

Ombudsman's Determination

Applicant	Mr S
Scheme	The Filtrauto UK Limited Staff Pension Scheme (the Filtrauto Scheme)
Respondents	The Trustees of the Filtrauto UK Limited Staff Pension Scheme (the Trustees)

Outcome

1. I do not uphold Mr 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. Mr S disagrees with the amount of the temporary pension he has received. He has complained that he was required to contact the Scheme administrators before the pension was put into payment. He has also complained that information about temporary pensions has been concealed from members.

Background information, including submissions from the parties

4. Mr S became a deferred member of the Filtrauto Scheme on 25 August 2005. He opted to take early payment of his deferred benefits on 1 January 2007.
5. Mr S was originally employed by Crosland Filters Limited; a subsidiary of Lucas Industries Limited. He was a member of the Lucas Staff Pension Fund (the **Lucas Fund**). In June 1988, Crosland Filters Limited was bought from the Lucas Group. It set up its own pension scheme; the Crosland Filters Pension Scheme (the **Crosland Scheme**). In June 1997, Crosland Filters Limited changed its name to Filtrauto UK Limited.
6. The 1979 booklet for the Lucas Fund stated that a temporary pension would be paid between ages 62½ and 65 for men or 57½ and 60 for women. It said the pension was based on pensionable service and provided a table of pensionable service in years against pension per year. The temporary pension started at £15 for one year's pensionable service and went up to £300 for a member with 20 or more years of pensionable service. Members were informed they could increase their temporary

pension by taking a reduction in their permanent pension. The maximum increase in temporary pension was stated to be £400 per year.

7. In 1988, Mr S was provided with information about his options following the change in ownership of Crosland Filters Limited (the **Options Document**). He was given three options: (a) to transfer to the Crosland Scheme; (b) to remain a deferred member of the Lucas Fund; or (c) to transfer to an insurance policy. Mr S was told that, if he wished to remain a member of the Crosland Scheme, only option (a) was available to him. If he chose option (b), he would be taken to have withdrawn from the Crosland Scheme and any contributions he had paid would be refunded to him. Mr S was told that option (a) would generally be the most advantageous because it ensured that his benefits at retirement would be based on his final salary. The Options Document stated:

“It was always Crosland’s intention to ensure that your working conditions – including the pension scheme – were not affected by the change of ownership and the new scheme has, therefore, been set up on a similar (and no less favourable) basis than the Lucas Fund as it applied at June 1988. No employer (neither Lucas nor Crosland) can ensure current conditions will apply forever and Crosland have the right to amend the scheme at any future stage (as Lucas had). It is important to realise however that the rights earned by the members to date cannot be affected by any such future decision.”

8. In the section giving a brief outline of the Crosland Scheme, the Options Document stated a temporary pension would be paid between ages 62½ and 65 for men or 57½ and 60 for women. It stated that the pension was calculated in accordance with a scale which depended upon pensionable service; £45 for each year of pensionable service up to a maximum of £900.
9. The Options Document included a statement of Mr S’ deferred benefits under the Lucas Fund. This stated that he had 8 years and 4 months’ pensionable service and a temporary pension of £360 per year would be paid between his normal retirement age and State pension age.
10. The 1990 booklet for the Crosland Scheme provided the same information about the temporary pension. It also stated that members could increase the temporary pension by reducing the permanent pension or convert the temporary pension into permanent pension. Members were told that a full explanation of the methods of conversion was available on request. They were also told that the total pension was limited to two-thirds of their annual earnings.
11. Mr S has also provided a copy of an undated booklet relating to the Filtrauto Scheme. The booklet post-dates the 1997 changes in contracting-out. This booklet states:

“Members who joined the Scheme before 1st January 1991 will receive a temporary pension from their date of retirement up to age 65 (State Retirement Age), subject to Revenue limits.”

12. The relevant rules are contained in a Definitive Trust Deed and Rules dated 28 July 1998. The temporary pension is defined as:

“... the pension calculated at the rate of £45 for each year of Pensionable Service up to a maximum of £900 and payable to a Member who joined the Scheme before 1st January 1991 between Normal Retirement Date and State Pension Age.”

13. Rule 13.5 provides:

“On the retirement from service under this Rule of a Member who joined the Scheme before 1st January 1991 there shall be payable to such Member ... a Temporary Pension in addition to any other pension payable under this Rule upon the following terms and conditions:

- (a) the Temporary Pension shall commence at Normal Retirement Date or on the actual retirement of the Member, whichever ever [*sic*] is the later, and shall cease on the Member attaining State Pension Age;
- (b) a Member may elect by notice in writing to the Trustees to have his Temporary Pension increased by such amount as is determined by the Actuary in lieu of a reduction of the pension payable to him under Rule 13.1 or 13.2;
- (c) a Member may elect by notice in writing to the Trustees to have the whole of his Temporary Pension converted into a pension payable for life commencing on the date of his actual retirement and upon such terms as are certified by the Actuary to be reasonable;
- (d) the provisions in (a) to (c) shall apply to a Member entitled to a Temporary Pension who retires under Rule 13.3(a) [Retirement before Normal Retirement Date with the employer’s consent].”

14. Rule 20.1(a) provides for a pension in payment to be increased by the lower of 5% per annum compound or in proportion to the increase in the “Index” which has occurred over the previous year.

15. Mr S’ temporary pension commenced with effect from May 2016 at the rate of £900 per annum. It was increased to £923.40 per annum with effect from 1 April 2017.

Mr S’ position

16. The main arguments made by Mr S are summarised below. They are taken from his internal dispute resolution submissions and his application to the Pensions Ombudsman:-

- The amount of temporary pension payable under the Filtrauto Scheme should be equivalent to that which he would have been paid under the Lucas Fund.

He refers to the 1988 Options Document, which stated that the Crosland Scheme had been set up on a no less favourable basis to the Lucas Fund.

- The temporary pension paid under the Lucas Fund increased year on year. He refers to the 1979 Lucas Fund booklet which stated the temporary pension would be £15 per year of pensionable service, limited to a maximum of 20 years. He refers to the deferred benefits statement provided with the Options Document, which stated the deferred pension after 8 years and 4 months' service included a temporary pension at retirement of £360 (£45 per year of service). He then refers to the Options Document which stated that the current value of the temporary pension was £45 per year of pensionable service to a maximum of £900 per year.
- The Options Document stated that the Lucas Fund trustees would transfer sufficient funds for the Crosland Scheme to provide final salary benefits for service up to 1 June 1988. The benefit statement contained within the Options Document quoted a temporary pension of £360. It also stated that pension in excess of the GMP would increase by the lesser of 5% or RPI. The temporary pension should now be worth £856.54. He has a right to a temporary pension of £892.23 derived solely from the funds transferred from the Lucas Fund.
- Although the Trustees informed him that the maximum temporary pension was £900, he is now being paid £923.40. He suggests that this indicates that the maximum figure can be overridden by other clauses within the Scheme rules.
- The option to remain a deferred member of the Lucas Fund and join the Crosland Scheme for future service was not offered in 1988. He states that figures now available show that this would have been the best option. He asserts that the threat of the loss of membership of the Crosland Scheme was used to force members to transfer from the Lucas Fund. He argues that this was contrary to the Transfer of Undertakings regulations which required the new employer to maintain transferred employees' terms and conditions.
- At no time has he been given notice that any of his rights or benefits have been altered.
- The published information does not convey to a reader that the temporary pension was frozen at its June 1988 level. For example, with regard to future alterations to the rules, the Options Document stated that "rights earned by the members to date cannot be affected by any such future decision". Former members of the Lucas Fund would have been familiar with the fact that the amount of temporary per year of pensionable service increased over time. The Options Document referred to the multiplier being "currently" £45 for each year of pensionable service. This concealed the fact that the amount had been frozen. The members were given verbal assurances that the temporary pension would increase. He acknowledges that there is no record of these assurances other than those contained in the Options Document.

- He was required to contact the Filtrauto Scheme administrators before his temporary pension was paid. He points out that his date of birth is in November 1953 and the first month in which payment should have been made was May 2016. He states that the Trustees had failed to make two payments before he contacted the administrators.
- The Crosland Scheme 1990 booklet stated that, if a member retired early, full details of the options to spread the temporary pension over the period from early retirement to State pension age or surrender part of the permanent pension would be given at early retirement. He was not provided with this information.
- The Trustees have a duty to obtain the most beneficial outcome for a member and they have failed to do so in his case. He has referred to guidance issued by The Pensions Regulator.

17. Having received an opinion from one of our Adjudicators, Mr S made some further comments:-

- The only evidence considered has come from him.
- The Trustees have previously been in breach of a promise concerning Additional Voluntary Contributions (**AVC**) and have admitted this.
- He has not suggested that liability should rest with this Filtrauto Scheme; only with the Trustees in person.

The Trustees' position

18. The key points in the Trustees' submission are summarised below:-

- They are required to provide members with the correct benefits in line with the Filtrauto Scheme rules.
- Mr S has 25 years' pensionable service and his temporary pension is capped at £900 payable from his normal retirement date. Once in payment, the temporary pension is increased in line with the pension increase rule.
- Mr S' temporary pension was due to be paid towards the end of May 2016. This date was after the cut-off date for the June 2016 pensioner payroll. Mr S' temporary pension was, therefore, paid in July 2016 and backdated.
- The Filtrauto Scheme administrators have confirmed that Mr S telephoned them on 9 June 2016 to query why he had not received his temporary pension. They wrote to Mr S, on 13 June 2016, confirming that the temporary pension was due.
- The Filtrauto Scheme administrators have a procedure to check, on a monthly basis, whether any temporary pensions are due. The previous administrators

had missed some temporary pensions but an exercise was undertaken in 2012 to ensure all pensions were paid, including any arrears due.

Adjudicator's Opinion

19. Mr 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 below:-

- The starting point for any dispute as to the level of benefits payable under an occupational pension scheme is the scheme rules. It is the scheme's governing documentation which dictated which benefits the trustees may pay and under what circumstances. Unless there was a specific legal and/or statutory override, the trustee could not pay benefits unless they were provided for in the scheme rules.
- In Mr S' case, the relevant document was the Definitive Trust Deed and Rules dated 28 July 1998. This provided for a maximum temporary pension of £900 to be paid for a member with in excess of 20 years' pensionable service, who joined before 1 January 1991. Once in payment, the temporary pension was subject to annual increases under rule 20.1(a). Mr S had been paid a temporary pension of £900 per year, increased to £923.40 from April 2017. This was in line with the Filtrauto Scheme rules.
- Mr S' argument was that the Filtrauto Scheme rules were required to mirror the Lucas Fund rules. He argued that the Lucas Fund rules provided for the rate of temporary pension per year of pensionable service to increase over time. The temporary pension provided for under the Filtrauto Scheme rules mirrored the temporary pension provided under the Lucas Fund rules as at 1 June 1988.
- Mr S had based his argument on the fact that the 1979 Lucas Fund booklet had referred to a rate of £15 per year of pensionable service; whereas, by 1988, this had increased to £45 per year of pensionable service. However, there was no reference to increasing the rate of temporary pension in the 1979 booklet. The booklet had contained a table showing rate of pension against years of pensionable service at the rate of £15 per year of pensionable service. If there had been provision for regular increases in the rate of temporary pension, the expectation would be for this to be referred to in some way. Alternatively, the booklet might be expected to indicate the date at which the £15 rate applied.
- Clearly there was an increase in the rate of temporary pension between 1979 and 1988. However, this did not evidence a requirement for year-on-year increases.
- The Adjudicator noted Mr S' reference to the Transfer of Undertakings (**TUPE**) regulations. In 1988, the relevant statutory provisions were contained in the

Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI1981/1794). Regulation 5 provided that a relevant transfer would not operate so as to terminate an individual's contract of employment. The transferring employer's rights, powers, duties and liabilities under the contract of employment transferred to the receiving employer. However, regulation 7 provided that this would not apply "to so much of a contract of employment ... as relates to an occupational pension scheme".

- Mr S' transfer pre-dated the leading legal judgment, in the European Court of Justice¹, which provided some clarification as to what pension rights did or did not transfer under TUPE. However, the judgment related to the 1981 TUPE regulations and was, therefore, relevant to Mr S' case. Briefly, it was found that benefits for "old age, invalidity or survivors" did not transfer. The case in question concerned benefits payable when a member was made redundant. In the Adjudicator's view, the temporary pension payable when a member reaches age 62½ would be classed as an "old age" benefit and, therefore, did not transfer under TUPE in 1988. Any link with the Lucas Fund, therefore, ceased in June 1988.
- Mr S had referred to the Options Document issued to transferring members in 1988. In the section outlining the benefits payable under the Crosland Scheme, the Options Document had stated that a temporary pension would be paid between the ages of 62½ and 65. It had said the pension would be calculated in accordance with a scale depending upon pensionable service. It had said the scale was "currently, £45 for each year of pensionable service with a maximum of £900". Mr S had drawn attention to the use of the word "currently". The Adjudicator acknowledged that this wording did not suggest that the rate of temporary pension was necessarily fixed at the 1988 rate. However, in her view, neither did it amount to an unambiguous promise to review the rate of temporary pension at any time; much less on a regular or year-by-year basis.
- The no less favourable basis referred to in the Options Document was in relation to the Lucas Fund as it stood in June 1988. This was specifically stated on page 3 of the Options Document; in the same paragraph as the reassurance that any future decision to change the terms of the Crosland Scheme could not affect rights earned by members to date. Mr S' right under the Lucas Fund as at June 1988 was to a temporary pension, payable at age 62½, of £45 per year of pensionable service up to a maximum of £900. This was exactly what he had received from the Filtrauto Scheme.
- Mr S had complained that he had been required to contact the Filtrauto Scheme's administrators before his temporary pension was put into payment. The Trustees had explained that this was a matter of timing in relation to the

¹ *Katina Beckmann v Dynamco Whichloe Macfarlane Limited* [2002] 64 PBLR

pensions payroll. Mr S' temporary pension was not due to come into payment until towards the very end of May 2016. It was not uncommon for payrolls to have a cut-off point mid-way in the month in question for setting up new payments. Mr S' first payment was made in July 2016 and backdated. In the Adjudicator's view, this did not amount to maladministration.

- The fact that Mr S made contact with the Filtrauto Scheme administrators when he expected his temporary pension to come into payment argued against the claim that the existence of this benefit had been concealed in any way.
- Mr S had also complained that he was not provided with information about increasing or surrendering his temporary pension. He had pointed out that this was promised in the 1990 Crosland Scheme booklet. Mr S opted to take early payment of his deferred benefits in January 2007. He had clearly been made aware, via the booklet, that there were such options but there was no evidence that he had sought to explore them further at the time. Whilst it may have been helpful for information about these options to have been provided, there was no evidence that Mr S had suffered any injustice as a consequence of not having been provided with such details. If he had been interested in either option, it was open to him to seek further detail. That he did not do so gives the impression that this was not something he was interested in pursuing.
- The Adjudicator explained that she had not considered Mr S' submissions relating to the options which were made available to him in 1988. In particular, he had argued that he should have been given the option to retain deferred benefits in the Lucas Fund whilst remaining a member of the Crosland Scheme for future service. Mr S was of the view that this would have been the best option for him. In the Adjudicator's view, this matter fell outside the three years within which an individual was meant to apply to the Ombudsman. Mr S was aware that this option was not on offer in 1988.
- The Adjudicator said it was not entirely clear what Mr S meant by the Trustees' duty to obtain the most beneficial outcome for a member. The Trustees must pay benefits in accordance with the Filtrauto Scheme rules and the surrounding pensions legislation. The Trustees had a fiduciary duty to act for the beneficiaries of the Filtrauto Scheme, rather than for themselves. They also had a duty, arising under statute and common law, to act with care and skill in the administration of the Filtrauto Scheme. Mr S may have had in mind the requirement for the Trustees to act in the best interests of the beneficiaries. The phrase 'best interests' is often misused, as the trustees' duty is to pay the benefits in accordance with the scheme deed and rules and to comply with all relevant legislation. When selecting investments they should act in the best financial interests of the members. So the Trustees cannot pay benefits which were not provided for in the Filtrauto Scheme rules.

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- The Adjudicator concluded that there were no grounds for upholding any part of Mr S' complaint against the Trustees.
 - In his correspondence with the Trustees and with the Ombudsman's office, Mr S had made some very serious accusations regarding the Trustees' conduct. The Adjudicator said she wished to make it clear that she had seen no evidence of any improper behaviour on the part of the Trustees in the administration of Mr S' temporary pension.
20. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S 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 main points made by Mr S for completeness.

Ombudsman's decision

21. In essence, Mr S is of the view that the temporary pension payable to him between the ages of 62½ and 65 should be higher than the £900 referred to in the Options Document. This view appears to be based on a belief that the Lucas Fund rules provided for year-on-year increases and that there was a requirement for the Filtrauto Scheme to mirror this. There is no evidence that either of these conditions exist.
22. The promise contained within the Options Document was for the Filtrauto Scheme to pay a temporary pension at the rate which was provided for by the Lucas Fund as at June 1988.
23. The Filtrauto Scheme was established under a trust. This is a legal relationship under which assets are placed under the control of trustees for the benefit of certain beneficiaries. It allows for the separation of the legal ownership of the assets and a beneficial interest in those assets. The trustees become the owners of the trust property as far as third parties are concerned and the beneficiaries can look to the trustees to manage the trust property for their benefit. The terms upon which the trustees may act are contained within the trust documents. In other words, the trustees are required to manage the trust assets in accordance with the terms and conditions laid out in the trust deed and rules.
24. The Filtrauto Scheme trust deed and rules set out the amount of the temporary pension and the terms under which it is paid. The definition of the temporary pension states that it shall be £45 for each year of Pensionable Service up to a maximum of £900. It is then subject to rule 20.1(a), which allows for it to be increased by the lower of 5% per annum compound or in proportion to the increase in the "Index" which has occurred over the previous year. This is the amount of temporary pension which the Trustees are allowed, under the terms of the trust, to pay Mr S.
25. Therefore, if a higher pension amount is not provided for in the Filtrauto Scheme rules, there would have to be some overriding requirement under law or statute which allowed the Trustees to pay a higher amount.

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26. Mr S has referred to the TUPE legislation. However, there is a pension exception in regulation 7 which means that benefits for old age, invalidity or survivors do not transfer. I find that the temporary pension is an old age benefit and did not transfer under the TUPE legislation.
27. There is no other statutory or legal requirement for the Trustees to pay Mr S more than is provided for in the Filtrauto Scheme rules. It is true that there are both legal and statutory duties which trustees must fulfil. For example, the Trustee Act 2000 imposes a statutory duty for trustees to act with reasonable care and skill in carrying out certain functions. In addition, there is a well-established body of caselaw² requiring trustees to act with prudence. If anything, these statutory and legal obligations reinforce the position that the Trustees must act in accordance with the rules of the Filtrauto Scheme.
28. Given that the benefits payable to Mr S are those provided for under the Filtrauto Scheme rules, there is no need for me to consider the rules of the Lucas Fund. I would say, however, that the information contained in the booklets referenced by Mr S are not indicative of there being year-on-year increases.
29. Therefore, I do not uphold Mr S' complaint.
30. I have not commented on Mr S' allegation relating to the AVC provisions because this did not form part of the complaint which was accepted for investigation. Nor is it directly relevant to Mr S' claim for a higher rate of temporary pension.

Anthony Arter

Pensions Ombudsman
2 October 2018

² Speight v Gaunt [1883] EWCA Civ 1 (20 January 1883)