

Ombudsman's Determination

Applicant	Mr D
Scheme	The GKN Group Pension Scheme (No.2) (the Scheme)
Respondents	GKN 2 Trustee 2018 Limited (the Trustee) Mercer Limited, in its capacity as administrator of the Scheme (Mercer)

Outcome

1. The complaint against the Trustee is upheld because it unnecessarily delayed Mr D's application for an ill health retirement pension (**IHRP**) by approximately 50 weeks. To put matters right, the Trustee shall pay Mr D an amount equal to the IHRP he would have received had there been no delays by the Trustee in progressing his application.
2. The Trustee shall pay £1,000 to Mr D for the serious distress and inconvenience that Mr D has suffered, and Mercer shall pay £500 for Mr D's additional distress and inconvenience caused by its inaction.

Complaint summary

3. Mr D has complained that delays by the Trustee and Mercer, in dealing with his application for an IHRP, led to his IHRP commencing later than it should have done.

Background information, including submissions from the Parties

Material facts

4. Mr D was a member of the GKN Group Pension Scheme 2012 (the **2012 Scheme**) during his employment with GKN.
5. The Deed Adopting Rules for the 2012 Scheme (the **Rules**), dated 12 September 2012, contains a provision under Rule 11(D)(1)(c), set out in full in the Appendix, allowing a deferred member to elect the early commencement of his/her pension.
6. Mr D left GKN's employment on 8 April 2016 and became a deferred member of the 2012 Scheme.

7. On 20 April 2017, Mr D contacted Jardine Lloyd Thompson (**JLT**), the then administrator of the 2012 Scheme, to apply for an IHRP due to cardiomyopathy and other medical conditions. On 20 July 2020, Mercer acquired the contract from JLT to administer the 2012 Scheme. Mercer has confirmed that it is liable for the administration previously undertaken by JLT. On that basis, hereafter, I have used the broad term "**Administrator**" to refer to the 2012 Scheme's administrator (whether that was JLT or Mercer at the relevant time).
8. On 26 April 2017, the Administrator wrote to Mr D asking him to provide his consent to the 2012 Scheme's Medical Adviser (**SMA**) to process his application. On 9 May 2017, Mr D returned his signed consent form.
9. On 16 May 2017, the SMA wrote to Mr D's GP to request medical evidence. On 10 July 2017, the Administrator wrote to Mr D confirming receipt of medical evidence from his GP and said it had sent this to the Trustee for consideration.
10. Until December 2017, there was no further communication between Mr D and the Administrator. On 7 December 2017, Mr D called the Administrator for an update and was informed that his application was still being considered by the Trustee.
11. On 17 December 2017, the SMA emailed the Administrator saying he had spoken to Mr D regarding his medical conditions and had a letter from his GP dated June 2017. The GP had not seen Mr D in person, so his report was based on letters from specialists who had treated him from 2015. The SMA said he would need more up to date medical evidence in order to issue an opinion.
12. On 19 December 2017, the Administrator wrote to Mr D's GP to request an up-to-date report.
13. On 30 January 2018, Mr D called the Administrator for an update and expressed dissatisfaction that he had been waiting eight months for the outcome.
14. The Administrator queried the matter with GKN's pension team (**the In-House team**) dealing with Mr D's application. The In-House team informed the Administrator that Mr D's case was still with the SMA.
15. On 21 February 2018, the Administrator chased the In-House team for an update on Mr D's application. The In-House team said that the SMA wanted to see Mr D in person but a date had yet to be arranged.
16. On 26 February 2018, the In-House team chased the SMA for an update. The SMA said:

"I left Mr D two voicemails asking him to get back to me, this was in January. He did not respond to either of them. I eventually rang and spoke to him a few weeks ago. I sent him a consent form and I have written to his GP but so far no response. I did ask him if he could come to see me in central Birmingham but he said he was too ill. I will write to his GP again in the middle of March if I have not heard from him."

17. On 27 February 2018, Mr D raised a formal complaint with the Administrator regarding the delays. The In-House team confirmed to the Administrator on 28 February 2018 that it would respond to Mr D's complaint.
18. There was no communication from the In-House Team to Mr D between February and July 2018. On 16 July 2018, Mr D contacted the In-House team for an update and expressed further dissatisfaction with the lack of communication. He said that he was now going to contact the Pensions Ombudsman's Office (**TPO's Office**) as he had received no response to his complaint.
19. On 18 July 2018, the Administrator wrote to Mr D apologising that his IHRP application still had not been concluded. The Administrator said it was waiting for "confirmation from the Trustee Representative of the Pension Scheme that ill health retirement has been approved." As soon as it received confirmation on his IHRP, it "will duly let [him] know."
20. On 26 July 2018, the In-House team chased the SMA for an update. There was no communication between the In-House team and Mr D between 26 July and October 2018.
21. At the end of July 2018, Mercer took over as Scheme Secretary on behalf of the Trustee from the In-House team. I shall use the term "**Scheme Secretary**" when referring to Mercer in that capacity.
22. On 3 October 2018, Mr D called the Administrator for an update. The internal call note said:

"NO update on sharepoint since July which looks although (*sic*) we are still awaiting correspondence back from trustees regarding ill health retirement. However, due to this being a complaint already and member has called numerous times to chase information can we please contact customer back with more of update of (*sic*) confirming clearly what the member needs to do going forward. Notes also state member needs to speak with GKN Dr who (*sic*) member has confirmed he has done this and we have been sent 2 medical reports. Member requested a call back today before the close of business...can someone pick this (*sic*) up on this and give member a call back..."(original emphasis).
23. On 5 October 2018, the Administrator wrote to Mr D saying that it would investigate his complaint and respond to him as soon as possible.
24. On 11 and 16 October 2018, there was an exchange of emails between the Administrator and the Scheme Secretary regarding Mr D's application. The Administrator informed the Scheme Secretary that Mr D was last contacted by the In-House team in July 2018 and asked the Scheme Secretary to deal with his case as a matter of priority.

25. On 21 December 2018, the Administrator wrote to Mr D saying that the IHRP application form that had been submitted in April 2017 was now out of date and asked that he complete the form¹ it had enclosed.
26. Between January and May 2019, Mr D was communicating with the Administrator concerning a pension transfer, there was no communication regarding his application for an IHRP.
27. On 1 February 2019, an Interim Trust Deed was executed by GKN Holdings PLC, establishing the Scheme.
28. On 7 June 2019, the Administrator wrote to Mr D saying:

“We have sent the information requested by [TPO’s Office] in reference to your complaint; however, your claim for ill health [retirement] has not been finalized as we need to request further medical reports from your Doctor and Specialist in order for the trustees to make a decision. I sent you a letter on the 21 December 2018 enclosing further forms for completion...we wish to make an application to your Specialist for further information; please can you complete the enclosed form with the details to allow us to make an application as there is limited information concerning this in your medical report from your Medical Practitioner after 2015...if you have any further medical information pertaining to this case that would useful [sic]...please can you forward this to us along with dates and details of your last employment?”
29. On 9 June 2019, Mr D completed and returned the new application form.
30. On 26 June 2019, Mr D called the Administrator regarding his transfer value. He informed the Administrator that he wished to “take [an] enhanced transfer but without [an] annuity as he has serious ill health”. He said he would submit the transfer form before the deadline of 28 June 2019.
31. On 30 June 2019, Mr D was transferred from the 2012 Scheme to the Scheme by way of a bulk transfer, under the terms of a Transfer Deed dated 28 June 2019 (the **Transfer Deed**).
32. Clause 2.3 of the Transfer Deed provided as follows:

“Each Transferring Deferred Member and Transferring Pensioner shall be admitted to membership of the Receiving Scheme and shall, in respect of benefits previously accrued in or provided by the Transferring Scheme up to the Transfer Date, be granted benefits under the Receiving Scheme as described in the Announcement and which are the same as the corresponding benefits documented in the Transferring Scheme Deed and Rules.”

¹ Mr D says he did not receive the letter.

33. The Announcement referred to in Clause 2.3 of the Transfer Deed stated that “the benefit that [Mr D is] entitled to in the 2012 Scheme will not change as a result of being transferred to a new scheme”.
34. Definitive deed and rules are not yet in place for the Scheme. Therefore, by virtue of Clause 2.3 of the Transfer Deed and the Announcement, Mr D’s benefits under the Scheme are governed by the terms of the 2012 Scheme’s Trust Deed and Rules.
35. On 17 July 2019, the Administrator wrote to Mr D’s GP confirming it had now paid the fees for a current medical report.
36. On 18 July 2019, the Trustee emailed the Administrator to ask whether it had obtained the GP’s report for the SMA. The same day, the Administrator replied, stating that the fees for the GP’s report had been paid and that the report should be available shortly.
37. On 25 July and 5 August 2019, the Trustee emailed the Administrator to ask whether it had received the GP’s report. The same day, the Administrator replied saying that it had not yet received it.
38. On 14 August 2019, the Administrator emailed the Trustee saying it had called Mr D’s GP again and the surgery had confirmed that Mr D had asked to see a copy of the report before it was issued. Mr D had subsequently seen the GP report and disagreed with it. So, the report had been sent back to the GP for consideration and it would likely take a couple of weeks.
39. On 11 September and 7 October 2019, the Trustee emailed the Administrator to ask whether it had received the GP’s report. On both occasions, the Administrator replied that it had not received it.
40. On 9 October 2019, the Administrator emailed the Trustee, informing it that it had spoken to Mr D’s surgery and said:

“They have advised that [Mr D] gave some documentation to the GP [at the] end of September as he did not agree with the report that the doctor did...”
41. On 23 October 2019, the Trustee emailed the Administrator asking it for an update. On 24 October 2019, the Administrator replied, saying that Mr D was due to check the GP’s revised report the following day and would confirm whether he was going to accept it or not.
42. On 19 November 2019, the Administrator emailed the Trustee to inform it that Mr D had said that his GP had missed something from the report, so he would need to discuss this further with the GP.
43. On 7 January 2020, the Administrator emailed the Trustee saying it had now received an up-to-date medical report from the GP. It said the copy it received in December 2019 had not been clear so it had been resent and received that day.
44. On 27 January 2020, the Trustee approved Mr D’s application for an IHRP.

45. The Administrator and the Trustee had an email exchange between 29 January and 13 March 2020, regarding the date that the ill health pension should be backdated to. The Trustee advised that it was seeking advice from its legal team. In the email to the Administrator on 13 March 2020, the Trustee said:

“As [Mr D] applied for ill-health early retirement from deferred status, according to the Scheme rules, the pension should commence from the date of the application. However, the application in this instance can only become valid once it has been approved by the Trustee, so the date of commencement is the date of approval (27 January 2020) and the pension should be calculated on that basis.”

46. On 3 April 2020, the Administrator wrote to Mr D, informing him that his application for an IHRP had now been approved by the Trustee. It said that his retirement date would be the date the Trustee had approved his IHRP application, which was 27 January 2020.
47. On 1 June 2020, a Deed of Appointment and Removal appointed GKN 2 Trustee 2018 Limited as the Trustee of the Scheme and removed the GKN Group Pension Trustee (No 2) Limited.

Summary of the Trustee’s position

48. Mercer has made the following submissions in response to Mr D’s complaint, on behalf of the Trustee:-

- It accepted that there were delays, however it disagreed that the pension should be backdated to a date earlier than the date the application was approved by the Trustee. There is no provision in the rules to allow for this.
- It referred to Rule 11(D)(1)(c)² and its legal team’s advice on the date the ill health pension should commence, which was as follows:
 - “- Our reading of the relevant rule is that the pension commences on the “date of application”. However, because a member requires Trustee consent to take their pension early from deferred status, that application only becomes a valid application at the point that consent is given.
 - As such, our view is that the date of valid application and the date of consent are really one and the same and the pension should be calculated at that date and commence at that date. The pension only becomes payable at the point consent is given. It is not payable from the date of election itself. We feel this is the most natural reading of a rule where payment of pension is subject to certain conditions needing to be met (here, consent).
 - There are other aspects of the rule which support the approach of the pension being paid from (and calculated on) the date of consent - The value

² Deed Adopting the Rules for the GKN Group Pension Scheme 2012 dated 14 September 2012.

test at the end of Rule 11(D)(1)(c) is linked to the date that the pension becomes payable. It only becomes payable once Trustee consent is given.

- The fact that the pension is described as an “immediate” one does not of itself mean that it must therefore commence at the earliest date possible. Indeed, the rule itself anticipates there may be a need to defer the pension if it is insufficient to provide the GMP, but it is still described as “immediate.”
- At the time of internal changes within the administrator in July 2018, Mr D’s complaint was not included in “the immediate handover from the In-House team so we were not informed of the case until October 2018.”
- It accepted the “apparent delays, from various phases of the referral process with the In-House team, SMA, GP, member and as part of the handover. However, had this case been actioned more proactively, it is possible the member would have been paid his benefits sooner, albeit they will be backdated to January 2020.”
- It sympathises with the delays Mr D experienced in this case and therefore decided to increase its offer to £1,000 in recognition of the distress it caused him.
- The Trustee obtained an estimate of the amount of pension that would have been paid to Mr D, had there been no delay, assuming a commencement date of 20 November 2018. The Trustee confirmed that the arrears of pension amount to £9,802.50.

Summary of the Administrator’s position

49. Mercer, acting in its role of Scheme Secretary, has responded on behalf of the Trustee and has accepted that delays have occurred. Mercer has not acknowledged any liability, or provided any substantive response to Mr D’s complaint, in its capacity as Administrator of the Scheme.

Summary of Mr D’s position

50. Mr D says:-

- The Trustee’s offer of £1,000 “is a joke” as his application has taken over three years to conclude.
- The offer is not sufficient because he has gone through financial difficulties and has suffered great deal of distress and inconvenience.
- He has not claimed his pension since it was approved because it may have a negative impact on his complaint.

51. I issued a preliminary decision on 21 April 2021. Mr D made further comments during the investigation that I have given careful consideration to, however, I do not consider that they impact on my decision.

Ombudsman’s Decision

52. Mr D's complaint concerns delays in dealing with his application for an IHRP. The Trustee has agreed that there were delays and has sympathised with Mr D's situation. It does not dispute that there was maladministration on the part of the Trustee. I acknowledge that the Trustee is allowed to take a reasonable period of time to assess Mr D's eligibility for an ill health pension. However, I find that the time taken by the Trustee was unreasonable as there were periods of inaction resulting in a considerable period of delay.
53. When Mr D brought the complaint to my Office on 19 February 2018, he was still awaiting the Trustee's decision. Mr D first applied for his IHRP in April 2017 and the Trustee decided to approve his pension on 27 January 2020. I sympathise with Mr D that his application has gone on for a significant length of time.
54. While part of Mr D's complaint has been resolved, as his IHRP has since been approved, the issue of its delayed commencement, on account of the Trustee's delays, remains.
55. It is not clear, from the evidence the parties provided to my Office, what the reasons were for the delays on the Trustee's part.
56. Mr D submitted a signed consent form on 29 April 2017. Between April and 10 July 2017, Mr D provided his medical evidence. The first period of delay was between 10 July and December 2017; there was no update from the Trustee on Mr D's application. I find no reasonable justification for this delay of 21 weeks.
57. The second period of delay was between 27 February and 18 July 2018. Again, there was no communication from the Trustee to Mr D. It was on this occasion that Mr D raised a complaint and brought his complaint to my Office. I find no reasonable justification for the delay of 19 weeks.
58. The third period of delay was between 26 July and October 2018, where there was no communication between the In-House team and Mr D. I find no reasonable justification for this delay of 10 weeks.
59. In June 2019, Mr D was asked to complete another consent form. The original form was out of date at that point. There is no doubt in my mind that it would have been very frustrating for Mr D to complete another consent form more than two years after he had submitted his original form.
60. Overall, I consider that the Trustee is responsible for the delays identified in paragraphs 56 to 58, which in total amount to 50 weeks.
61. There were other delays. But these were contributed to by other factors, such as the referral process, the time Mr D took to provide medical evidence; and/or times when he did not communicate with the Administrator in a timely manner.
62. This raises a question concerning the date the Trustee would have approved Mr D's application had the delays identified in paragraphs 56 to 58 not occurred, taking into consideration the Rules of the Scheme. The Trustee refers to Rule 11(D)(1)(c) and

submits that the pension only becomes payable once Trustee approval is given. In this case, the Trustee gave consent on 27 January 2020. The date it considers Mr D's IHRP commenced.

63. Rule 11(D)(1)(c) states that a member who is entitled to a deferred pension may "...by notice in writing to the Trustees, and with their consent, elect to take in lieu of such deferred pension an immediate pension..." Rule 11(D)(1)(c) sets out the order of events leading up to the member's election, namely the member gives the Trustee written notice and then the Trustee consents, after which the member's election becomes effective and the pension commences immediately after the Trustee provides consent.
64. I agree with the Trustee that the IHRP should commence immediately from the date the Trustee consents. However, the Trustee accepts that there were delays in dealing with Mr D's application and that, had there been no delays, Mr D's IHRP would have been paid earlier. The excessive delays amount to maladministration and caused Mr D serious distress and inconvenience.
65. It is of course impossible for me to establish with certainty the exact date the Trustee would have provided its consent for Mr D's IHRP. However, based on the evidence available, I consider it reasonable that Mr D should be compensated for the IHRP he would have received from 11 February 2019. That is, in respect of the period of 50 weeks before 27 January 2020, the date his pension commenced.
66. While I consider that the Trustee is primarily responsible for the delays encountered by Mr D, the Administrator should have been more proactive to ensure that it received a response from the Trustee following receipt of the medical report on 10 July 2017. It should also have sought regular updates from the Trustee in order to keep Mr D informed of the progress of his application.
67. The Administrator has acknowledged that Mr D made requests on numerous occasions for updates on his application and that he submitted several complaints in respect of the delays that he encountered. I am satisfied that the Administrator's failure to communicate effectively with Mr D amounts to maladministration and caused him significant distress and inconvenience.

Directions

68. Within 21 days of the date of the Determination:

- I. the Trustee shall pay Mr D compensation equal to the amount of IHRP he would have received had there been no delays by the Trustee in progressing his application, plus simple interest at the base rate quoted by the Bank of England, for the period from 11 February 2019 to 27 January 2020;
- II. the Trustee shall pay Mr D £1,000 in recognition of the serious distress and inconvenience it has caused him; and
- III. Mercer shall pay Mr D £500 in recognition of the further distress suffered by Mr D as a result of its failure to properly address Mr D's cases.

Anthony Arter

Pensions Ombudsman
25 May 2021

Appendix

Election for Early Commencement of Deferred Pension

69. Rule 11(D)(1)(c) says:

“A Member who is entitled to a deferred pension under (a) above may, at any time after attaining Normal Minimum Pension Age and before the Normal Retiring Date by notice in writing to the Trustees, and with their consent, elect to take in lieu of such deferred pension an immediate pension to be payable as provided in Rule 13(A) provided that the Trustees may determine that any such election may be made before the Member attains Normal Minimum Pension Age in any case where satisfactory evidence is produced to them of the Member’s Ill-health (and subject to the possible need to defer commencement of an immediate pension in order that pensions payable to the Member and contingently payable to the Member’s widow or widower may not be reduced below any Guaranteed Minimum that may be applicable after taking account of the effect of the discounting hereinafter provided for)....

Provided that:

- (i) Where the physical or mental condition of the Member is accepted by the Trustees in the light of medical evidence produced in respect of the Member as severely impairing his earning capacity for the foreseeable future, the deferred pension shall not be subject to discount and Provisos (a) and (b) to (C)(1) of this Rule shall apply as if the Member had retired on account of Ill-health;
- (ii) In the case of a Protected Member the pension shall not be less than the Protected Pension; and
- (iii) On the date the immediate pension becomes payable its value shall to the reasonable satisfaction of the Trustees be not less than the value of the pension (including the value of any increases in the Member’s Guaranteed Minimum under Sub-rules (D) and (E) of Rule 40) to which the Member would have been entitled under this Sub-rule at Normal Retiring Date had he survived to that date without electing an immediate pension.”

