

Ombudsman's Determination

Applicant	Mr R
Scheme	Arup UK Pension Scheme (the Scheme)
Respondent	The Trustee of the Scheme (the Trustee)

Outcome

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

Complaint summary

2. Mr R has complained that his benefits have not increased in line with inflation.
3. Since 2008, Mr R has received regular Scheme Reviews that said his deferred pension was being increased annually and would continue to be increased after retirement. However, the Scheme Reviews did not reflect the Trust Deed and Rules (**the Scheme Rules**); so, his benefits were not subject to the increases.
4. Mr R said that he would have made additional voluntary contributions (**AVCs**) had he known that his deferred benefits were not increasing in line with inflation.

Background information, including submissions from the parties

5. Between 1 April 1978 and 31 January 1985, Mr R was an active member of the Scheme.
6. On 1 February 1985, the Trustee wrote to Mr R outlining the options available to him. Mr R had the option to transfer his accrued benefits to his new employer's scheme or defer his benefits within the Scheme until his Normal Retirement Date (**NRD**). The letter also said:

“The Trustee will review the paid-up pension annually and discretionary increases may be awarded both up to and after [NRD].”
7. The letter also included a note that explained his Guaranteed Minimum Pension (**GMP**):

“The GMP is broadly equivalent to the earnings related component of the State pension, and ensures that a member is no worse off as a result of contracting-out. After age 65, (women 60) the GMP is inflation proofed by the Government.”

8. Section G.3.04(2) of the Scheme Rules states that increases are only applied to pension entitlement in excess of the GMP (**excess pension**). This section is included in the Appendix.
9. On 1 February 1985, Mr R joined Marchant Filer Dixon’s Staff Benefits Plan (**the Marchant Plan**). London & Manchester (Pensions) Ltd (**L&M**) was the administrator.
10. On the same day, the Trustee wrote to L&M and requested confirmation that the Marchant Plan was also contracted-out of the State pension. It needed this information as Mr R was considering transferring his Scheme benefits to the Marchant Plan.
11. On 16 April 1986, L&M declined to accept the transfer of Mr R’s benefits from the Scheme, as the transfer value offered did not cover the GMP liability.
12. In November 1986, the Trustee wrote to Mr R. It said that it:

“decided to review the value of deferred pensions annually and, although no guarantees can be given, it is the Trustee’s aim to provide some measure of protection against inflation during the deferred period and, subsequently, when the pension comes into payment.”
13. The Trustee went on to say that increases would be discretionary. The Trustee explained that Mr R’s deferred benefit entitlement, payable from his NRD, had increased from £5,865.67 per annum to £5,874.28 per annum.
14. In April 1989, the Trustee wrote to Mr R. It confirmed that his deferred benefit entitlement had increased to £5,919.68 per annum. It said that the increase was discretionary, and members would only be notified about increases every three years.
15. On 19 May 1989, the Trustee wrote to Smith Adams (Life & Pensions) Ltd (**Smith Adams**), Mr R’s financial advisors. It confirmed that all of Mr R’s contributions were made between 1 April 1978 and 31 January 1985. It also confirmed a transfer value of £5,401.37.
16. On 16 August 1989, the Trustee wrote to Mr R and provided an illustration of the benefits available upon retirement. The Trustee said that the Scheme would provide benefits of £5,919.68 per annum. It went on to say:

“...pension entitlement in excess of GMP is reviewed by the Trustees each year up to retirement date with the aim of providing some measure of protection against inflation.”

And;

“after State Pension Age the GMP is fully inflation protected by the Government in line with the Retail Prices Index.”

17. Smith Adams advised Mr R to leave his benefits within the Scheme.
18. In December 1992, the Trustee wrote to Mr R to advise him of a discretionary increase. This document said that it would review deferred pensions every year, but details of discretionary increases would only be notified to members every three years.
19. On 1 April 1999, Scheme members, including Mr R, received an additional discretionary increase of 8% on their excess pension. The Trustee referred to this as a special increase.
20. On 22 July 1999, Mr R had a meeting with an Independent Financial Advisor (**the IFA**). On 28 July 1999, the Trustee provided a statement of benefits due to be paid from age 65. It said:

“The current deferred pension amounts to £6,198.79 per annum payable at age 65 (inclusive of revalued GMP of £5,435.04 per annum). This takes into account discretionary increases to 1 April 1999.”
21. Having reviewed this document, the IFA advised Mr R not to transfer his Scheme benefits, as they were guaranteed.
22. Between 12 September 2002 and 3 December 2008, Mr R was a member of the Scottish Equitable Reflex Scheme.
23. In 2006, the Trustee issued an Annual Report. This said:

“Final Salary Scheme Pensions are reviewed annually on 1 April in accordance with the Scheme Rules, which guarantees annual increases in line with changes in the RPI up to a maximum of 5% for benefits earned up to 30 September 2006.”
24. In 2008 the Trustee provided members with a newsletter (**the 2008 Newsletter**). This said:

“Deferred pensions (i.e those where the member has left the Scheme but not yet taken pension benefits) are increased under statutory requirements. These are linked to legislation on Guaranteed Minimum Pension elements and increases in the RPI measured September to September each year.”
25. The Trustee wrote a Scheme Review for the year ending 5 April 2010 (**the 2010 Review**). The 2010 Review included a section that explained the increases that applied to a pension in payment. It said:

“If you are already receiving your pension, you will know that it is reviewed annually on 1 April in accordance with the Scheme Rules.

The Rules guarantee annual increases in line with changes in the Retail Prices Index (**RPI**), December to December, up to a maximum of 5% for benefits earned up to 30 September 2006, and 2.5% per annum for benefits earned thereafter. The RPI rose by 2.4% over the year with the award being 2.4% for both pre-October 2006 pensions and post-October 2006 pensions.”

26. The Scheme Review for the year ending 31 March 2011 (**the 2011 Review**), said that deferred members would receive increases once their pension was in payment. It also said that increases would align with the Consumer Prices Index (**CPI**) and that, going forward, there would be increases broadly in line with inflation until the benefits were put into payment.
27. On 4 December 2012, the Trustee wrote to Mr R and said that his pension was preserved at his date of leaving and would receive increases in line with inflation until the date his benefits were calculated for payment.
28. On 29 January 2013, Mr R had a meeting with the IFA, where he supplied all correspondence relating to the Scheme from 1985 onwards. Consequently, on 31 January 2013, the IFA wrote to him and said:

“I will complete a pension analysis of your pension schemes, excluding the Arup scheme as the Arup scheme has so many guarantees.”
29. On 7 May 2013, Mr R met the IFA to discuss retirement options. He was told that the Scheme was in deficit, so he should postpone his retirement to age 65, the NRD.
30. The Scheme Review for 2014 said that once a pension has been put into payment it would increase in accordance with the Scheme Rules. It said that pension benefits in excess of the GMP would be increased in line with the RPI up to a maximum of 5% per year.
31. The Trustee wrote a Scheme Review for the year ending 31 March 2015 (**the 2015 Review**). This said:

“For benefits built up before the 30 September 2006, the Scheme Rules provide increases to the pension in excess of the GMP, that are in line with changes to the [RPI] up to a maximum of 5% a year. Benefits earned after this date increase by the increase in RPI up to a maximum of 2.5%. The GMP part of your pension is increased by reference to changes in the [CPI].”
32. On 22 September 2016, the Trustee wrote to Mr R and his IFA with a CETV quotation. The covering letter that accompanied the CETV explained the increase applied to benefits. It said that, whilst in deferment, the GMP element was revalued on a yearly basis at 8.5%. The pension in excess of the GMP, whilst in deferment, would be calculated in line with the RPI, for the years up to September 2010, or the CPI, from September 2010 onwards. Once the benefits were put into payment, the GMP would not be increased, as all Mr R’s benefits were accrued before 6 April

1988. Mr R said that this was the first time he heard that his GMP would not increase whilst in payment.

33. On 19 May 2017, the Trustee wrote to Mr R and provided a calculation of his benefits. It confirmed that when Mr R left the Scheme he had accrued rights to an annual pension of £789.79. This consisted of pre-1988 GMP of £368.16 per annum and an excess pension of £340.63 per annum. The GMP element was revalued at 8.5% per annum. The excess pension was increased using a discretionary uplift that totalled 82.3%. As a result of the increases, Mr R's annual pension amounted to £6,336.56.
34. Mr R complained that he should have been told that his GMP would not receive increases once it was put into payment. He has also complained that he has not received any increases to his excess pension since 2006. He has said that he was given incorrect information which meant that he thought both elements of his benefits were subject to increases.
35. On 11 August 2017, the Trustee issued a response under stage one of its Internal Dispute Resolution Procedure (**IDRP**). In reference to the increases that would be applied to the GMP, it said that the Scheme Rules, the February 1985 letter and the retirement quotations make it clear that pre-1988 GMP is not increased by the Trustee. It stated that it had made it clear that any increases would be provided by the Government. With regard to increases to the excess pension, both in deferment and in payment, it said that the Scheme Rules create an obligation to revalue non-GMP benefits in line with the statutory revaluation rules. Because Mr R left the Scheme on 1 February 1985, he was not entitled to guaranteed increases to the excess pension. It also said that it had made the decision to stop making discretionary increases in 2006.
36. On 7 November 2017, the Trustee issued a response under stage two of its IDR. It said that any inflation proofing once the GMP was in payment was to be paid by the Government, not the Scheme. It also said that the letters issued on 1 February 1985 and 16 August 1989 made this clear. In relation to the increases to the excess pension, it said that the letter issued on 1 February 1985 set out Mr R's options in respect of his benefits. The Trustee said that it is clear from the letter that his excess pension was subject to a discretionary increase, but there was no automatic right to the increase.
37. On 10 January 2018, Mr R brought the complaint to my Office. He said that he has suffered a financial loss in respect of any future inflation he expected to be covered by future increases to his GMP benefits. He also said that his excess pension has not increased since 2006, so he has missed out on 12 years of inflation proofing. Had he been notified of this at the time, he said he would have made additional AVCs to offset the loss.
38. On 22 May 2018, Mr R's benefits were put into payment.

Adjudicator's Opinion

39. Mr R'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:-

- Mr R has complained that he received incorrect information in relation to how his GMP would be increased once in payment. He has also complained about some information he received relating to the increases applicable to his excess pension.
- The letter dated 1 February 1985 informed Mr R that the GMP element was increased by the Government to allow for inflation., the Trustee wrote to him and explained that, "after age 65, (women 60) the GMP is inflation proofed by the Government".
- This was reiterated in the letter dated 16 August 1989, where the Trustee confirmed that, after NRD, the GMP is protected by the Government. The Adjudicator commented that both letters were specific to Mr R's benefits, so should have been considered as accurate indicators of how Mr R's benefits would increase.
- The Scheme Reviews repeatedly said that Mr R's GMP would be increased in line with inflation. Mr R said that it was reasonable to rely on the Scheme Reviews as it was the most up to date information, so it superseded the letters issued in 1985 and 1989. The Adjudicator said that the Scheme Reviews always said that the increases to pensions were made in accordance with Scheme Rules; so, Mr R should only have expected his GMP to increase in accordance with the Scheme Rules.
- The Adjudicator also said that the Scheme Reviews were produced as a Scheme-wide document. Whereas the letters issued in 1985 and 1989 directly referred to Mr R's individual benefits. So, he should have given them more weight.
- Mr R argued that he had continued to receive regular increases on the excess pension, but he has not received any increases since 2006.
- On 1 February 1985, the Trustee wrote to Mr R and explained that it would review his benefits annually and discretionary increases may be awarded both up to and after NRD. Sometime afterwards, in November 1986, the Trustee said that, although no guarantees could be given, it aimed to provide some measure against inflation. In April 1989, the Trustee notified Mr R of a further discretionary increase and told him that it would notify him of increases every three years. There were several further notifications of discretionary increases. From this, the Adjudicator was satisfied that it was clear that the excess pension was only subject to discretionary increases.
- Mr R has received regular financial advice since leaving the Scheme. The Adjudicator highlighted a letter that the Trustee sent to the IFA on 28 July 1999. This letter included a report that provided details of the discretionary increases for

the previous ten years. The Adjudicator said that he would have expected the IFA to understand that all increases were at the discretion of the Trustee.

- Mr R has said that the Scheme Reviews repeatedly said that his excess pension would be increased in line with inflation. Mr R has argued that this guidance was the most up to date information, so he felt it superseded the various correspondence issued between November 1986 and July 1999. Again, the Adjudicator did not believe this argument can succeed. Mr R was told on multiple occasions that increases to his excess pension were at the Trustee's discretion. Furthermore, when his excess pension was increasing, he was notified by the Trustee. If he was relying on a continuation of discretionary increases, the Adjudicator would have expected him to ask for regular updates.
- Mr R has said that if he had been aware that his excess pension had been frozen in 2005, he would have made additional pension arrangements. However, the discretionary payments were not frozen, the Trustee has said they were reviewed each year. It is not the Trustee's responsibility to forecast the increases and Mr R should not have relied on assumed discretionary increases in his retirement planning.
- The Adjudicator disagreed that it was reasonable for Mr R to rely on the Scheme Reviews, so he cannot say that financial loss flowed from the incorrect information. However, even if he was able show that it was reasonable to rely on the incorrect information, the Adjudicator did not think he had suffered financial loss. Mr R has said that, had he had known the increases were not going to be applied, he would have made additional contributions. In this case, insofar as he did not increase contributions, he has had the benefit of a higher income instead.

40. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

41. Mr R provided his further comments which do not change the outcome. He has argued that:-

- The Trustee has a duty of equal care to both active and deferred members. As such, the Trustee had a duty to warn him of changes that would impact on how his benefits were increased. On 29 May 2014, the Trustee wrote to members to advise them of changes instigated by the March 2014 budget. However, this did not mention the removal of inflation protection afforded to GMP benefits.
- The Adjudicator has put too much emphasis on his reliance on the Annual Scheme Reviews. Mr R said he received personal letters from the Trustee, accompanying the Annual Scheme Reviews, which reinforced his belief that his excess pension increased in line with inflation. The Trustee sent him a CETV quotation, in relation to his benefits on 22 September 2016, which disproves the suggestion that he only relied on generic documents.

- He also complained that the Adjudicator had not fully investigated the decision of the Trustee to halt any payment of discretionary increases. On 11 August 2017, the Trustee wrote to Mr R and told him that the practice of awarding discretionary increases to excess pension ceased in 2006. He said that this showed that the Trustee was refusing to even consider whether increases were suitable.
- He also complained about the way the special increase was paid. He said that the special increase he received in 1999 was treated as a pre-1997 excess, so it was frozen from the date discretionary increases stopped. He said that this was not equitable as active members' special increases would have continued to have received increases in line with the RPI/CPI.

42. The Trustee provided further comments. It argued that:-

- The Scheme Rules are not overridden by the Scheme Reviews. Scheme Reviews are only intended to give members a broad overview of the key features of the Scheme. The Trustee would not expect the IFA to have placed any reliance on them.
- The quotations in Mr R's response show that there was no guarantee of discretionary increases being paid. Therefore, any expectation of such an increase would be unreasonable on the basis of the information provided.
- The discretionary increases awarded in respect of the excess pension stopped being awarded once the Trustee knew of the extent of the funding deficit in the Scheme. As the Scheme is still in significant deficit, the recovery plan contributions made by the principal employer are being used to tackle this as a priority.

Ombudsman's decision

43. I agree with the Adjudicator's Opinion and note the additional points raised by Mr R.

44. Mr R has complained that his GMP will not increase during payment, which is not consistent with what he had been previously told. On 1 February 1985, the Trustee wrote to Mr R and told him that, after age 65 for male members, the GMP would be protected against inflation by the Government. A letter dated 16 August 1989 made it clear that the GMP, after NRD, is protected by the Government. As these documents were specific to Mr R's benefits, he should have given them significant attention.

45. Mr R has argued that the Scheme Reviews were the most up to date information, so they superseded the letters issued in 1985 and 1989. The Scheme Reviews repeatedly said that Mr R's GMP would be increased, when in payment, in line with inflation. The Scheme Reviews were general documents to all members, so they cannot be said to directly address Mr R's benefits. In addition, the Scheme Reviews also stipulated that increases to pensions are always made in accordance with the Scheme Rules. Given the discrepancy between the documents, I would have expected Mr R or the IFA to clarify the method of increase before relying on the

Scheme Reviews. I do not find it reasonable for Mr R to have relied on the Scheme Reviews, as they contradicted what he was told when he left the Scheme, and in documentation specific to his benefits.

46. Mr R has argued that, when he was sent the Scheme Reviews, there was more parity between the Scheme Reviews and the Scheme Rules. He says that the Scheme Reviews did not include a disclaimer that said that the Scheme Rules would take precedence. However, the Scheme Reviews did say that benefits would be paid in accordance with the Scheme Rules, so I do not find that this argument can succeed. Regardless, the IFA would have known that benefits, and any potential increases, can only be paid in accordance with the Scheme Rules.
47. I am satisfied that it was made clear to Mr R that any increases to GMP would be paid by the Government, not the Trustee. In April 2016, the new single-tier state pension was introduced. The effect of this was that Mr R's pre-88 GMP would no longer be increased in payment. Although I appreciate this would have been disappointing for Mr R, the Scheme Rules only provide for GMP increases to be paid by the Government. The Trustee cannot be responsible for the alteration in how the Government has dealt with pre-88 GMP increases.
48. On 29 May 2014, the Trustee wrote to all members to advise them of changes instigated by the March 2014 budget. Mr R has complained that the Trustee should have taken this opportunity to inform him that the Government would no longer apply increases to GMPs that were in payment. I do not find that the Trustee had a duty to inform Mr R of the impact of the changes to the way state pension is calculated.
49. Mr R has also complained that he was provided with incorrect information on how his excess pension would be increased in both deferment and in payment. He has argued that he was told that he would receive regular increases on the excess pension, but he had not received any increases since around 2005.
50. When Mr R left the Scheme, the Trustee wrote to him and said that it would review his excess pension annually and discretionary increases may be awarded, both up to and after NRD. In the years that followed, the Trustee provided several notifications of discretionary increases and said that it would continue to provide updates every three years. On 28 July 1999, almost 15 years after Mr R left the Scheme, the Trustee wrote to the IFA and provided details of all discretionary increases that had been applied to Mr R's deferred benefits in the previous ten years. So, I find that Mr R should have been aware that his benefits were to be increased on a discretionary basis.
51. Mr R argues that it was reasonable for him to believe that his excess pension would be increased in accordance with the 2008 Newsletter and the subsequent Scheme Reviews. In particular, he references the September 2016 CETV quotation, which was specific to his benefits. This said that his excess pension would be increased in accordance with either the RPI or the CPI. However, I do not find it reasonable for him to have relied on this. When he left the Scheme, Mr R was told that any

increases applied to his excess pension would be discretionary. On multiple occasions he did receive increases, but it was always made clear that the increases were at the Trustee's discretion. I find that Mr R and the IFA ought reasonably to have relied upon the information given to Mr R in documentation addressed specifically to him about his benefits.

52. Mr R has also complained about the halting of discretionary increases around 2005. He said that there is no evidence to suggest that the Trustee thoroughly considered whether increases should be paid. However, the Trustee has explained that there was a funding deficit in the Scheme, so it was no longer able to make discretionary increases. The Trustee has a responsibility to manage the overall funding of the Scheme, so I find it reasonable that it chose to cease discretionary increases while the Scheme was in deficit.
53. Mr R has argued that the special increase applied on 1 April 1999 was unfair on deferred members. He said that his increase had been applied as a pre-1997 increase, so it was only subject to discretionary increases. Whereas active members' discretionary increases would have been protected against inflation by increases in line with the RPI/CPI. Mr R is only entitled to increases in accordance with the Scheme Rules, so he was only due to receive discretionary increases. The special increase was provided to all members, so did not differentiate between deferred and active members. How those benefits were then increased depended upon the rules in place for each respective member. I do not find this to be discriminatory.
54. I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman

27 August 2020

Appendix

Rule G3.04(2)

“Where a person’s guaranteed minimum pension under the Scheme has come into payment at State Retirement Age, an increase shall be made under Rule G3.01 only on such part of that pensions as exceeds his guaranteed minimum pension.”