

Ombudsman's Determination

Applicant	Mr S
Scheme	Arup UK Pension Scheme (the Scheme)
Respondent	The Trustees of the Arup UK Pension Scheme (the Trustees)

Outcome

1. I do not uphold Mr S's complaint and no further action is required by Trustees.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S complains that the Trustees have used an incorrect young spouse's reduction of 2.2% p.a. for each year in excess of 10 to calculate the widow's pension available from the Scheme to his wife who is more than 10 years younger than him on death after retirement. In his view, the reduction should only be 1% p.a. as shown in the February 1995 edition of the Scheme booklet (**the Booklet**) which he received.

Background information, including submissions from the parties

4. The Booklet shows under the section entitled "Benefits payable on death after retirement":

"On your death, your spouse will receive a pension of half the amount of your full Scheme pension, before any reduction made to provide a cash sum...

If your spouse is more than ten years younger than you, his or her pension will be reduced by 1% for each year in excess of 10 years."

5. In September 2016, Mr S asked RPMI, the Scheme administrator, to calculate the widow's pension available to his wife from the Scheme in the event of his death after retirement.
6. RPMI informed Mr S that his wife would be entitled to a widow's pension of 39% of his pension in the Scheme. Having received Mr S's reply that he was expecting a higher percentage of 45% of his pension, RPMI confirmed in December 2016 that its figure was correct and informed him that:

“The benefits payable from the Scheme are governed by the Scheme Trust Deed and Rules (**the Scheme Rules**) which state that “the Trustees may reduce the spouse’s pension by such an amount as is certified to be reasonable by the Actuary in respect of each year in excess of 10.” This is to take account of the fact that the spouse is likely to receive the pension for a longer period of time. The factor is reviewed on a regular basis by the Scheme Actuary to take account of changes in various factors such as mortality rates. Although the reduction factor in force at the time you received the Booklet was stated, this is not deemed an entitlement to that factor and was included for information only. The booklet states that benefits are subject to the Scheme Rules.”

7. Mr S was dissatisfied with this response but his appeal against the decision was not upheld at both stages of the Scheme’s Internal Dispute Resolution Procedure (**IDRP**) during in April and June 2017.
8. During the IDRP, it was explained to Mr S that:
 - rule F5.03 of the Scheme Rules set out the basis for calculating a spouse’s pension and stated that a surviving spouse “shall be entitled to an annual pension equal to...one half of the pension which would have been payable to the pensioner at the date of his death”;
 - in cases where the surviving spouse is more than 10 years younger than the Scheme member at the date of his/her death, a young spouse’s reduction would be applied to the spouse’s pension and this was set out in rule F6.04 which provided that “the Trustees may reduce the spouse’s pension...by such amount as is certified to be reasonable by the Actuary in respect of each year in excess of 10”;
 - in such cases, the Actuary calculated a reduction factor to the spouse’s pension which allowed for current mortality rates, market conditions and the age of the member;
 - this reduction factor is reviewed regularly to ensure that it remains reasonable and appropriate;
 - the reduction factor calculated by the Actuary assuming his pension came into payment at his requested date was 2.2% p.a. for each year in excess of 10 and this reduced the spouse’s pension in the event of his death from 50% to 39% of his pension;
 - as the factors were kept under review, they might change again in the future and there was no guarantee that this factor would therefore apply at the time of his death;
 - although the Booklet did not make it specifically clear that the young spouse’s pension reduction factor would be reviewed and updated, it was clear that where there was any inconsistency between the two documents, the Scheme Rules would always apply

9. Mr S contends that the reduction factor shown in the Booklet, which he received when he became a deferred pensioner, should be honoured by the Trustees because it made no reference that this factor could be changed. He also says that:

“The importance of the Booklet cannot be overstated... It is the document in which the Trustees define the benefits of the Scheme to the pensioners. It is the only source of information available to pensioners. It is simply not practical for individual pensioners to refer to the Scheme Rules.

The Trustees understood that a pensioner would need to know the pension that would be paid to his widow. In providing this clear and unambiguous commitment in the Booklet this was recognised by the Trustees at the time...

The reason that the Booklet makes no reference that the factor could be changed is simply that the Trustees did not intend the factor to be changed. They treat the handful of so called young spouses in the same manner as the hundreds of other spouses up to 10 years younger whose pension is not subject to current mortality rates, market conditions and the age of the member. If not at 10 years why at 11 years? Why target the tiny sector that already receives the lowest pension?

The Trustees applied Rule F6.04 at the date of my retirement and promised me that the pension paid to my wife would be 45% of mine as she is 15 years younger than I am.

Did the Trustees act in accordance with their discretion and the Scheme Rules? If they did, the clause in the Booklet is consistent with the Scheme Rules and there is no basis on which to substitute a different interpretation. It is simple, concludes the matter and is of universal application. It avoids consideration by the Actuary after the death of the pensioner, of the spouse's life style and health...”

10. The Trustees say that:

“The factors that apply to the calculation of benefits under the Scheme are set following receipt of detailed advice from the Scheme Actuary and careful consideration by the Trustees. The reduction that applies in respect of a young spouse's pension is one of a number of factors that are set.

It is a common feature of occupational pension schemes to apply a reduction to a spouse's pension in circumstances where the spouse is significantly younger than the member. The Trustees understand that ten years is not out of line with market practice in terms of the starting point for applying such a reduction.

Mr S joined the Scheme in 1963 and would have received a copy of the booklet issued in April 1983.* Whilst this booklet is not binding, and contains wording explaining that the Trust Deed and Rules takes precedence, it refers

to the young spouse's reduction which at that date was 2% for each year in excess of 10 years. Given that the Booklet that Mr S relies upon includes a different level of reduction, it is clear that the reduction applied has changed over time."

*Mr S says that he did not receive a copy of this booklet.

Adjudicator's Opinion

11. Mr S'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 briefly below:-
 - The Booklet clearly stated that it only summarised the main provisions of the Scheme and was intended for general guidance only. It also contained a clear proviso stating that Mr S should refer to the Scheme Rules which described in full the Scheme benefits and overruled the non-legally binding booklet, should there be any discrepancies.
 - The Booklet only set out the factors in place at the time of its publication and were for reference purposes.
 - The Trustees cannot decide in advance what reduction factor ought to be used and must apply instead the factor set by the Actuary at the time the spouse's pension comes into payment.
 - With the benefit of hindsight, the Trustees should have made this clear to Mr S in the Booklet that the factors could change in the future. However, its failure to do so could not be construed as maladministration on the part of the Trustees for the reasons already given.
12. 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 key points made by Mr S for completeness.

Ombudsman's decision

13. Although I appreciate Mr S's point of view on this matter, I cannot disregard the fact that the Trustees have a duty to operate the Scheme for the members in accordance with the provisions of the Scheme Rules which, in my opinion, they have clearly done in his case.
14. I have seen no concrete evidence to corroborate the Trustees' assertion that Mr S would have received a copy of the booklet published in April 1983.

15. I am satisfied, however, that the Trustees have adequately explained how the 'young spouse's' reduction operates by providing him with a copy of the Scheme booklet applicable at the time he became a deferred pensioner. If Mr S required further details about this reduction factor, it had been open to him to request a copy of the Scheme Rules from the Trustees for inspection.
16. Although I sympathise with his circumstances, I do not therefore consider there to be any grounds to uphold Mr S's complaint.

Anthony Arter

Pensions Ombudsman
16 August 2018