The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr L
Scheme	Lloyds TSB Bank Group Pensions Scheme No 2 (the **Scheme**)
Respondent	Lloyds Banking Group Pensions Trustees Limited (the **Trustee**)

Outcome

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

Complaint summary

2. Mr L's complaint is that his Scheme pension in payment was not uplifted to £5,078.84 at State Pension Age (**SPA**).

Background information, including submissions from the parties

3. The Scheme is an occupational final salary contracted-out arrangement.

4. Mr L joined the Scheme on 4 October 1971. He was contracted out of SERPS (the State Second Pension) on 6 April 1978. Mr L left the Scheme on 21 December 1980.

5. In early 1992 Mr L was considering transferring his preserved pension. On 28 February 1992 TSB Group Pension Trust Limited sent Mr L a transfer information sheet. Amongst other information the sheet detailed:-

   Under 'Member Details'

   - Mr L's pensionable service as 9 years and 79 days (that is 9 + (79/365) = 9.216438 years), final pensionable salary at date of leaving as £7,155 and Normal Retirement Date as 3 April 2012, at age 60.

   Under 'Scheme Details'

   - The basis of GMP revaluation: Fixed Rate. As Mr L left the Scheme pre 6 April 1988 the Fixed Rate is 8.5% for each complete tax year between Mr L's date of preservation in the Scheme to the tax year preceding his State Pension Age (65). That is 35 years.

Under 'Benefit Details'

- Mr L's deferred pension at date of calculation (2 March 1992) as £1,315.92[1], escalation of deferred pension at the lesser of 5% or annual government increase orders; and GMP at date of leaving (21 December 1980) as £119.08.

Under 'Contracted-out Details'

- Mr L's GMP at State Pension Age, £2,069.60. That is 119.08 x 1.085^{35}

6. About the time of Mr L's retirement, Equiniti administered the Scheme on behalf of the Trustee.

7. In November 2011 Mr L was quoted retirement benefits which included the option of a tax-free cash sum. However, information sent to Mr L in January 2012 did not mention it. Mr L queried the matter.

8. On 28 February 2012 Equiniti wrote to Mr L informing him that it had estimated his GMP at SPA as £5,078.84 per annum. As this exceeded his revalued preserved pension, no tax-free cash sum was available at his NRA: "In order to cover this GMP it has been necessary to totally restrict your tax-free cash".

9. Mr L requested confirmation of the amount he would receive from 2012 and 2017. Equiniti replied that he would receive a pension of £2,294.40 from April 2012 and from SPA his pension would be "uplifted to the Equivalent State Pension of £5,078.84".

10. In early October 2016 the Trustee transferred the Scheme's administration to Willis Towers Watson (**WTW**).

11. On 21 April 2017 Mr L contacted WTW querying why he had not yet received the GMP uplift to his pension in payment. WTW said it would investigate the matter. Mr L chased the matter over the next two months receiving the same response from WTW.

12. On 6 July 2017 WTW explained to Mr L that the delay in the payment of his GMP was because it was necessary to have HMRC's confirmation of his GMP before it could be put into payment.

13. In September 2017 Mr L complained to the Trustee invoking the Scheme's two-stage internal dispute resolution (**IDR**) procedure. The stage 1 decision was issued on 23 April 2018:-

    - Equiniti's letter of 28 February 2012 contained a projection of Mr L's GMP at SPA. It was not a guaranteed amount.

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[1] That is Mr L's deferred pension at date of leaving escalated at the lesser of 5% or annual government increase orders to 2 March 1992.

- However, Equiniti's subsequent letter of 23 March 2012 did not make it clear that the pension uplift at SPA to £5,078.84 was not guaranteed.

- The Trustee had a legal obligation to pay benefits to members at the correct level. Therefore, it was necessary for it to verify Mr L's GMP with HMRC before calculating the uplift to his pension.

- Mr L's case was complicated by his transfer out and then reinstatement in the Scheme. This meant that HMRC took longer than anticipated to confirm his GMP. The delay was not attributable to Equiniti, WTW or the Trustee.

- Equiniti were handling GMP reconciliation matters with HMRC on behalf of the Trustee. HMRC had recently confirmed Mr L's GMP as £2,908.90 per annum from SPA.

- WTW would now uplift Mr L's pension backdated to 3 April 2017 and add interest.

14. The stage 1 decision-maker (the Senior Pensions Operations Manager for Lloyds Banking Group) concluded:

> "Given that the delay is not attributable to the action of Equiniti or WTW, I do not uphold your complaint against the Trustee insofar as it relates to the delay in bringing your pension uplift into payment.
>
> However, I acknowledge that you have experienced difficulties and frustrations in your dealings with WTW. In particular, I note that WTW did not keep you fully informed in the period April to June 2017, and did not pass your IDRP application to the Trustee in a timely manner, resulting in a delay in issuing this Stage 1 response. I would like to apologise for these administrative failings and offer you £750 as compensation for the distress and inconvenience that you have suffered as a result."

15. On 15 May 2018 WTW wrote to Mr L confirming his uplifted yearly pension from 3 April 2017 was £2,908.90, split: £2,069.60 GMP and £839.30 excess pension[2].

16. As Mr L's GMP is all pre-6 April 1988 no escalation is applicable to this part of Mr L's pension payable by the Scheme. The increase is payable by the State. The pre-1997 excess pension was increased on the anniversary of the commencement of Mr L's pension, namely 20 April 2017 and 20 April 2018. An arrears payment of £376.76, including interest, was included in the June 2018 pension payment to Mr L.

[2] That is the balance Mr L's pre-1997 escalated pension in payment.

17. Mr L rejected the Trustee's settlement offer. In October 2018 he submitted his IDR stage 2 appeal to the Trustee. He said his decision to take early retirement was based "in no small part" on the information provided by Equiniti in 2012.

18. The Trustee asked Mr L to provide evidence to support his position that he had suffered a financial detriment. In December 2018 Mr L replied:-

- Since joining the Scheme and in the twelve months leading up to his that he had suffered a financial loss as a result of retirement at age 60 he had received a number of updates and statements advising him of his pension options and amounts payable in each case. Was not the premise of providing this information to give some certainty to what could be expected at pension age and give values that could be relied on to assist with retirement planning?

- Equiniti's letter of 28 February 2012 clearly stated that the withdrawal of a tax-free cash sum was to pay for an enhanced pension of £5,078.84 per annum from age 65. On querying the amount Equiniti confirmed the increase to his pension.

- In planning his retirement he engaged pension advisors to his last employer (**GVA**), Johnson Fleming Group (**JFG),** who provided financial plans which took into account that an enhanced pension would be put into payment when he reached age 65.

- In the 6 months leading up to his 60th birthday he received from Equiniti a number of different updates and options on his pension. The last of these was Equiniti's letter of 23 March 2012. The pension of £2,294 was paid. Why was this information provided if it was not to be relied on?

- His wife, also an ex-employee of Lloyds TSB, received similar information from Equiniti in respect of her pension. When she reached pension age the pension and tax-free cash sum she had previously been told she would receive started with no further communication from Equiniti.

- As he received no further information from Equiniti to the contrary of what it had told him why was it not reasonable for him to expect payment of the higher pension when he reached age 65?

- As a layman with no expertise in this area it was not unreasonable for him to respect the advice he received from Equiniti and JFG. Equiniti provided a definitive figure when he asked for clarification and JFG felt confident enough to include that information in his future life planning.

- He had suffered detriment which he could not mitigate or remedy as a result of relying on the information provided by Equiniti in 2012.

- He resigned from his position with GVA in June 2016 and left its employment in September 2016.

- To fund living expenses until he started drawing his State Pension and the 'enhanced' Lloyds TSB Pension he believed he would receive from April 2017 he took the following action:-

  - In November 2016 he took a 32% tax free cash sum from a Scottish Widows policy he had contributed to while employed by GVA. The balance of the pension was paid into drawdown account.

  - The same month he paid off a mortgage balance of £6,924.98. This reduced his monthly payments to the Building Society from £888.67 to £238.08, a monthly difference of £650.59.

- He had had a pension fund with Abbey Life. The fund increased annually by a minimum amount and provided a guaranteed annuity rate of 11% per annum. In April 2017 he decided to defer taking pension benefits to age 70. But a few months later, when it became clear that Lloyds TSB were not going to pay him the increased pension and that he needed to fill the financial gap of £230 per month (£2,760 per annum) he reversed his decision and from October 2017 received an Abbey Life pension of £297 per month. By taking his pension 4 years and 7 months earlier than he had intended he had lost capital growth on his fund of a minimum of £15,000 (based on the previous five years) equivalent to a pension of £1,650 per annum. The value of his fund in April 2017 was £41,073. By October 2017 it was worth £44,962 – an increase of £3,889. If the rate of increase had been maintained his fund by age 70 would have increased by a further £35,000 rather than £15,000.

- He was now being told that the only part of his pension that would increase in line with CPI was £839.30, whereas the figures provided in 2012 suggested the increase would be on £3,009,24 (that is £5,078.84 less his GMP of £2,069.60) a significant difference. Even before the decision on paying the "enhanced pension" the increase was being made on £2,589.84 which excluded GMP. Therefore, within possibly 4 years he would become increasingly worse off year by year.

- His monthly income was £1,214.40 comprising: a State Pension of £676.12, Lloyds TSB pension of £241.18 and Abbey Life annuity of £297.10.

19. To support his appeal Mr L submitted:-

- February 1992 Scheme Member's Transfer Information Sheet.

- Mr L's letters to Equiniti dated 21 February and 16 March 2012.

- Equiniti's letters to Mr L of 28 February and 23 March 2012.

- Extracts from two financial plans prepared by JFG for Mr L and his wife, respectively dated 3 January 2014 and 24 August 2016, referencing Mr L's Scheme pension at age 65 but with no details.

- Abbey Life retirement quotations dated 30 January and 5 September 2017.

- Bank statements for October and November 2016, November and December 2017 and August and September 2018.

20. On 17 May 2019 the Operations Committee (the **Committee**) of Lloyds Banking Group partly upheld Mr L's appeal:-

On the underpayment of Mr L's pension

- It apologised that his pension had been incorrectly calculated and that he had been receiving the incorrect lower amount of pension for 7 years. The reason for the mistake was unclear but his correct pension of £3,444.72 per annum would be put into payment and it would pay the arrears with interest.

On the delayed confirmation of Mr L's GMP

- The delay was not attributable to Equiniti or WTW who had taken reasonable steps to obtain the relevant confirmation from HMRC. However, it noted that this aspect of his complaint must be viewed in the context of the series of incorrect benefit calculations he was provided with by Equiniti and WTW and the payment of his pension at the incorrect level since April 2012.

On the 2012 estimate and whether he suffered any financial detriment

- It acknowledged that one of the purposes of benefit statements and similar communications was to help members with their financial and retirement planning.

- It noted that a wrong base GMP figure had been used in producing the 2012 estimate and understood his disappointment that his actual GMP was lower.

- However, the Trustee could only pay benefits in excess of his entitlement under the Scheme Rules if he could demonstrate that he relied on the incorrect figures and suffered a financial loss as a result. For example, that he relied on the 2012 estimate when taking his decision to leave employment and would not made that decision if he had known the correct amount of his Scheme pension at age 65.

- It noted his submissions to demonstrate detrimental reliance but did not believe there was sufficient evidence to suggest that the 2012 estimate was a significant factor in his decision to leave GVA in June 2016. Additionally, it did not believe that he required a pension of/close to the 2012 estimate to support himself financially. For example, there was no evidence that he could not meet his ongoing bills and expenses. Therefore, it was of the view that in all likelihood he would have resigned from GVA when he did even if he had known his correct pension at age 65.

- If he had a significant concern as to how to support himself financially in his retirement it was of the view that he would have sought assurance in 2016 that the level of the pension shown in the 2012 estimate he would receive in 2017 (notwithstanding that any such enquiries would not have yielded a definitive figure as his GMP had yet to be reconciled with HMRC).

- It had considered his comment that he had brought his Abbey Life annuity into payment earlier than anticipated when he became aware that he would not receive the pension uplift. But it did not consider this to be financial loss since the lower payments from Abbey Life reflected the longer period over which it would be paid. His decision to bring his annuity into payment was sensible mitigation to address a lowering of his expected income.

- The mortgage he paid off would have had to be paid off at some point and it was unable to categorise it as a financial loss caused by reliance on the 2012 estimate.

- It did not consider it was reasonable for him to rely on the 28 February 2012 estimate, which on its face, stated that it was an estimate. This he appeared to acknowledge in his letter of 16 March 2012.

On Service issues

- It acknowledged there had been some issues with the service he had received from WTW and that it had taken significantly longer than usual to respond to both his stage 1 and stage 2 IDR applications.

21. The Committee concluded:

- Mr L's pension should not be based on the 2012 estimate.

- However, it was very concerned that since 3 April 2012 he had been receiving a lower pension than he was entitled to. To put matters right his pension would be corrected to £3,444.72[3] as at 20 April 2019 and he would receive a payment of £4,889.78 plus interest for the underpayment of his pension since April 2012.

- He should additionally be paid £2,000 for the distress and inconvenience caused.

Mr L's position

22. Mr L says:-

- He welcomes the Committee's admission of multiple errors over a prolonged period of time, that his case was handled very badly and he has been caused severe distress and inconvenience. He also welcomes the news that he will now

[3] A breakdown of the revaluation of Mr L's deferred pension to age 60 and the escalation of his pension in payment is provided in the Appendix.

be paid some arrears, albeit nothing like the amount he believes he should be paid. But he struggles to see how the Committee can claim that he has not suffered financially.

- The Committee has ignored that Equiniti advised him in 2012 that a tax-free cash sum would no longer be paid in order to cover the higher pension (GMP) of £5,078.84.

- He takes issue that his letter of 16 March 2012 acknowledged the pension stated by Equiniti as payable at age 65 was an approximation. His letter sought clarification that his pension would be increased to £5078.84. Equiniti replied that his "benefits will be uplifted to the Equivalent State Pension of £5,078.84".

- He fails to understand why the Committee says there was a need for him to recheck before he retired that he would receive the pension uplift at age 65. As his pension was in payment why should he have checked? He assumed the uplift would be automatically paid as the amount at age 60 had been and this would then increase in line with the annual increases.

The Trustee's position

23. The Trustee's position is as per the Committee's IDR stage 2 decision.

Adjudicator's Opinion

24. Mr L'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 below:-

    - The basic principle for negligent misstatement, in the absence of any additional legal claim, is that a scheme is not bound to follow incorrect information.

    - The Ombudsman would not direct the Trustee to increase Mr L's annual pension to £5,078.84 from SPA. Mr L was only entitled to receive the amount of benefits prescribed by the Scheme's rules.

    - The overstated pension would have provided approximately an additional £250 a month and clearly had some significance in Mr L's decision-making process. Nevertheless, Mr L has not said he would not have retired in 2016 based on his correct Scheme pension and explained why with supportive evidence.

    - Mr L says the expected uplift in his Scheme pension to £5,078.84 was pivotal to his decision to defer his Abbey Life annuity to age 70; and subsequently to take it earlier than intended, when it became clear that the Trustee was not going to pay him the increased pension and that he needed to fill the financial gap.

- Detrimental reliance usually means that the person has done something that they would not otherwise have done but for the incorrect information. Mr L's decision to take his Abbey Life annuity does not meet this requirement. If he had been given correct information about his GMP, that is if he had been notified of his correct GMP, he would have taken the Abbey Life annuity when he did because he needed that income stream. The difference in his actions would have been that he would not have decided to defer taking the annuity. So, the financial loss Mr L has calculated does not arise because he would not have deferred taking the annuity.

- Mr L's other actions were to take a lump sum and pay off a mortgage. Mr L did not appear to be saying that he would not have done either of these things. Nevertheless, paying the mortgage is not considered detrimental reliance because he would have had to pay this off anyway, and it seems likely he would have taken this action in order to reduce his outgoings.

- The Trustee had conceded maladministration. Its payment of pension arrears with interest restored Mr L to the position he would have been in if it had not overstated his GMP at SPA.

- Mr L suffered distress and inconvenience. The Trustee had offered Mr L £2,000 compensation for this. It was unlikely that Ombudsman would direct the Trustee to pay Mr L a higher sum.

25. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L provided his 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 L for completeness.

Ombudsman's decision

26. Mr L says:

- The Trustee has provided no evidence to support that his entire pension is now correct.

- If he had been given different information in 2011/12 he would have had four years to organise his financial arrangements based on that information. He has shown that he spent a considerable amount of time and diligence planning his retirement. This would clearly have happened whatever information was provided in 2011/12 and decisions would have been based on the available information at that time. He has shown that he based his planning on a pension benefit of £5,078.84, that this information was integral to his retirement planning.

- To suggest what he has done with his Abbey Life annuity is evidence as to what would have happened in the past is fanciful. His recent actions are a consequence

and reaction to changed information based on the shortfall in income from his Scheme pension which the Trustee says he will now get.

- He insists that he did retire based on the confirmed Scheme pension of £5,078.84. No one can honestly say what decisions would have been made in light of the lower pension payment.
- In conclusion he was told in 2012 that at age 60 he would receive a Scheme pension of £2,294.40 and at age 65 a pension of £5,078.84. Nothing in the interim 5 years suggested that the uplift in pension would not either be paid or reduced.

27. Mr L is seeking compensation (damages) for loss resulting from the provision of incorrect information; otherwise referred to as negligent misstatement. For this to succeed, certain circumstances must be satisfied:-

    (i) The party providing the information had a duty of care and it was reasonably foreseeable that the recipient would rely on the information.

    (ii) The claimant must have acted in good faith; that is, he must not have been aware of the error. In cases where it was obvious that something was amiss or it would have been possible for the claimant to have discovered the mistake by making reasonable enquiries, a claim is unlikely to succeed.

    (iii) There must be a causal link between the incorrect information and the loss claimed; that is, the claimant must have taken action he would not otherwise have done but for the incorrect information.

    (iv) It must be reasonable for the claimant to have relied on the information provided.

    (v) The claimant has acted to his detriment in reliance on the incorrect information.

28. I am satisfied that (i) and (ii) are met. The Trustee had a duty of care to provide Mr L with correct information about his pension benefits. It would have been reasonably foreseeable that Mr L would use the information for financial planning; although the Trustee could not have known the specific details of that planning. Mr L acted in good faith. In 2012 after receiving the estimate of his pension at SPA, he requested and received confirmation that his pension would be "uplifted to the Equivalent State Pension of £5,078.84".

29. Mr L has shown that he used the expected pension in his subsequent financial planning. He says this would clearly have happened whatever information was provided in 2011/12 and decisions would have been based on the available

information at that time. But Mr L has not said; and provided supporting evidence, that he would not have retired in 2016 based on his correct pension entitlement. For the reasons given by the Adjudicator, I agree that Mr L's decision to take his Abbey Life annuity does not amount to detrimental reliance. Consequently, Mr L does not meet (iii) and (v).

30. Having said that Mr L is only entitled to receive the amount of benefits prescribed by the Scheme's rules, there are circumstances where this might not be the case. The circumstances I am referring to are where the Trustee is 'estopped' from going back on the incorrect information or where the information has given rise to a contract.

31. The effect of estoppel is that the Trustee would be required to comply with the incorrect information and Mr L would receive more than he was strictly entitled to under the Scheme rules. It is for this reason that it is quite difficult for a claim involving estoppel to succeed. The courts have said that, for the party in question to go back on the incorrect information, must be considered "unconscionable"; that is, shockingly or extremely unfair.

32. For estoppel by representation to apply the following requirements need to be satisfied:

    (i) there has been a clear promise or a representation on which it was reasonably foreseeable that the person to whom it was made would rely;

    (ii) the party claiming estoppel acted in good faith and relied on the representation;

    (iii) as a result he/she acted to his/her detriment; and

    (iv) the party who made the representation or promise is now pursuing a claim that is inconsistent with the representation or promise.

33. It is doubtful that Mr L's claim satisfies '(i)'. Whilst the GMP was overstated the promise was to pay Mr L his GMP, which the Trustee has done. There was no detrimental reliance so Mr L does not meet (iii). Therefore, a claim for estoppel cannot succeed.

34. For a contract to exist, the following elements must all be present: offer, acceptance, consideration and the intention to enter into legal relations. Mr L received a statement of expected pension benefits. It does not amount to an offer.

35. The Trustee's payment of pension arrears with interest restored Mr L to the position he would now be in if his GMP had been correctly stated from the outset. I have no reason to doubt that his pension in payment is correct.

36. I do understand Mr L's frustration in receiving varying information concerning the value of his pension benefit and also being underpaid his pension. However, the Trustee's offer of £2,000 for non-financial loss is within the band that I would have

awarded with regard to the considerable distress and inconvenience which Mr L has no doubt suffered.

37. Therefore, I do not uphold Mr L's complaint.

Anthony Arter

Pensions Ombudsman
14 October 2019

Appendix

Escalation of Mr L's pension in payment from SPA (65)

Date	CPI	RPI	Total Pension (b/f)	Excess (b/f)	Excess (c/f)	GMP	Total Pension (c/f)
20/4/19	1.024		3412.44	1342.84	1375.07	2069.60	3444.72
20/4/18	1.03		3373.32	1303.72	1342.84	2069.60	3412.44
20/4/17	1.01		3360.36	1290.76	1303.72	2069.60	3373.32

Escalation of Mr L's pension in payment from age 60

Date	CPI	RPI	Pension (b/f)	Pension (c/f)
20/4/16	-0.1		3360.36	3360.36
20/4/15	1.012		3320.40	3360.36
20/4/14	1.027		3233.04	3320.33
20/4/13	1.022		3163.44	3233.04
20/4/12	1.052		3007.00	3163.44
20/4/11	1.031		2916.17	3006.57
20/4/10		1	2916.17	2916.17

Revaluation of Mr L's deferred pension to age 60

Date	RPI	Deferred Pension (b/f)	Deferred Pension (c/f)
20/4/09	1.05	2777.30	2916.17
20/4/08	1.039	2673.05	2777.30
20/4/07	1.036	2580.16	2673.05
20/4/06	1.027	2512.33	2580.16
20/4/05	1.031	2436.79	2512.33
20/4/04	1.028	2370.42	2436.79
20/4/03	1.017	2330.80	2370.42
20/4/02	1.017	2291.84	2330.80
20/4/01	1.033	2218.63	2291.84
20/4/00	1.011	2194.49	2218.63
20/4/99	1.032	2126.44	2194.49
20/4/98	1.036	2052.55	2126.44
20/4/97	1.021	2010.33	2052.55
20/4/96	1.039	1934.87	2010.33
20/4/95	1.022	1893.22	1934.87
20/4/94	1.018	1859.74	1893.22
20/4/93	1.036	1795.12	1859.74
20/4/92	1.041	1724.42	1795.12
20/4/91	1.109	1554.93	1724.42
20/4/90	1.076	1445.10	1554.93
20/4/89	1.059	1364.59	1445.10
20/4/88	1.042	1309.59	1364.59

20/4/87	1.021	1282.65	1309.59
20/4/86	1.011	1268.69	1282.65
20/4/85	1.07	1185.69	1268.69
20/4/84	1.051	1128.15	1185.69
20/4/83	1.037	1087.90	1128.15
20/4/82	1.11	980.09	1087.90
20/4/81	1.0906	958.38	980.09[4]
21/12/80			958.38

[4] (1.0906 x 958.38) – 958,38 = 86.83
(86.83 / 12) x 3 = 21.71
958.38 + 21.71 = 980.09