, The Trustee wrote to Mr W stating that it was considering some new information in relation to the increases and that it would update him accordingly when possible.

14. On 5 July 2017, TDC wrote to Mr W enclosing an amended Trustee announcement aiming to clarify the changes to increases in deferment and, to correct the increases in payment which had been incorrect in the previous announcement. The covering letter and the announcement stated that Mr W's benefits would be revalued by RPI between his date of leaving and 31 December 2010, and by CPI from 1 January 2011 to his retirement date.

15. The announcement went on to explain that the advice obtained regarding increases in payment did not consider some vital information. As a result, increases in payment were to continue to be paid as previously. This meant that for service before 1 April 1994, no increase would be paid. For service between 1 April 1994 and 31 March 1997, the increase in payment will be 3% per annum, and for service from 1 April 1997 onwards, increases in payment will be RPI to a maximum of 5% and minimum of 3%.

16. Mr W remained dissatisfied and proceeded with his complaint to this Office.

Adjudicator's Opinion

17. Mr W's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or TDC. The Adjudicator's findings are summarised briefly below: -

- The Trustee has acknowledged that the change from RPI to CPI may result in smaller increases, as in recent years RPI has generally been higher than CPI. But it maintains that the change is a legislative one, over which it has no discretion. The Adjudicator agreed that the wording in the 1992 Rules leaves the Trustee no discretion with regard to the increase payable. Rule 20(vi) states: -

  "The pension benefits referred to in Rule 7(i) and described in (i) and (iv)(b) above, shall increase to the Member's Normal Pension Date by five per cent per annum compound or by such lesser amount as is specified by the Secretary of State."

- In the Adjudicators opinion, the Trustee was correct to make this change in 2017, when it became aware of the difference in the 1992 Rules compared to the 2008 Rules. The reference to the Secretary of State means the Trustee was obliged to adopt CPI increases with effect from the legislative change to statutory revaluation and the Scheme Rules override any other documentation issued.

- Mr W has provided evidence to show that he has consistently been informed his pension would increase in deferment in line with RPI. Information provided prior to 2011 was correct and applied in accordance with the Scheme Rules and legislation at that time. Information provided post 2011, before the Trustee amended its practice in 2017, was incorrect as it still referred to RPI. However, the provision of incorrect information does not automatically provide an entitlement to the benefits said to be payable. Mr W's benefits must be calculated as set out in the Scheme Rules.

- Mr W's comments that the Trustee chose not to change increases to CPI in 2011, and that any changes now should only apply from the point they were notified and not be backdated to 2011. The Trustee felt the position was clear when making its decision in 2011, it has now been established that the Trustee cannot continue to use RPI increases in deferment for members who left before 27 March 2008.

- While the difference between the two sets of rules was not identified at the time, it does not automatically entitle Mr W, or any other affected member, to increases in deferment in line with RPI after 2011. The Trustee is required to put Mr W back in the position he would have been in had the error not occurred, this means that CPI increases are due from 2011 onwards, even though notification was only provided in 2017.

- Mr W also comments that RPI was written into the 2008 Rules so it was clearly accepted to be the appropriate increase method and should apply to all members. RPI was the index used for statutory revaluation in deferment at the point that the 2008 Rules were written, and it had been for some time. There had been no announcements suggesting a change to statutory revaluation, nor was it anticipated by the pensions industry.

- It was reasonable for RPI to have been written into the 2008 Rules as there was nothing to suggest, at the time, that doing so may cause inconsistencies between

membership groups in the future. It is unfortunate that this inconsistency has resulted in different increase methods for different members within the Scheme, but this is not something in which the Trustee has discretion.

- Mr W has further commented that the 1992 Rules specify an annual cap of 5% to increases, yet the March 2017 announcement shows that the annual cap was reduced to 2.5% in 2005, which took place without notification. This section of the letter refers to increases to pensions in payment, so does not apply to Mr W at present. The reduction to the maximum increase from 5% to 2.5% for pensions in payment was permitted by a legislative change, however the 1992 Rules specify that the increases are to be applied to pensions in payment and do not simply refer to statutory revaluation. Therefore, the Trustee was not in a position to adopt this change, and the Adjudicator understood that it had not done so. This information in the March 2017 announcement, was incorrect, and was later corrected by the July announcement applying the Scheme Rules and previous practice.

- Mr W says that as a result of the change to CPI he has suffered a financial loss. The Adjudicator did not agree, and instead concluded that Mr W had suffered a loss of expectation. This loss of expectation is heightened by the illustrations that he had been provided, which assumed the maximum possible future increase, up to his retirement date, of 5% per annum. A warning was included stating that it was only an illustration. Unfortunately, increases of 5% per annum have not been borne out in reality so, these illustrations would be over-inflated even if RPI had continued to be used. The Trustee has now instructed TDC to provide illustrations using more modest assumed future increases, currently 2.4%, with the aim of providing more prudent future illustrations.

18. Mr W did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr W and the Trustee provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr W and the Trustee for completeness.

Ombudsman's decision

19. Mr W says that the Trustee ignored the law and the wording of the 1992 Rules in 2011. The Trustee contends that its action, "should not be construed or described as a mistake." The Trustee says that when, "the matter was considered by the Trustee the position with regard to increases was noted from the 2008 Deed, which appeared to be clear, but the Trustee suggested getting legal advice. The Company did not feel this advice would add value, and asked the Trustee to proceed without it. The Trustee agreed to proceed on this basis, and indeed saw no reason to press the point. The Company reviewed that decision and requested advice was sought several years later. We do not believe that the Trustees actions therefore constituted a mistake."

20. While the correct position could have been established earlier if legal advice had been obtained in 2011, there is no legal requirement for the Trustee to seek legal advice in such circumstances. Therefore, it is reasonable for it not to have done so, especially as it understood the position to be clear. The Trustee needs to satisfy itself that it is administering the Scheme correctly in accordance with the rules, if an error does occur and something is done that is not in line with the rules it needs to put it right. This is what it did in 2017.

21. Mr W says he was never supplied with a copy of the 1992 Rules until he requested one during this dispute, yet he has been told that these rules, that he had never seen, can override the pension booklets and letters he has received.

22. The Trustee must provide members with a copy of the relevant rules upon request, but the rules would not usually be supplied to members. Instead schemes will issue booklets summarising the benefits payable and supply these to members either automatically or upon request. If differences occur the rules will be overriding. It is accepted that the booklets and correspondence issued reflected the 1992 Rules until the change in legislation in 2011, when the legislation altered the applicable revaluation methods, but this was not communicated to members or amended in the booklets at the time, as it was not believed to have an impact. The Trustee correctly supplied a copy of the Rules on request.

23. Mr W has commented that he has been provided with factually incorrect information since 2011. He feels he has taken reasonable steps when enquiring about the revaluation to be applied, and was consistently informed that it would be RPI since 2007. However, the provision of incorrect information does not provide an entitlement to benefits in excess of those payable under the Scheme Rules. Mr W says the change in revaluation has reduced his future retirement income as he has been planning his retirement using incorrect information. He has said that, according to the most recent estimates, he will be losing approximately £2,000 a year from his normal retirement date at age 65.

24. While I sympathise with Mr W's position, this is a loss of expectation. I can only direct redress for financial loss where the respondent has made an error which has directly led to the applicant's financial loss and I am only able to correct an error in order for the applicant to receive their correct entitlement under the rules. Therefore, it is not appropriate to direct redress for financial loss in Mr W's case as he will receive the benefits to which he is entitled.

25. With regard to any redress for non-financial loss, such as distress and inconvenience caused. This must be directly linked to the error, and I will only make an award if I consider the distress and inconvenience to be significant. I understand that Mr W has suffered distress and inconvenience in this matter, however I do not consider it to be so significant that it would be appropriate to direct an award of this nature.

26. Therefore, I do not uphold Mr W's complaint.

Anthony Arter

Pensions Ombudsman
9 April 2018