

Ombudsman's Determination

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| Applicant | Mr Z |
| Scheme | Carrier UK Pension Scheme (the Scheme) |
| Respondents | Carrier Pension Trustee Limited (the Trustee) Buck Consultants (Administration and Investment) Limited (the Administrator) Toshiba Carrier UK Limited (the Company) |

Outcome

1. Mr Z's complaint is partly upheld. To put matters right for the part that is upheld, the Trustee shall pay Mr Z's Guaranteed Minimum Pension (**GMP**), backdated to the date he became entitled to his GMP, together with interest at the base rate for the time being quoted by the Bank of England, for the period from when Mr Z became entitled to his GMP to the date of payment, inclusive.

Complaint summary

2. Mr Z's complaint is two-fold. His first complaint concerns the loss of pension benefits for the years 1979 to 1983, while his employment was contracted-out of the State Earning Related Pension Scheme (**SERPS**). He believes that he is entitled to a GMP from the Scheme for the period he was contracted-out.
3. His second complaint concerns the distress and inconvenience he has experienced, while trying to resolve his first complaint. He believes he should be awarded a financial sum for this.

Background information, including submissions from the parties

4. Mr Z worked for Caricor Limited (**Caricor**) from 1979 to 1983. Caricor is part of the United Technologies Corporation (**UTC**).
5. In October 2016, Mr Z contacted the Administrator. He said he had received a letter from HMRC informing him that he was entitled to a pension from the Scheme. He explained his employment history and asked the Administrator to confirm his pension entitlement under the Scheme.

6. On 1 November 2016, HMRC wrote to Mr Z and said:

“On the attached pages you will find details of the Contracted Out Salary Related (COSR) employer’s pension schemes that you have been a member of up until 5 April 2016.

If you were contracted-out before 6 April 1997 your pension scheme is required to ensure that weekly pension due to you from the scheme is no less than the Guaranteed Minimum Pension (GMP). The GMP is the minimum amount of pension that your pension scheme must pay you for the period you were contracted-out of the additional State Pension...

The Pension Service have already made a deduction to take account of the time that you were contracted-out of the additional State Pension...”

7. HMRC’s letter informed Mr Z that he was entitled to a weekly GMP of £22.74 from the Scheme.
8. On 24 November 2016, Mr Z sent a further letter to the Administrator, enclosing HMRC’s letter. He asked the Administrator to sort out the payment of his GMP “without further delay.”
9. Between 28 April 2017 and 26 May 2017, there was various correspondence between Mr Z and the Administrator concerning his provision of evidence that he was entitled to a pension from the Scheme. On 26 May 2017, the Administrator wrote to Mr Z and said:

“Following a review of our records, we have been unable to locate a benefit for you under the Scheme. Under the Rules of the Scheme, in force at the time that you ceased employment, a member with less than 5 years’ pensionable service would not have the option of retaining a benefit, and instead, a refund of contributions would have been paid.

The document provided by HM Revenue & Customs (HMRC) is not evidence of a benefit being retained within the Scheme. I would therefore be grateful if you could forward any documentation that you may hold, such as a statement of entitlement issued at the time that you left the company, as evidence of a benefit under the Scheme.”

10. On 31 May 2017, Mr Z replied to the Administrator and said that it being unable to locate a benefit for him did not mean that such a benefit did not exist. He said he had not received a refund of any contributions he paid into the Scheme or a statement of entitlement when he left Caricor’s employment. However, he had previously provided payslips to show that he was employed by the Carrier Group. He also did not accept that HMRC’s letter was not evidence of his entitlement to benefits from the Scheme.

11. On 15 June 2017, Mr Z complained to the Trustee under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
12. Between 27 June 2017 and August 2017, the Trustee made enquiries with HMRC, to try and establish what had happened to Mr Z's benefits. HMRC informed the Trustee of the Employee Contracted Out Number (**ECON**) that was associated with Mr Z's benefits and explained that the ECON related to another employer, Carlyle Air Conditioning Company Limited (**Carlyle**).
13. The Trustee did not recognise the ECON as being associated with the Scheme so it requested, from HMRC, a list of the Scheme Contracted Out Numbers (**SCON**), that the ECON had been linked to.
14. In response, HMRC explained that it was unable to provide a list of the SCONs. However, it informed the Trustee that there had been a change in the Responsible Paying Authority (**RPA**), where the SCON had been changed to that of the Scheme but the ECON had remained the same. HMRC also informed the Trustee that the RPA notification had been received from the Carlyle Air Conditioning Company Limited Employee Benefit Plan (**the Plan**).
15. During the same period, the Trustee also made enquiries with former trustees and members of the Scheme, who were previously members of the Plan, to try and establish what had happened to the Plan. The individuals they contacted were unable to provide any information, although, a previous Plan member informed the Trustee that a new scheme had been set up in 1983/1984 for employees of Duckworth Engineering Systems (**DES**) and Carlyle.
16. On 13 September 2017, the Trustee replied to Mr Z, not upholding his complaint. While it accepted that Mr Z was employed by Caricor between 1979 and 1983 and that he was contracted-out of SERPS during that period, it said:

“The Trustee has reviewed documentation in its possession regarding the Scheme and made enquiries [with the Administrator]. From the information that this has yielded the Trustee has learned that:

 - i) Employees of Caricor Ltd were not given access to the Scheme until 1 June 1985; and
 - ii) Up until 31 May 1985 Caricor Ltd employees participated in the Carlyle Air Conditioning Company Limited Employee Benefits Plan which is completely separate from the Scheme.

[The Administrator holds] no record of you ever becoming a member of the Scheme, or of you having any entitlement to benefits from the Scheme. Given your employment dates, this would be consistent with Caricor Ltd employees not being admitted to the Scheme until 1 June 1985.”
17. The Trustee said it believed Mr Z was a contributing member of the Plan however, it did not have any information regarding the Plan despite making enquiries. The

Trustee explained that it believed HMRC had incorrectly linked Mr Z's GMP to the Scheme. However, it said it was willing to reconsider Mr Z's claim, if he could provide evidence of his membership in the Scheme.

18. At some point after receipt of Mr Z's complaint, the UTC Group Pensions Department (**the Pensions Department**) reviewed its internal files for evidence of legacy pension arrangements. It located a withdrawal statement from Legal and General (**L & G**) for the DES Pension Scheme (**the DES Scheme**), from an individual who was trying to locate his preserved pension benefits.
19. On 15 January 2019, the Pensions Department contacted L & G to request any information it had in relation to the Plan. In April 2019, L & G replied that based on the information provided, it could not find the policy. However, the query had been referred to another department within L & G and if it found anything it would be in touch.

The Company's position

20. The Company says:-

- Although the Company and Caricor are part of UTC, it has no direct link to Caricor. Therefore, it is not responsible for making good Mr Z's claim for a GMP, if that claim is successful. That said, it is authorised by UTC to respond on behalf of Caricor and the UTC group.
- Mr Z has provided evidence in the form of P60s from 1982 and 1983 and HMRC's letter of 1 November 2016, to prove that (i) he was employed by Caricor, (ii) superannuation contributions were deducted and (iii) he was also contracted-out of SERPS during that period. However, the Company does not accept that this means Mr Z is entitled to a GMP from the Scheme.
- The Company rejects Mr Z's claim for a GMP from the Scheme as it has no record of his membership in the Scheme.
- The HMRC letter is not "irrefutable" evidence that Mr Z has a GMP in the Scheme. While it is a relevant document, historical HMRC records have been known to be incorrect, and when considered alongside other relevant factors, it believes that HMRC's records are likely to be incorrect in respect of Mr Z.
- Up to 31 May 1985, it understands that Caricor employees were eligible to join the Plan. However, neither it nor the Trustee has a record of the Plan. Therefore, it cannot say with certainty whether Mr Z was a member of the Plan. Nevertheless, as Mr Z was in contracted-out employment with Caricor, the Company is willing to accept that, on balance, Mr Z was a member of the Plan during his employment with Caricor.
- Caricor employees were not permitted to join the Scheme until 1 June 1985, as per the Scheme Rules (**the Rules**). As Mr Z left Caricor's employment in 1983, he would not have been eligible to join the Scheme and his benefits would have

remained in the Plan. This is supported by the fact that Caricor did not start to participate in the Scheme until 1985, as shown by the deed of adherence dated 29 November 1985, which is listed in the third schedule of the Rules.

- There is no evidence that Mr Z's benefits in the Plan were transferred to the Scheme in error in 1985.
- If Mr Z does have a GMP entitlement, this should sit with the Plan. However, it is unlikely that Mr Z retained any accrued benefits in the Plan because preservation law at the time, as set out in the Social Security Act 1973, stated that members must accrue five years' pensionable service to have a preserved pension in an occupational pension scheme.
- As Mr Z had less than five years' pensionable service when he left Caricor's employment he had no right to a preserved benefit, including a GMP. Instead, Mr Z is likely to have been paid a refund of contributions and should have been fully reinstated into SERPS through the payment of a contribution equivalent premium (**CEP**).
- While it is possible the rules of the Plan, in 1983, may have permitted members who had less than five years' pensionable service to retain a preserved pension in the Plan, it has no information regarding the Plan to confirm this. It would have been unusual for schemes at the time to apply anything other than the statutory minimum preservation requirements.
- While the Company does not believe Mr Z is entitled to a GMP from the Scheme, or the Plan as it is likely that the Plan would have paid a CEP, it recognises this is an unsatisfactory outcome for Mr Z as he will receive a reduced State Pension. Therefore, to remedy the situation, it is willing to make a one-off payment to HMRC to reinstate Mr Z into SERPS for the period he was contracted-out while employed by Caricor.
- The Company does not agree with Mr Z's alleged financial loss because it does not accept that he is entitled to a GMP from the Scheme. Further, if HMRC accepts the CEP to restore Mr Z into SERPS, HMRC should be liable for providing the backdated payments of the State pension, plus interest, to Mr Z's State Pension Age (**SPA**).
- Mr Z's claim for compensation for the distress and time costs of £9,760 are excessive and not in line with the Ombudsman's guidance for redress for non-financial injustice. The Company had responded swiftly to Mr Z's complaint so does not feel it should be liable for any award to Mr Z for distress and inconvenience.

The Trustee's and the Administrator's positions

21. The Trustee and Administrator provided a joint response to Mr Z's complaint. They provided a copy of the Rules and reiterated most of the points the Company had

made concerning why they do not think Mr Z is entitled to a GMP from the Scheme. They also provided evidence of the steps they took to establish if Mr Z was entitled to any benefits from the Scheme and made the following additional comments:-

- The letter HMRC sent to Mr Z dated 1 November 2016 refers to a SCON and an ECON. Despite making enquiries, the Trustee was unable to establish definitively which company the ECON related to, although it expected it related to Caricor. Nevertheless, the ECON is not affiliated with the Scheme.
- They believe the most likely explanation is that HMRC incorrectly recorded members relating to the ECON against the Scheme's SCON, instead of making the distinction between (i) individuals who joined the Scheme from the Plan in 1985 and (ii) individuals, such as leavers, who could not have joined the Scheme at that time because they had no preserved pension rights and were no longer members of the Plan.
- In the absence of evidence to show that Mr Z was a member of the Scheme, they consider that it would be in breach of their duties and legal obligations to pay Mr Z a benefit to which they believe, based on the Scheme's records, he is not entitled to.
- Despite making enquiries, including contacting HMRC, The Pensions Advisory Service in relation to the pension tracing service and former trustees and employees, it has been unable to establish what happened to the Plan.
- The Plan is not on the list of schemes which have entered the Pensions Protection Fund. Given the lack of information available about the Plan, the Trustee considers that it was likely that the Plan was wound-up.
- The Trustee and Administrator have checked the Scheme's records. Only 14 individuals, including transferring members of the Plan, joined the Scheme on 1 June 1985. However, none of those individuals matched information Mr Z provided concerning his employment dates and the identity of his employer.
- Mr Z has not provided any evidence that he was ever a member of the Scheme. The P60s Mr Z provided are in relation to his employment with Caricor for the years ending April 1982 and 1983. While the P60s evidence that Mr Z was paying pension contributions, it is likely that these were paid to the Plan.
- It is also likely that because Mr Z was a member of the Plan for less than five years, a CEP would have been paid to reinstate him into SERPS.
- As Mr Z is not entitled to a GMP from the Scheme, no arrears of payment are owed to him.
- While they understand that the discrepancy between HMRC's and the Scheme's records would have caused confusion for Mr Z, they have done everything they could to provide Mr Z with a clear explanation as to why they consider he is not

entitled to a GMP from the Scheme, as well as why the discrepancy in HMRC's records may have arisen.

- They have not acted inappropriately or in breach of their duties and consequently they should not be liable to pay compensation to Mr Z for any distress this issue has caused him, or the time he has spent on the matter.
22. Following receipt of the Company's, Trustee and Administrator's responses to the complaint, there was further correspondence between my office, the Trustee, the Company and Mr Z.
23. Mr Z said the "response from [the Administrator] is nothing short of an attempt to deny responsibility." He said it is not his fault that the Administrator or Trustee is unable to find his records. He has provided evidence of his employment at Caricor. His claim is against UTC and not confined to one subsidiary.
24. The Company confirmed that it had not contacted HMRC to see if the option to make a one-off payment to reinstate Mr Z into the State Scheme in respect of his employment with Caricor was possible. This was because it was awaiting my Determination.
25. The Trustee said that:-
- It received the final cut of GMP reconciliation data from HMRC, and Mr Z's liability was reported as being held in the Scheme.
 - It had no evidence that Mr Z had received a refund of the contributions he had paid into the Plan. It only has records for the Scheme's members. It has no way of obtaining access to any information about the Plan.
 - HMRC confirmed that the Plan ceased to contract out on 31st May 1985.
 - It is unable to confirm if the 14 individuals who transferred to the Scheme on 1 June 1985 were active or deferred members of their previous schemes at the time. It is not necessarily the case that all those individuals transferred in benefits to the Scheme. There is insufficient information on the records to determine whether they were previously members of the Plan.
 - It does not have any information pertaining to the bulk or individual transfers from the Plan.
26. Although not a party to the complaint, HMRC provided the following information: -
- "Our records show [the Scheme] already holds liability for Mr Z from 6 April 1974 to 24 January 1983.

Mr Z was originally contracted-out with the Carlyle Air Conditioning Co Ltd S0316523J then a change of RPA (Responsible Paying Authority) was recorded transferring liability to [the Scheme]".

- HMRC does not have a copy of the form changing the RPA or any forms that transferred individual member's GMP liability.
- The original records for the Plan have long been destroyed.
- HMRC is unable to advise how many individuals have a GMP entitlement under ECON for the Plan and the Scheme's SCON, as it does not hold this information on its records.
- It can find no record that a CEP was ever paid for Mr Z. The time limits to record a CEP have now passed and it is no longer possible to record a CEP on HMRC's records.

Adjudicator's Opinion

27. Mr Z's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee. The Adjudicator's findings are summarised below:

- There was no dispute that Mr Z was employed by Caricor between 1979 and 1983, during which period he paid pension scheme contributions and was contracted out of SERPS. His period of employment suggests that he was a member of the Plan, not the Scheme.
- What was in dispute was whether Mr Z was entitled to a GMP from the Scheme. Mr Z believed he was entitled to a GMP from the Scheme because of the information he received from HMRC in 2016. However, the Trustee, Administrator and Company (**the Respondents**) disputed this, as they could find no record that Mr Z was ever a member of the Scheme.
- During the period of Mr Z's employment with Caricor, for individuals to be contracted-out of SERPS, a pension scheme had to provide a GMP and also had to meet the requisite benefits test. This was an overall scheme quality test which generally resulted in a minimum accrual rate that was above the GMP level. Members who were contracted out were subject to a deduction, roughly equivalent to the accrued GMP, from their State Pension entitlement.
- If a member who had accrued a GMP left service, the scheme had to secure the member's GMP by an approved method and submit the correct forms to the DWP (formerly DSS). This was the case even if the individual had not satisfied the preservation requirements and was only entitled to a refund of contributions under the scheme rules. Similarly, if a scheme surrendered its contracting-out certificate, it had to secure any GMPs it held at that point by an approved method and submit correct forms to the DWP (formerly DSS).

- GMPs could be secured by:
 - retaining them in the scheme;
 - transferring them to another scheme;
 - paying CEP for individuals who had not satisfied the preservation requirements, to reinstate them in SERPS; or
 - buying them out with an insurance company.
- During the period of Mr Z's employment with Caricor, the Social Security Act 1973 (**the Social Security Act**) was in force. Section 53 (2) of the Social Security Act states:

“Subject to the provisions of this Part of this Act, minimum personal pension must be provided for an earner in any case in which, on termination of a period of service is recognised pensionable employment...

(c) he attained the age of 26 and has at least 5 years' qualifying service accrued since the appointed day...”

- As Mr Z was in pensionable employment with Caricor for less than five years he was not entitled to a preserved pension from the Plan, as per the Social Security Act. However, it was usual practice at that time for scheme rules to provide that such early leavers should be reinstated into SERPS by payment of a CEP. The member should also have been paid a refund of his contributions less his part of the CEP, which was known as the Certified Amount.
- HMRC has no record of a CEP having been paid for Mr Z at that time, and Mr Z denies receipt of any refund of contributions. HMRC's records state that it received a notification of a change of RPA from the Plan to the Scheme in respect of Mr Z.
- The Rules establish a link between the Plan and the Scheme in that active members of the Plan, as at 31 May 1985, could join the Scheme on 1 June 1985. The Trustee confirmed that active members from the Plan did join under the Rules.
- The Plan surrendered its contracting-out certificate in 1985. As there was a process to follow in order to surrender a contracting-out certificate, action to surrender would have been in train before the surrender date. The Plan is presumed to have been wound up, but there is no evidence of any of the Plan's liabilities having been secured by means of an insurance policy in the name of the Plan or in the name of Mr Z.
- The Scheme has received the final cut of its GMP reconciliation data from HMRC and Mr N's liability has been reported as being held in the Scheme. HMRC's approach to “stalemate” enquiries that cannot be resolved (that is where, despite HMRC providing the information it holds on its records, a scheme still cannot trace

an individual as having been a scheme member) is that the scheme should accept HMRC records¹.

- In the Adjudicator's view, it was more likely than not, that the Plan's trustee failed to pay the CEP to reinstate Mr Z into the State Scheme after he had left service in 1983.
- HMRC confirmed that the time limit to record a CEP had passed. In the Adjudicator's view, as a CEP could no longer be paid for Mr Z, the Scheme should pay Mr Z the GMP to which he is entitled. So, it was the Adjudicator's opinion that the complaint should be upheld against the Trustee, but not against the Administrator or the Company and the Trustee should pay Mr Z his GMP from the Scheme.
- The Adjudicator appreciated that this situation had caused Mr Z distress and inconvenience. But the Respondents had dealt with this matter in a timely manner; and had made significant efforts to establish who held the liability for Mr Z's benefits, albeit without success. So, it was her view that no award for distress and inconvenience was merited.

28. The Respondents accepted the Adjudicator's Opinion but Mr Z did not. In response to the Opinion, Mr Z made some additional comments, a summary of which is below:-

- In not awarding him any compensation for the distress and inconvenience he has experienced, the Adjudicator has absolved the Respondents of all "responsibility and culpability", for causing this situation in the first place.
- The Adjudicator's Opinion licences unlawful activity by "government agencies and Multinationals to disregard and flout the law."
- The Opinion "whitewashes" the shortcomings and total disregard of the respondents who were responsible for the employee's pension administration.

29. As Mr Z did not accept the Adjudicator's opinion, the complaint was passed to me to consider. I note the additional points raised by Mr Z but I agree with the Adjudicator's Opinion.

Ombudsman's decision

30. It has been agreed by all parties that, through no fault of his own, Mr Z has lost out on pensionable benefits. The Adjudicator upheld that part of Mr Z's complaint, but did not believe that an award for the distress and inconvenience Mr Z had experienced was merited.

31. I understand Mr Z's frustration that it has taken a number of years to get this situation resolved. I also appreciate that while he was awaiting the outcome of the

¹ HMRC Countdown bulletin 38.

Respondents' investigation, he would have experienced distress and inconvenience. However, I find that the Respondents did not dismiss, disregard or fail to take action, once Mr Z brought the issue of his missing GMP to their attention.

32. This is not a straightforward case. The matter complained about stretched back over thirty years, and while this does not absolve the Respondents of their responsibility to maintain adequate records, it is understandable that it was not immediately evident that the liability for Mr Z's GMP rested with the Scheme. The Trustee has a duty to pay benefits in accordance with the Scheme rules. But to exercise this responsibility correctly requires the Trustee to be certain that any claim is valid. Its duty is not just to Mr Z but to the other members of the Scheme.
33. It was therefore reasonable that the Respondents made extensive enquiries to validate Mr Z's claim. The Respondents made significant efforts to ascertain who was responsible for paying Mr Z the GMP, in that they contacted previous members of the Plan, and made enquiries with HMRC and L & G. Although, unfortunately, their efforts were unsuccessful, throughout the process, they kept Mr Z informed of the progress of their investigations and provided him with detailed reasons on why they did not uphold his claim.
34. So, while I appreciate that Mr Z believes he should be awarded a financial sum for the distress and inconvenience this situation has caused him I make no award in respect of this aspect of his claim.
35. I uphold Mr Z's complaint in part.

Directions

36. Within 28 days of the date of this Determination, and Mr Z providing his bank account details to the Trustee, the Trustee shall pay Mr Z his GMP from the Scheme. This should be backdated to the day Mr Z became entitled to the GMP, together with interest at the base rate for the time being quoted by the Bank of England for the period from when Mr Z became entitled to his GMP to the date of payment inclusive.
37. If Mr Z becomes liable to pay income tax at a higher rate solely because of the backdating of the GMP, the Trustee shall reimburse Mr Z promptly in respect of the additional tax.

Anthony Arter

Pensions Ombudsman

24 August 2020