

## Ombudsman's Determination

Applicant	Mr N
Scheme	The Caparo 1988 Pension Scheme ( <b>the Scheme</b> )
Respondents	JLT Benefit Solutions Limited ( <b>JLT</b> ) Dalriada Trustees Limited ( <b>the Trustee</b> )

## Outcome

1. Mr N's complaint against the Trustee is partly upheld. To put matters right (for the part that is upheld), the Trustee shall pay Mr N £500 for the significant distress and inconvenience caused to him by the Scheme's historical error.

## Complaint summary

2. Mr N is unhappy that a reduction has been applied to his benefits and believes this defies the rules applying to his pension. He would like his pension restored to its previous level.

## Background information, including submissions from the parties

3. Mr N was a member of The Barton Pension Scheme. He became a deferred member in 1984.
4. On 2 July 1987, Mr N was sent a letter (**the 1987 letter**) headed 'The Barton Pension Scheme' and signed by a Mr Jeavons, which said:

"With reference to your letter dated 12<sup>th</sup> June 1987 we would inform you that your paid up pension in the Barton Scheme was £282.00 per annum at your date of leaving the company. This amount is subject to [sic] 2.5% increase per annum until your normal retirement date."

5. In various letters, The Barton Pension Scheme is interchangeably referred to as this and 'the Barton Scheme' so for ease and consistency, I will refer to it as 'the Barton Scheme.' On 1 July 1988 by deed of variation, the Barton Scheme became The Caparo 1988 Pension Scheme i.e. the Scheme.
6. On 24 December 2015, JLT wrote to Mr N saying that further to previous announcements, the Scheme had now entered the Pension Protection Fund (**PPF**) Assessment Period.

7. On 28 March 2017, JLT, on behalf of the Trustee, wrote to Mr N, saying:-
- Most sections of the Scheme had entered a PPF Assessment Period on 19 October 2015. A key task during this period was for the Trustee to review pensions in payment to determine whether they had been calculated in line with the Scheme's rules.
  - JLT had undertaken this investigation and unfortunately, it had been established that Mr N's pension was being paid at too high a level.
  - Mr N's pension from the Scheme provided a fixed 2.5% increase each year once it came into payment. The Scheme also had a practice of applying a 2.5% increase to pensions, each year, between a member's date of leaving the Scheme, and their date of retirement. However, the Trustee had received legal advice that the practice of awarding a 2.5% per annum increase prior to retirement was invalid (the 2.5% per annum increase applied after a member's retirement date had been correctly applied).
  - In addition, the Scheme had a practice of awarding a minimum increase of £12 per annum on the portion of pensions earned prior to 6 April 1997. This meant that for some members, their pension received a much higher increase than would have been awarded if the correct increase rate of 2.5% per year was used.
  - The Trustee had a legal responsibility to ensure that each member received their correct entitlement under the Scheme, which meant that Mr N's pension would need to be reduced to its correct level. With effect from 1 May 2017, Mr N's annual pension would change to £145.13 a year.
  - Mr N's benefits had been overpaid for a period of time. The Trustee was considering the correct course of action to deal with any overpayments and would provide further details.
  - On a separate point, the Scheme had taken steps to equalise the Guaranteed Minimum Pension (**GMP**) for men and women. In some cases, members had received an increase to their pension but in Mr N's case, the increase from this exercise had been incorporated into his amended pension. His pension must still be reduced for it to be paid at its legally correct level.
8. Mr N responded on 3 April 2017 disputing JLT's letter. Further exchanges followed.
9. On 18 January 2018, Mr N said he had accepted that his pension would not increase by annual increments since moving to the PPF but he did not accept the massive pension decrease now being applied. He requested further information on the monthly contributions he had paid.
10. On 11 April 2018, Mr N wrote to JLT to formally complain under the Scheme's Internal Dispute Resolution (**IDRP**). He made the following points:-

- He was a member of the Barton Scheme with a fully paid up pension which should have been ring-fenced. He was not informed in writing of a change to another scheme, this being the Caparo scheme, or provided any terms and conditions for it.
  - In the Barton Scheme Summary of Provisions of 6 April 1978, section 13 on Escalation stated that all pensions would increase by 2.5% per annum and that if death occurred before pension age, compound interest of 3% would apply.
  - The Scheme was fully funded in 2000 but was closed in 2002 then re-opened in 2004. Information issued said that benefits would remain the same.
  - The terms and conditions from the Barton Scheme confirmed a 2.5% increase per annum of capital until normal retirement date and a 2.5% annual increase in pension would apply. JLT's removal of the 2.5% increase was contradictory and discriminatory.
  - JLT said it had received legal advice that the 2.5% increase prior to retirement was invalid. However, advice he had received said that this increase, which as mentioned was provided for in the terms and conditions, was irrefutable.
11. On 20 April 2018, JLT asked Mr N to forward it the terms and conditions he had made reference to in a recent letter.
12. On 17 July 2018, JLT responded to Mr N saying:-
- Mr N believed he was entitled to receive increases to his pension of 2.5% per year between the date he ceased to be an active member of the pension scheme and retirement. Responsibility for the payment of benefits rested with the Trustee.
  - The Trustee had an obligation to pay benefits in line with the Scheme's governing documentation, that is the Trust Deed and Rules and any subsequent amendments that had been made to the documents.
  - The Trustee had taken legal advice on the correct level of revaluation applying to increases between leaving service and retirement. The legal advice confirmed that the correct entitlement was for no revaluation to apply, unless it was required under general pension legislation. For members that had left in 1984, such as Mr N, no revaluation was required.
  - Unfortunately, the 1987 letter did not correctly state the benefits Mr N was entitled to and is overridden by the Scheme's rules.
13. On 30 July 2018, Mr N asked JLT for a copy of the rules for the Scheme, adding that he was never a member of the Caparo scheme and did not receive any terms and conditions relating to it.
14. Mr N's position is:-

- The pension fund was in the PPF however he had been corresponding with JLT who had been misleading him with respect to the terms and conditions of the Scheme to justify a massive decrease in his pension. The company had provided false statements about the escalation of his pension, even though he had written proof of this. His position is as fully detailed in his letter of 11 April 2018 to JLT.
- He is eighty two years old and although this would appear to be a small sum, it forms an important part of his living expenses. He wished for his pension to be reinstated and a sum to be paid in compensation for the trauma that this action had created.

15. In support of his position, Mr N has provided:-

- The 1987 letter.
- The Barton Scheme Summary of Provisions which Mr N says is dated 6 April 1978. He refers to section 13, entitled 'Escalation', which states: "All pensions arising under Section 8,9,10,11, 12(b) and 14(b) of this booklet will increase by 2.5% per annum, the first such increase coming into operation at the 1<sup>st</sup> January following the commencement of payment and further increases applying from each subsequent 1<sup>st</sup> January."
- The terms and conditions for the Barton Scheme. Under Rule 24 entitled 'Escalation', the following is stated: "All Pensions arising under Rules 14, 15, 16, 18, 20, 21(B), 23(B) or 25(I) will be subject to an increase of an amount equal to two and one half per centum per annum of the Pension payable on the first day of January next following the commencement of payment of the Pension, and on the first day of January in each subsequent year."

16. JLT's position is:-

- An issue was identified whereby a 2.5% fixed revaluation had been used to revalue Mr N's benefits from his date of leaving to his date of retirement. A legal review concluded that the application of the revaluation rate was not documented within the Scheme's rules. Accordingly, the Trustee took the difficult decision to restrict the pensions of members affected by the issue to their legal entitlement.
- Mr N left in 1984 so it was the rules pertaining to members who left between 1983 and 1988 which applied to him – the '1983 Rules'. I will hereby refer to these as 'the Rules.'
- In 1974, the Barton & Sons Limited and Associated Companies (1956) Staff Scheme (**the Staff Scheme**) and the Barton & Sons Works Pension Scheme (**the Works Scheme**) merged into the Barton Scheme. By a deed of variation dated 1 July 1988, the Barton Scheme became known as the Caparo 1988 Pension Scheme.

- Under Part A, Rule 24, there is a section entitled 'Escalation.' This relates to increases due on pensions in payment after retirement age.
- In terms of the Part B Rules, there was no such provision for escalation.
- Part A Rule 25 and Part B Rule 24 relate to 'Leaving Service'. The provisions were silent in respect of any increases due on preserved pensions before retirement.
- The Rules do not expressly provide for revaluation.

17. The Trustee's position is:-

- On 19 October 2015, four of the Scheme's statutory employers entered into administration creating four segregated parts of the Scheme triggering a PPF assessment period. This meant Mr N would receive benefits at no lower than PPF compensation levels.
- The Scheme had since undergone a valuation for the purposes of s.143 of the Pensions Act 2004, which had concluded that the Scheme had sufficient assets to secure its protected liabilities. The Trustee had also been able to secure a bulk annuity contract to buy-in the PPF level of benefits for all members. It was hoped that additional benefits could be secured in the near future and that Mr N would receive benefits in excess of PPF levels in due course.
- Mr N was a member of the Staff Scheme. In 1974, the Staff Scheme and the Works Scheme merged into the Barton Scheme, which then became The Caparo 1988 Pension Scheme.
- Under Part A Rule 24 of the (1983) Rules titled "Escalation" (as stated in paragraph 18 above) provided for a 2.5% increase for pensions in payment. There are no provisions relating to revaluation before NRD.
- Hence, in the Staff Scheme, members who left between 1983 and 1988 receive escalations in pension benefits in payment after NRD, but not revaluation in respect of periods of deferment before NRD. Accordingly, Mr N is not entitled to 2.5% revaluation, and the statutory minimum applies.
- Unfortunately, Mr N did not qualify for statutory revaluation which applied only to members who left pensionable service on or after 1 January 1986 (section 83 of the Pension Schemes Act 1993). The same applied for the purposes of determining PPF compensation payable under the Pensions Act 2004.
- In respect to any claim for overpayment, it reserved its position on the recovery of any overpayments in respect of members who were erroneously paid 2.5% revaluation.

## Adjudicator's Opinion

18. Mr N's complaint was considered by one of our Adjudicators who concluded that the Trustee should pay Mr N £500 for the significant distress and inconvenience caused to him by the error, and no further action was required by JLT. The Adjudicator's findings are summarised below:-

- The main question was whether Mr N was entitled to pension increases in deferment (specifically a 2.5% increase). Mr N had referred to the 1987 letter, the Scheme's terms and conditions and a Scheme Summary of Provisions document.
- The starting point was that the Trustee was only required to pay the benefits which the member was entitled to under the Rules. A member would not be entitled to benefit from any mistaken application of the Rules, and the Trustee would be entitled to correct any such mistake.
- In her opinion, JLT and the Trustee had correctly identified the rule applicable to Mr N, this being Part A, Rule 24 of the Rules. Rule 24 said: "All Pensions arising under Rules 14, 15, 16, 18, 20, 21(B), 23(B) or 25(1)" will be subject to the increase in question.
- However, the "Pensions arising under Rules 14, 15, 16, 18, 20, 21(B), 23(B) or 25(1)" mainly related to death benefits, and pensions payable on retirement. The Trustee and JLT had interpreted Rule 24 to mean that pension increases/escalations at 2.5% per annum only apply "following the commencement of payment of the Pension." The Adjudicator believed this was the correct interpretation.
- The Adjudicator said that having considered the Rules, she was not aware of any provision for revaluation (either at 2.5% per annum or otherwise) for a pension in deferment. Her view was that Mr N's pension was not entitled to revaluation in deferment.
- In addition, the Trustee had said that Mr N is not entitled to statutory revaluation because this applied only to members who left pensionable service on or after 1 January 1986. This was in accordance with Section 83 of the Pension Schemes Act 1993. As Mr N left service in 1984, his deferred pension, other than the GMP element, was not subject to revaluation.
- Mr N had put forward certain documents in support of his position and sought to rely on Rule 24 of the terms and conditions he provided, but this did not support the payment of an increase in deferment for the reasons given. In regard to the Barton Scheme Summary of Provisions document, this provided for a 2.5% increase "coming into operation at the 1st January following the commencement of payment and further increases applying from each subsequent 1st January." Hence, the Adjudicator's understanding was again that, the increase mentioned concerned pensions in payment (not in deferment).

- In respect to the 1987 letter, there was no doubt that this stipulated a 2.5% increase would apply in deferment until Mr N's normal retirement date. However, such an increase was not provided for in the Rules, which overrode the advice given in the letter. It was regrettable that this letter provided incorrect information to Mr N.
- Mr N was not entitled to increases in deferment and JLT had acted appropriately in reducing his future pension entitlement.
- In respect to any overpayment which may have arisen as a result of the error, the Trustee has reserved its right in relation to recovery and said it has not made any such attempts. The Adjudicator said she would therefore not consider any claim for overpayment as part of the current complaint.
- The wrong increase was applied to Mr N's pension through no fault of his own, and JLT's letter to correct this position many years later will have caused him significant distress and inconvenience. Accordingly, the Adjudicator recommended that the Trustee pay Mr N an award for non-financial injustice in recognition of this. She said although it was most likely that the administrator had made this error, JLT might not have been the administrator at the time the increases were applied, so the Trustee should bear overall responsibility.

19. JLT accepted the Adjudicator's Opinion. The Trustee made the following comments:-

- Whilst it respectfully disagreed that any award was appropriate in the circumstances of this case, subject to Mr N and JLT accepting the Adjudicator's recommendation at this stage, it was prepared to comply with this and arrange the payment of £500 to be made to Mr N.
- The Trustee was appointed in March 2016 and carried out the benefit audit which discovered the mistake in good time. Therefore, the Trustee neither made the original mistake in the calculation of the applicant's pension, nor continued it for any material period of time. From reading the Opinion, it was this mistake and the continuance of it which gave rise to the award.

20. Mr N did not accept the Adjudicator's Opinion and made the following points:-

- There had been five administrators of the Scheme – "Barton Pension Scheme/ Armstrong Pension Trustees Ltd./ J.L.T Ltd./ Dalriada/ Mercer...now Dalriada or Mercer?????" He was sure that Mr Jeavons, Secretary of the Barton Scheme, would be "fully conversant" of the terms and conditions of his scheme. Further, "Messrs. Armstrong accepted this uplift on transfer of the fund to that company," so two trustees had agreed to the uplift. Therefore, there was no overpayment.
- JLT alleged that there should be no uplift and he had been overpaid. He refuted this. Should his funds not have been invested/received an uplift then the minimum he should receive would have been bank interest accrual. A calculation of interest over the period would provide an annuity of approximately £488 per annum. JLT

showed an annual increase of £12 which they claimed was their error, an increase of 2.5% over the time period would provide a greater pension than had been paid. No individual calculation was provided to him.

- The funds must benefit from uplifting or bank interest. If not, he was a victim of fraud. The funds appeared to have been invested for the benefit of others and not himself.
- The paid up funds were moved to another scheme exposing them to “possible plunder.”
- JLT had contacted a lawyer presenting it with evidence that he had provided to it (JLT), which was now being used against him. He could not afford his own legal representation.
- Essentially, he “made a financial decision based on 2 options outlined in the letter from Barton which was crystal clear and by the actuary and not covered by any other terms and conditions.” Based on the presentation of this, he chose to leave the funds invested in the Scheme as he felt they would be better and more safely invested.
- Everything was in place and “Messrs Armstrong paid [his] pension as per the letter from 2001.” The problem seems to have appeared since JLT was responsible and he did not know what the trustees were doing to allow this to happen.
- His pension had been “cut by 62%” He was not given at the time any terms and conditions nor the opportunity to remove his funds when a material change to his pension had occurred, for instance, the removal of the 2.5% increase.
- For the Adjudicator’s information, the Trustee had previously notified him of a top-up exercise that would apply to his benefits. However, further details on this had not yet been provided. He had tried to seek further clarity from the Trustee. It had said that it could not provide an answer until it had completed the legal queries it was making. JLT had not responded. This lack of clarity meant that it was difficult to accept the Adjudicator’s Opinion as matters stood.
- His pension had been reduced by 50% for three years plus there was the risk of a further reduction because of the alleged overpayment. The “problems of the scheme are the result of incompetence by the former trustees JLT.”

21. The complaint has now been passed to me to consider. I note the comments made by Mr N and the Trustee, however, I agree with the Adjudicator’s Opinion.

### **Ombudsman’s decision**

22. The crux of the matter is whether a 2.5% increase applied to Mr N’s pension in deferment. Mr N says that an increase in deferment did apply, and that his pension



has been wrongly reduced due to a misunderstanding of the current trustee and administrator in relation to how the Scheme operates.

23. I have considered the Rules and I cannot find that these provide for a 2.5% increase to members of the Scheme between their date of leaving the Scheme and their date of retirement. I understand that this will be disappointing news to Mr N, who is extremely unhappy that his pension has now been reduced as a result of such a finding. However, the Trustee is legally obliged to act in accordance with the rules of the Scheme and, the reduction in question was appropriate.
24. Mr N has explained his hesitancy to accept this position, which is partly based on the uncertainty which surrounds a top-up exercise the Trustee intends to carry out. I appreciate this. However, the top-up exercise is a separate matter to the one being considered here. Irrespective of the outcome of this, Mr N must be paid his benefits in accordance with his correct entitlement.
25. I also agree that the dates pertaining to Mr N's membership mean that he is not entitled to statutory revaluation for the purposes of Section 83 of the Pension Schemes Act 1993. I understand that Mr N considers that a position whereby no increase/uplift applies to his benefits in deferment is akin to him being a victim of fraud. However, it is simply the case that the rules do not make such a provision; and, that the timing of his membership is such that, regrettably for Mr N, it does not benefit from statutory revaluation.
26. Lastly, in response to the Adjudicator's Opinion, the Trustee has highlighted that it was appointed in March 2016 and neither made the original mistake, nor continued it for any material period of time. Nonetheless, I agree that as the current Trustee it should bear overall responsibility and pay Mr N an award in recognition of the significant distress and inconvenience he has suffered because of this error in the application of the rules.
27. Therefore, I partly uphold Mr N's complaint.

## **Directions**

28. Within 21 days of the date of this Determination, the Trustee shall pay Mr N £500 for the significant distress and inconvenience caused to him by the Scheme's historical error.

**Anthony Arter**

Pensions Ombudsman  
21 August 2020