

## Ombudsman's Determination

|             |                                                                                    |
|-------------|------------------------------------------------------------------------------------|
| Applicant   | Mr D                                                                               |
| Scheme      | Judicial Pension Scheme ( <b>the Scheme</b> )                                      |
| Respondents | Ministry of Justice ( <b>MoJ</b> )<br>PSAL Pensions Administration ( <b>PSAL</b> ) |

## Outcome

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

## Complaint summary

3. Mr D's complaint against MoJ and PSAL is that he was led to believe he would be able to retire at age 60 with an unreduced pension. Mr D later found out that he could not take this pension until he reached age 65.

## Background information, including submissions from the parties

4. In 1994, Mr D became a salaried Chairman of Employment Tribunals and enrolled into the 1981 section of the Scheme (**the 1981 section**). He was due to reach age 60 on 16 November 2017.
5. On 3 November 2015, Mr D received a letter from PSAL illustrating his benefits at age 60 (**the illustration**), which said the following:

"Under the terms of the Judicial Pensions Act 1981, under which you are currently entitled to receive benefits, we estimate that you would receive the following benefits as at 16 November 2017:

Annual Pension: £53,020.00

Gross Pension Lump Sum: £106,040.00

Refund of Widows Pension Contributions: £5,713.71 (net)

Please note that the above benefits are based on a preserved pension as under the Scheme rules, if you remained in the 1981 Scheme and you

voluntarily retire from office between the age of 60 and 65 you would only be entitled to a preserved pension.”

...

“Alternatively, if you were to elect to transfer to the 1993 Judicial Pension Scheme, established under the provisions of the Judicial Pensions and Retirement Act 1993, we estimate that you would be entitled to receive the following benefits:

Annual Pension: £39,076.00

Pension Lump Sum: £22,170.00 (net)

Service Award: £18,177.37 (net)

Please note that the above benefits are based on immediate benefits as under the Scheme rules, if you elect to transfer to the 1993 Scheme and you voluntarily retire from office between the ages of 60 and 65 ”.

6. On 18 July 2017, Mr D wrote to MoJ to confirm that he intended to retire when he reached age 60. Following this, on 27 July 2017, MoJ wrote to Mr D and asked him to contact the Judicial Office to inform it of his decision to retire. A final retirement quotation was then sent to Mr D.
7. On 4 October 2017, Mr D received his final retirement figures. In this letter, it was explained to him that under the Regulations of the 1981 section, if he retired in November 2017 or before age 65, he would only be entitled to a preserved pension. This was due to the 1981 section not allowing for retirement at an earlier age than 65. Alternatively, he could transfer to the 1993 section and take an actuarially reduced pension immediately.
8. On 10 October 2017, Mr D wrote to MoJ and said that he had already made arrangements to retire at age 60 based on an annual pension of £53,020 and a gross lump sum of £106,040. In particular, Mr D highlighted that the illustration stated, “we estimate that you would receive the following benefits as at 16 November 2017”.
9. On 24 October 2017, MoJ wrote to Mr D to confirm that he was unable to retire at age 60 under the 1981 section. It said that the illustration included wording which explained that his benefits were preserved until he reached age 65.
10. On 2 November 2017, Mr D wrote to MoJ to invoke its Internal Dispute Resolution Procedure (**IDRP**). In regard to the wording of the illustration, he said:

“The wording is, with respect, incapable of sensible interpretation in any other way. I simply cannot see how I was expected to interpret the subsequent reference to a preserved pension as overruling that clear statement.”

11. On 27 November 2017, MoJ issued its IDRP 1 response and did not uphold Mr D's complaint. It said the paragraph that sits immediately beneath the pension figures in the illustration confirms that only a preserved pension is available from the 1981 section. It had enquired whether Mr D was able to retire at age 61, 62 or 63, but this was not an option under the Scheme Rules.
12. On 16 March 2018, MoJ issued its IDRP 2 decision, Mr D's complaint was again not upheld for reasons similar to the IDRP 1 decision.
13. Dissatisfied with the response, Mr D brought his complaint to this Office.
14. MoJ provided its formal response to this Office. A summary of its key points is set out below: -
  - Mr D's complaint was considered by the Judicial Pension Board (**the JPB**) at IDRP 2. The chair queried the meaning of 'no discretion' under the 1981 Scheme and how a lawful recommendation may be made by the JPB if there is no discretion to support Mr D's case. After further deliberation, the JPB considered there was no merit in the case to support an ex-gratia payment.
  - The illustration could have been clearer in explaining that Mr D was not entitled to immediate payment of his 1981 section benefits. However, it did state that this was preserved until age 65. On this basis, Mr D should have understood that he could not take his full benefits at age 60, or sought clarification on the matter.
  - Additionally, Mr D's retirement figures included in the illustration were estimates, so it would be reasonable to expect Mr D to seek an up-to date retirement illustration before taking the decision to submit his notice of retirement. Mr D did in fact request a final retirement quotation, however this was more than 18 months after he received the illustration, only two months before he was due to retire having already given his notice.
  - MoJ did not consider that Mr D has suffered a financial loss. His benefits are deferred until he reaches the age of 65. He may opt to transfer his benefits to the 1993 section and take his benefits immediately, subject to an actuarial reduction.
  - Mr D had the opportunity to mitigate any impact from his decision to retire early. MoJ wrote to Mr D on 4 October 2017 to confirm that he was unable to take his full retirement benefits at age 60. Mr D's retirement was not due to take effect until 16 November 2017 and it was therefore possible for his notice to be rescinded. The fact that he did not, demonstrates that he intended to retire regardless. It is also open for Mr D to take further work until his pension comes into payment.

15. In reply, Mr D made the following comments:-

- He relied on the illustration in deciding to give his notice. Taken in isolation, the statement “Under the terms of the Judicial Pensions Act 1981” can only have one meaning, namely, that if he were to retire at age 60 he would be entitled to a full pension payable immediately. MoJ has only conceded that the statement could be better worded but it is not apparent what other meaning this statement would have had.
- He finds it irrelevant that MoJ has no discretion to pay his 1981 benefits at age 60; if MoJ has cast upon itself a liability, it must meet it even if the pension exceeds what would normally be payable.
- In relation to the paragraph explaining that his benefits were preserved until age 65, he does not consider that, given the clear wording of the illustration which said that he would receive his benefits at age 60, he should have taken this to mean that he would not be able to take his benefits in full. In any event, the use of the word “preserved” is fully consistent with the promise of a full pension payable at 60. The Scheme provides that a full pension has been earned after 15 years’ service, which in his case would be 2009. As he was only 52 at that time it was not possible for a pension to be taken, so his pension was preserved at that point until he could retire.
- In summary, the use of the word preserved did not alert him to the fact that he would not be able to take his benefits in full at age 60. However, he said “even taking MoJ’s case at its height, what we have are two statements that contradict each other. This was MoJ’s document and any ambiguity of that sort should be construed against it.”
- He does not believe that he should have asked for an up to date retirement illustration. The principles for which his pension would be calculated were clear from the illustration; a pension equivalent to 50% of his salary and a lump sum equal to one year of pay. It was always likely that his final retirement figures would differ as he continued in employment and his salary increased. But it remains that the basic principles for calculating his pension could not be clearer. He submitted his notice shortly after receiving this 2015 illustration.
- He does not understand MoJ’s contention that he has not suffered any financial loss. He was expecting to receive his full pension from November 2017, but instead will receive nothing until he reaches 65 unless he transfers to the 1993 section and takes an actuarially reduced pension.
- He had saved annual leave so his last day of work would be before his retirement date of 16 November 2017. Upon receiving PSAL’s letter of 4 October informing him that he was not entitled to a full pension, he sought to clarify the matter which took several weeks. Therefore, he was not able to rescind his retirement notice at such a late stage.

## Adjudicator's Opinion

16. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by MoJ or PSAL. The Adjudicator's findings are summarised below:-

- The basic principle for negligent misstatement (in the absence of any additional legal claim) is that a scheme is not bound to follow incorrect information, for example, retirement quotes, transfer values or early retirement. A member is only entitled to receive the benefits provided for under the scheme rules, that is those based on correct information accurately reflecting the scheme rules.
- Broadly, the Ombudsman will provide redress if it can be shown that financial loss or non-financial injustice has flowed from incorrect information given. For example, the member may have taken a decision in the expectation of receiving the higher benefits which they would not otherwise have done, such as retiring early. But first, what needs to be established is whether the member relied on the information in good faith, and then to what extent they relied on it to their detriment.
- Mr D's complaint is that based on the illustration, he opted to retire at age 60 as he was under the impression that he would be entitled to a full pension of £53,020.00 and a lump sum of £106,040.00.
- Mr D says it is irrelevant that MoJ has no discretion to pay his pension early due to the November 2015 illustrations. However, the Scheme Rules, set out in the appendix, state the member's retirement age is 65 and contain no provision for a pension to be taken any earlier. MoJ is bound to pay his pension in accordance with the Scheme Rules, so he is not entitled to his full 1981 section Scheme benefits before the age of 65. However, redress could be provided if it is certain that Mr D relied on the statement to his detriment, which he did by opting to retire early. First it is necessary to establish whether it was reasonable for Mr D to have relied on the illustration in good faith.
- As explained, the illustration sets out Mr D's benefits that would be payable at age 60. The Adjudicator acknowledged that the illustration starts by explaining that "we estimate that you would receive the following benefits as at 16 November 2017". However, this does not supersede the fact that the illustration goes on to state that if Mr D took voluntary retirement between the ages of 60 and 65 he would only be entitled to a preserved pension.
- Mr D has raised the issue over the interpretation of the word preserved in the context of the Scheme Rules. He has said that the Scheme provides a pension after 15 years' service, and from this point his pension is preserved, which is correct. Nevertheless, the illustration goes on to state that he would be entitled to an actuarially reduced pension under the 1993 section immediately if he

transferred. Although Mr D was not enrolled into the 1993, the difference in the wording between “preserved” and “immediately” gives further cause for him to be have been aware that he was not entitled to the 1981 section benefits before 65.

- Whilst the Adjudicator appreciated that Mr D believes it was not reasonable for him to interpret the illustration to mean that he was not entitled to his 1981 benefits at age 60, the good faith requirement does not just concern how Mr D actually interpreted the illustration, but how he ought to have done. When read in full, it is clear that Mr D’s 1981 section benefits are preserved until age 65. If it was unclear to Mr D that this was the case, it was up to him to contact MoJ to clarify the matter.
- It was therefore the Adjudicator’s Opinion that Mr D’s complaint should not be upheld.

17. Mr D did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr D 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 D for completeness. These are set out below:-

- Mr D maintains that an injustice has occurred because the illustration stated that he would receive his full benefits when he retired early.
- Furthermore, Mr D claims that he was in a contractual relationship with MoJ and PSAL, so they had an implied obligation to take reasonable care in producing documents such as his pension projections. Having failed to do so, it has breached that contract. Any damages should be assessed on a contractual basis, not a tortious one.
- The section of the illustration, which sets out his retirement benefits as at 16 November 2017, promises him those benefits. Mr D’s position is that this cannot be interpreted in any other way.
- Mr D also adds that in an email of 1 December 2017, MoJ states that the term retirement “refers to the date or age that you take your benefits”. The relevant paragraph in the illustration has that word in its heading, again confirming that the sums are to be paid immediately when he retires at 60.
- Mr D disagrees that he should have made further enquiries if his entitlement was brought into question. He suggests that it would be unreasonable for him to make further enquiries when his entitlement has been set out in such a clear manner.
- Mr D also maintains that the meaning of the word “preserved”, mentioned in the illustration, is consistent with his interpretation of his entitlement.

- Mr D says that his understanding of the statement was, that he would receive benefits as at 16 November 2017, which meant that he would receive the preserved pension at age 60, so the subsequent reference to an immediate pension under the 1993 Scheme is irrelevant. His interpretation is consistent with the entire letter. But even at best, the illustration is ambiguous, and that any ambiguity should be resolved in his favour.
- Finally, Mr D says MoJ were under an obligation to inform him of his entitlement six months before he retired. The failure to be alerted of this issue was the fault of MoJ.

### **Ombudsman's decision**

18. Mr D has argued that there is a contractual relationship between him and MoJ to provide clear information, and any claim should be considered on a contractual basis. Whilst MoJ is obliged to provide Mr D with certain information, it can only pay him his pension benefits as set out in the Scheme Rules, which state that he is entitled to his full pension benefits at age 65 and do not contain a provision for these to be paid earlier. The issue is whether it was reasonable for Mr D to interpret the illustration to mean that he was entitled to his 1981 benefits at age 60.
19. In Mr D's view, given that the illustration stated that he was entitled to his full benefits at 60, and then to state that these would be preserved, this meant that they would be preserved until he takes them at age 60. Mr D does not see how the illustration could be interpreted in any other way.
20. I agree that that particular paragraph in the illustration could have been clearer in setting out that he was not entitled to a pension under the 1981 section until age 65. But, although Mr D interpreted the letter to mean that his benefits under the 1981 section were payable at age 60, it does not mean it was reasonable for him to do so.
21. The illustration clearly sets out the amount of pension benefits that had been accrued and 'preserved' as at 16 November 2017, in other words the pension will be deferred. If the quoted preserved pension was actually payable on that date there was no point in the second paragraph, which offered the facility of transferring to the 1993 Judicial Pension Scheme to provide an 'immediate' actuarially reduced pension, with both the lump sum and pension considerably lower than the 1981 section benefits.
22. I find that the first paragraph of the letter that Mr D received from PSAL on 3 November 2015, illustrating his benefits at age 60, cannot be read in isolation with that of the second paragraph. It is clear when reading the whole letter that there are two distinct benefits, one of which is immediate and can be taken at age 60 and the other is a benefit which is preserved and protected at the date of leaving employment. I do not find that it was reasonable for Mr D to have relied on just the first paragraph of the illustration to mean that he could take the preserved pension at age 60.

**PO-21564**

23. With regard to Mr D not being informed of his entitlement six months before he retired, this was not a part of Mr D's original complaint. It is a new matter to which MoJ has not had the opportunity to respond. Mr D may raise this separately with MoJ if he wishes.
24. I do not uphold Mr D's complaint.

**Anthony Arter**

Pensions Ombudsman  
22 March 2019



## **Appendix**

### **Judicial Pensions Act 1981**

#### **President or chairman of employment tribunals**

A person to whom this section applies may on the recommendation of the Secretary of State be granted a pension—

(a) if he retires after 15 years relevant service and at the time of his retirement he has attained the age of 65, or

(b) if at the time of his retirement he has attained the age of 72, or

(c) if the Secretary of State is satisfied by means of a medical certificate that, at the time of his retirement, by reason of infirmity of mind or body, he is incapable of discharging the duties of his office and that the incapacity is likely to be permanent.