PO-21816

Ombudsman's Determination

Applicant	Mr N
Scheme	DCWW Pension Scheme – MIS Section
Respondents	Welsh Water Pension Trustee Limited (the **Trustee**)
	Dŵr Cymru (the **Company**)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Trustee or the Company.

Complaint summary

2. Mr N has complained that, since 2011, his pension has been increased by reference to the Consumer Prices Index (**CPI**), rather than the Retail Prices Index (**RPI**). Mr N says he was given misleading information about pensions increases in 1992 and he relied on this information to his detriment.

Background information, including submissions from the parties

Background

3. Mr N had been a member of the Water Mirror Image Pension Scheme (**MIS**); now the MIS Section of the DCWW Pension Scheme (the **MIS Section**). The MIS had been set up following privatisation of the water industry in 1987. It was intended to fulfil an undertaking to employees, who had been members of the Local Government Superannuation Scheme, that they would be offered the same benefits after privatisation. In 1992, Mr N was offered membership of a new scheme; the Water Pension Scheme (**WPS**). Mr N opted to remain with the MIS.

4. Mr N was employed by the Company until 2007, when he took early retirement. He has provided a copy of a letter, dated 22 August 2007, from the Scheme administrators which enclosed a benefits options statement. The notes to the statement said the pension in payment would increase on 1 April each year "in line with the increase in the Retail Prices Index". The notes also stated that the quotation was "subject to the Trust Deed and Rules of the Scheme".

5. In April 2011, Mr N received a letter from the Scheme administrators notifying him that future pension increases would be linked to CPI, rather than RPI.

6. In November 2011, Mr N wrote to the Company expressing the view that the change to CPI was illegal and wrong. He gave the following reasons:-

   - Information provided by the Company in 1992, which had stated that pensions were increased automatically by the percentage increase in RPI. He referred to: a Water Mirror Image Pension Scheme Summary of Benefits; a Question and Answer Booklet; and a Help Booklet.

   - A letter, dated 1 November 2007 (*sic*), from the Scheme administrators which had stated that his pension would increase based upon the rise in RPI in the 12 months to the preceding September. Mr N said this letter had been confirmation of the terms of a compromise agreement terminating his employment in 2007 as they related to his pension payments. He asserted that the Company was in breach of the agreement.

7. The Company responded, on 26 January 2012, saying it had taken advice as to the best approach to Mr N's complaint and suggesting he use the two-stage internal dispute resolution (**IDR**) procedure. In his response, Mr N suggested that the IDR procedure may not be suitable for addressing his second point; namely, the status of his compromise agreement.

8. The Trustee issued a stage one IDR decision on 16 March 2012. The decision is summarised below:-

   - Mr N's complaint about the compromise agreement was a matter between him and the Company and would not be considered under the IDR procedure.

   - The benefits to which Mr N was entitled were determined by the Scheme Rules. It had to provide his benefits in accordance with the Scheme Rules unless it could be established that there was a legal entitlement to another form or level of benefit which superseded the Rules.

   - Rule 7 (see paragraph 9 below) provided that the relevant legislation regarding pension increases shall apply "to the same extent as these provisions would apply to any similar benefits which would be payable in circumstances to or in respect of the pensionable employees of a local authority". This preserved the link to the basis upon which pensions payable from the Local Government Pension Scheme (**LGPS**) were increased.

   - The basis on which pensions in payment under the LGPS were increased had changed from RPI to CPI. This took effect in the MIS Section by virtue of the reference to the relevant legislation in Rule 7, including the Pension (Increases) Act 1971.

- It could only apply increases to Mr N's pension in accordance with Rule 7. Due to the reference to the underlying legislation, increases would now be based on CPI.

- In some years this would result in a lower increase than would have been the case if the increase was in line with RPI, but in other years, such as 2012, an increase based on CPI would result in a higher increase. Increases under Rule 7 remained uncapped; unlike the WPS where a 5% cap was in place.

- It had reviewed the booklets referred to by Mr N and had been unable to conclude that they overrode the Scheme Rules.

- The Help Booklet clearly stated that it had been prepared as a short summary. The contents were necessarily expressed in general terms. The Help Booklet had referred to pension increases in MIS and WPS being based on RPI, but this was a reflection of the need to summarise the benefits provided by the two schemes. This was the basis of pension increases in local authority pension arrangements at the time and, therefore it applied in the MIS Section.

- Even if the full reference to the provisions of the relevant legislation had been set out in detail in the booklets, the assumption would have been that this was a reference to RPI because CPI did not exist.

- There was no intention that the booklets should override the Scheme Rules, given their status as summary documents.

- The Summary of Benefits document referred readers to the MIS Member's Guide for more detail. The MIS Member's Guide confirmed that pensions under the MIS were "increased by the rate applied to public service pensions by Review Orders made under the Pension (Increase) Act 1971". This remained the case; albeit the Government now used CPI. The MIS Member's Guide also confirmed that the Scheme's Trust Deed overrode the Guide.

- It was unable to agree with Mr N's statement that the current situation was contrary to all information provided to employees about the Scheme. The wording in the summaries was qualified, by virtue of the reference to the MIS Member's Guide. The information provided in 1992 had been a correct summary of the position at the time; rather than a commitment to provide RPI without qualification.

- The "summary" nature of the booklets and the references in the MIS Summary Booklet, together with the MIS Member's Guide, meant they had to be read subject to the Scheme Rules. It was not possible to establish reliance on the summary booklets alone.

- The summaries were accurate at the time and pre-dated the use of CPI as a price inflation measure. At the time, RPI had been used consistently, and until 2011, as the applicable measure for prices for the purpose of pension increases. It would not be appropriate for the Scheme to be bound to provide an increase based upon a summary which was correct in 1992 when there was no awareness that another index might be used in place of RPI.

- The letter Mr N had received from the Scheme administrators had confirmed that it was subject the Trust Deed and Rules of the Scheme.

9. Rule 7 provides:

"PENSION INCREASES

7.1 Extent of increases

Any increase in the pension payable to or in respect of a Member under this Rule shall apply only to the amount of pension in excess of the Member's or Spouse's guaranteed minimum pension as appropriate provided that the increase is being paid as part of the state pension.

7.2 The provision of the Pension (Increases) Act 1971 and any amendment to it or instrument or order made under it and with effect from 6 April 1979 the provisions of Section 59 of the Social Security and Pensions Act 1975 as amended by the Social Security Act 1986 and any amendment to it or instrument or order made under it shall be deemed to apply to the pension, … to which a Member may be entitled (whether in payment or not) … to the same extent as these provisions would apply to any similar benefits which would be payable in circumstances to or in respect of the pensionable employees of a local authority under those Acts PROVIDED THAT any increase in the pension payable to or in respect of a Member shall not be less than the level of increase required by Section 51 of the Pensions Act 1995 (Annual increase in rate of pension)."

10. Mr N asked that his case be progressed to stage two of the IDR procedure. He said the central issue was that employees had been required to make a choice of pension scheme in 1992 based on information provided by the Company in documents and presentations. Mr N said these categorically, explicitly and repeatedly stated, without qualification, that future pension increases would be linked to RPI. He pointed out that the MIS Member's Guide had stated that the level of pension increase was announced by the Government and was "in line with rises in the Retail Prices Index". He confirmed that the compromise agreement was a matter between him and the Company which he would pursue separately.

11. The Trustee issued a stage two decision on 29 November 2012. In addition to the points made in the stage one decision, the Trustee said:-

- It was unable to comment on the content of or what might have been said in the 1992 presentations. It had focused on the documents provided at the time.

- It agreed that the booklets provided in 1992 had referred to pensions in payment under the MIS being increased in line with RPI. They had been drafted in this way because RPI was the basis for increases used at that time. It did not agree that the references were without qualification.

12. Mr N contacted the Company again in February 2018. He referred to a recent Court decision[1] and asked if this changed the Company's perception of the issue. In its response, the Company acknowledged that the question of switching from RPI to CPI continued to be an issue across pension schemes. It provided Mr N with a summary of the recent Court case and said it had related to the interpretation of the particular scheme's rules. The Company quoted Rule 7 (see paragraph 9 above).

Mr N's position

13. Mr N submits:-

- In 1992, he was required to make a choice of pension scheme based upon information provided in professionally produced documents and presentations. These categorically, explicitly and repeatedly stated, without qualification, that future increases under the MIS would be linked to RPI. No other documents were provided at this time.

- As the alternative WPS was superior in all aspects, the only possible reason for choosing to remain in the MIS was the stated "absolute linkage" to RPI; as opposed to the "best endeavours" offered by the WPS.

- It is accepted that, each year, RPI rises on average at least 1% more than CPI. Over the period of an average retirement, this equates to a reduction of many tens of thousands of pounds in pension income. He does not agree that CPI is just "another measure of inflation".

- In selecting the MIS, on the basis of information provided by the Company, he chose to forego more immediate short-term benefits; for example, 60ths accrual instead of 80ths.

- As he remembered the rampant inflation rates of the 1960s and 1970s, the link to RPI was the overriding factor in his decision-making. Every other comparator was in favour of the WPS.

- Pension increases are the single most important factor in the consideration of scheme benefits for most people. The documents provided in 1992 should have adequately covered this.

- He understands that the Trustee is bound by the MIS Trust Deed and Rules. However, since this document was not distributed to or made readily available to employees, this is immaterial to the average member. Members were

[1] *British Telecommunications Plc v BT Pension Scheme Trustees Limited and another* [2018] EWCA Civ 2694

unaware of any qualification to the repeated statements that pension increases would be in line with the rise in RPI.

- The Company should make up any shortfall between the two indices; both historically and going forward.

14. Mr N has quoted from the following documents:-

- Water Mirror Image Pension Scheme Summary of Benefits Booklet

  Page 2

  “In April 1992, members of MIS have a special one-off option to transfer from MIS to WPS. So that you can compare the benefits under the two Schemes, this booklet sets out in summary the main features of MIS.”

  Page 12

  “PENSION INCREASES

  Pensions are increased automatically by the percentage increase in the Retail Prices Index.”

- Help Booklet

  Page 4

  “The presentation had two objectives.

  1) To clarify for MIS and WPS members the relative merits of their pension arrangements and reassure members of both schemes that they are valuable and secure.

  2) To demonstrate the attractions of WPS and give a special, and possibly last opportunity for MIS members to transfer if they wish.”

  Page 6

  “Both MIS and WPS offer good benefits but in a number of circumstances WPS is better.”

  “If you are an MIS member you have a special one-off option to transfer to WPS during April 1992.”

  Page 10

  “It should be stressed that the special terms described above are only available until 30 April 1992.”

  Page 13

  Pension Increases MIS “Full RPI increase paid”

- Question and Answer Booklet

  Page 3

  "In many areas WPS gives better results than MIS. This applies particularly to employees who choose to pay the 6% contribution rate to WPS."

  "The Company is committed to maintaining MIS and the benefits it provides for all employees who wish to continue in the scheme."

  Page 10

  "If you retire for any reason other than ill health then your WPS pension will always exceed your MIS pension provided you choose to pay 6% contributions as a member of WPS."

  Pages 12 and 13

  Worked examples showing WPS pension superior

  Page 17

  "As MIS benefits are guaranteed to increase with price inflation …"

15. In order to put Mr N's quotes in context, further extracts from the relevant pages are provided in the Appendix.

The Trustee's and the Company's position

16. It is submitted on behalf of the Trustee and the Company:-

- The Scheme Rules do not provide Mr N with any entitlement to receive increases on his pension in payment by reference to RPI.

- Rule 7 (see paragraph 9 above) provides that a member's entitlement is to receive increases which are calculated by reference to specific legislation which shall apply "to the same extent as these provisions would apply to any similar benefits which would be payable in circumstances to or in respect of the pensionable employees of a local authority …".

- Pension increases under the legislation referred to in Rule 7.2, as it applies to local authorities, are now calculated by reference to CPI, rather than RPI.

- The Trustee can only pay benefits in accordance with the Scheme Rules. Accordingly, there is no basis upon which the Trustee can, or is required to, pay RPI-based pension increases to members of the MIS Section of the Scheme.

- No Scheme booklet or member guide provides Mr N with a legal entitlement to pension increases based on RPI. No such document supersedes the Scheme Rules. No additional benefit was provided by such documentation nor was there any intention for such guides to be anything other than a summary of the benefits provided by the Scheme at the time.

- The booklets and guides referred to pre-date the use of CPI and were issued prior to the Government's adoption of CPI in 2010. There is no legal basis upon which the booklets and guides can provide Mr N with a benefit entitlement which differs from the Scheme Rules. In particular:-

  Water Mirror Image Pension Scheme Summary of Benefits Booklet

  Although there is reference, on page 12, to pensions being increased by the percentage increase in RPI, page 2 clearly stated that the booklet was only a summary of the main features of the MIS. It went on to state that a complete explanation of the benefits provided under the MIS was provided in the Member's Guide. Mr N has not referred to the Member's Guide but it is submitted that this is a material document which Mr N would have had or could have obtained.

  Member's Guide for the MIS

  The Member's Guide stated, on page 2, that "nothing in the Guide can override the legal position set out in the MIS Interim Trust Deed, copies of which are held by your employer". It further stated, on page 7, that it was "only a guide and does not override the Interim Trust Deed under which the Scheme has been set up".

  The Member's Guide dealt with pension increases on page 16, where it stated that:

  "Your pension will be reviewed annually and increased by the rate applied to public service pensions by the Review Orders made under the Pensions (Increase) Act 1971. The level of increases is announced by the Government and is in line with the rises in the Retail Prices Index …"

  This accurately set out the position concerning pension increases at the time. It is clear that increases are linked to the Review Orders, rather than there being any commitment to pay increases based on RPI at all times in the future.

  Question and Answer Booklet

  Question 18 stated that MIS benefits were "guaranteed to increase with price inflation …". It did not specifically refer to RPI. Since 2011, increases have been in line with CPI but the guarantee to increase with price inflation continues to be in place. The change to CPI was determined by the Government and was outside the control of either the Trustee or the Company.

  The answer to question 18 referred to RPI. This was a fair description of the relevant inflationary measure at the time.

  Help Booklet

The "At a Glance" guide did refer to pension increases in the MIS being full RPI. However, the document was only ever a summary of the MIS benefits at the time. Page 11 noted that the document was only a brief comparison of the MIS and WPS. The summary of the pension increase benefit was a fair and accurate description of the benefit based upon the inflationary measure which applied under the Review Orders in 1992.

- The information provided in 1992 was a summary of the benefits under the MIS and the WPS. It was entirely appropriate to refer only to RPI in such documentation. There was no other inflationary measure at the time which would have been considered to be used in place of RPI. CPI did not exist as a measure of price inflation in 1992.

- It is established law that a summary document does not override the Scheme's Trust Deed and Rules and does not provide Mr N with a right or entitlement in addition to or separate from the Scheme Rules.

- Mr N has asserted that he made his decision in 1992 on the basis that the MIS provided increases linked to RPI; as opposed to the "best endeavours" under the WPS. This is a reference to a cap of 5% under the WPS which could be applied if the increase in RPI exceeded 5%. The Trustee could apply an increase of more than 5% (up to the increase in RPI) if it could be done without increasing employer contributions.

- Given that, in 1992, there was no other basis for price indexation for pension schemes and no change to another index could have been contemplated, it is submitted that Mr N's choice was based on whether or not a cap of 5% might apply.

- Mr N has referred to a letter from the Scheme administrator dated 22 August 2007. This letter clearly stated that the quotation being provided was subject to the Scheme's Trust Deed and Rules. The Scheme Rules did not at that time or since provide Mr N with an entitlement to RPI-based pension increases.

- Correspondence issued by the Scheme administrator in November 2007 did refer to pensions being increased by reference to RPI. However, this was issued after Mr N had left employment and it is submitted that he did not act in reliance on it, having already left employment. The correspondence was a summary of the situation and an accurate representation of the position at the time.

- The compromise agreement entered into between Mr N and the Company does not provide him any legal entitlement to RPI-based pension increases. It does not cause the Company to have any separate obligation to Mr N in this respect.

- It is recognised that previous determinations by the Pensions Ombudsman are not binding precedents. However, the determination PO-440, dated 24 July 2013, is considered particularly relevant and raised similar issues.

Adjudicator's Opinion

17. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or the Company. The Adjudicator's findings are summarised below:-

- There were two aspects to Mr N's complaint:-
  - The use of CPI in place of RPI; and
  - The information he was provided with in 1992.
- Rule 7 stated that "the Pension (Increases) Act 1971 and any amendment to it or instrument or order made under it … shall be deemed to apply to the pension … to the same extent as these provisions would apply to any similar benefits which would be payable … to or in respect of the pensionable employees of a local authority under those Acts". It did not refer specifically to RPI. Instead, Rule 7 provided for pensions in payment under the MIS Section to be increased in the same way as pensions in payment under the LGPS. This was achieved by reference to Review Orders issued under the Pension (Increases) Act 1971.
- Until 2010, the index used to determine increases applicable by reference to the Review Orders was RPI. The Government's decision to move to CPI was subject to challenge in the Courts at the time and found to be lawful[2]. Thus, with effect from 2011, pensions increased by reference to Review Orders issued under the Pension (Increases) Act 1971 have been increased in line with CPI.
- The change to CPI applied to Mr N's pension by virtue of the reference to the Pension (Increases) Act 1971 in Rule 7. His entitlement under the Scheme Rules was to an increase in line with changes in CPI.
- In order to receive increases by reference to RPI after 2011, Mr N would have to establish a right to such increases by some other means. For example, if he could show that he had been promised increases in line with changes in RPI over and above the increases provided for by the Scheme Rules.
- Mr N was seeking to rely on booklets provided for him in 1992 (the **1992 Booklets**). In effect, Mr N was suggesting that these promised that pensions would be increased by reference to RPI. The Adjudicator considered whether

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[2] *Staff Side of the Police Negotiating Board & Ors, R (on the application of) v Secretary of State for Work and Pensions & Anor* [2012] EWHC 3175 (Admin)

the 1992 Booklets established any right to future pension increases linked to RPI. There were two ways in which this might occur: by estoppel or by contract.

- Estoppel was a legal argument raised when one party considered that another was seeking to go back on something they had previously asserted. The two forms of estoppel commonly raised in relation to pension cases were: estoppel by representation and estoppel by convention. Estoppel by representation relied on there having been a clear and unequivocal statement or promise, which it would be unconscionable for the party in question to go back on. In Mr N's case, he was suggesting that the Company had made a promise, in 1992, that future pension increases would be linked to RPI.

- Mr N had highlighted references in the 1992 Booklets to increases in line with changes in RPI. The Adjudicator agreed that there were a number of references in the 1992 Booklets to pensions increasing in line with changes in RPI. However, she was of the opinion that these needed to be read in the context of all of the information about the MIS which was available to Mr N. It would not be appropriate to rely on the selected quotes in isolation.

- In particular, as an existing member of the MIS, Mr N would have had access to the MIS Member's Guide. This stated that pensions would "be reviewed annually and increased by the rate applied to public sector pensions by Review Orders made under the Pensions (Increase) Act 1971". It also said the level of increase was "announced by the Government". In the Adjudicator's view, this was an accurate summary of Rule 7 and made it sufficiently clear that increases to pensions in payment were subject to external legislation. Although the 1992 Booklets did refer to increases in line with RPI, it was her opinion that this did not amount to a clear and unequivocal promise because of the additional information available to Mr N. The Adjudicator noted also that the 1992 Booklets had made it clear that they were intended to provide a summary of the MIS benefits and had directed Mr N to the information which was available elsewhere.

- For an estoppel by convention to arise, there had to be a common assumption by the parties which they had expressly shared between them. In Mr N's case, the shared assumption would have to be that pension increases would be linked to RPI regardless of future changes to the Pensions (Increase) Act 1971 and/or Review Orders. There was no evidence of this.

- This left the question of whether an extrinsic contract existed between Mr N and the Company that it would provide pension increases linked to RPI. For a contract to exist, there had to be: (i) an intention to create contractual legal relations; (ii) an offer; (iii) acceptance of the offer; and (iv) consideration. Consideration was something of value given in exchange for the promise. The Adjudicator said she had not identified any of the elements of a contract in the 1992 Booklets.

- Mr N had also argued that he had relied on the information in the 1992 Booklets in deciding to remain in the MIS. This raised two questions: (i) was the information incorrect and/or misleading; and (ii) if so, had Mr N relied on the information to his detriment?

- In cases involving a claim that incorrect information had been provided, the Ombudsman's position was that a scheme was not bound to follow any incorrect information. A member was only entitled to receive the benefits provided for under the scheme rules; that is, those based on the correct information accurately reflecting the scheme rules.

- Broadly, the Ombudsman would provide redress if it could be shown that financial loss or non-financial injustice had flowed from any incorrect information given. For example, a member might have taken a decision, in the expectation of receiving higher benefits, which they would not otherwise have done. The Ombudsman would also consider whether it was more likely than not that a member had relied on the incorrect information to their detriment and if it was reasonable for them to have done so. An example of this was where a member had already decided to take early retirement before receiving the incorrect information; in which case it was unlikely that any claim for financial loss would be upheld on that basis alone.

- Mr N had highlighted references in the 1992 Booklets to pensions increasing "automatically by the percentage increase in the Retail Prices Index" or "guaranteed to increase with price inflation". Taken in isolation, it could be argued that these statements were not a completely accurate reflection of the terms of Rule 7. However, the 1992 Booklets were intended to be read in the context of the other information available to Mr N, including the MIS Member's Guide. It was the Adjudicator's view that, taken as a whole, the information could not be said to be incorrect or misleading.

- The Adjudicator noted that the Trustee had argued that, even if a more complete description of the increases provided for by Rule 7 had been provided, Mr N would have assumed RPI would be used because CPI was introduced in the UK in 2003. The Adjudicator suggested it would be fair to say that it would not have been in anyone's mind in 1992. Nor did she think that the Government's decision to switch to another index could have been foreseen in 1992. The information provided in the 1992 Booklets, when read in context, was reasonably accurate at the time.

- On the basis that it could not be said that the 1992 Booklets were incorrect or misleading, it was not strictly necessary to consider Mr N's assertion that he relied to his detriment on them.

- The Adjudicator noted, however, that Mr N's stated concern was that his pension be protected against very high rates of price inflation. He had said he preferred the MIS' "absolute linkage" to RPI over the WPS' "best endeavours".

Pension increases under the WPS were capped at 5% in any year unless it was considered appropriate to exceed this. If Mr N's concern had been high rates of price inflation, then Rule 7 still provided this protection; albeit by reference to CPI. Although Mr N considered that CPI will result in lower pension increases in future, it was still a measure of price inflation. In addition, there was no cap on the increase under Rule 7. The one caveat being that future increases were subject to any further changes introduced by the Government. On that basis, even if the 1992 Booklets had provided a more complete summary of Rule 7 and the move to CPI could have been foreseen, the Adjudicator considered it more likely than not that Mr N would not have taken any different action.

18. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N 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 main points made by Mr N for completeness.

Mr N's further comments

19. Mr N submits:-

- Undue emphasis has been given to a one-line oblique reference to a document not supplied with the 1992 Booklets; namely, the MIS Member's Guide.

- He asks the following questions:-

  Why was the MIS Member's Guide not included with the 1992 Booklets if it was considered to be essential to the proper consideration of the MIS Scheme and its rules?

  Why was full RPI indexation repeatedly referred to in absolute terms and without qualification if this is not the case under the Scheme Rules?

  Is it acceptable to rely on an obscure partial reference to another document for clarification of such a fundamental issue as pension increases when this document was not provided and itself refers to the Scheme Rules, which are held remotely and themselves refer to the Pension (Increases) Act 1971?

  Why was further clarification of this not included in the information at the time? A whole page in the WPS booklet (Page 22) was spent further defining and explaining 'Pension Increases' under that scheme. If the oft-quoted 'Full RPI Indexation' required further qualification or reference why was this not done at the time in the MIS document?

- Much use has been made of the excuse that the documents provided were "only a high level summary of the benefits", "A Guide" or cover "the Main Features" of the scheme. Given that pension increases are the single most important factor in consideration of scheme benefits for most people, these documents should have adequately covered such an issue. Particularly as they were being formally issued under FSA guidelines to staff by directors and actuarial consultants to the Scheme in order to inform an important decision by members.

- A number of simple and reasonable qualifications could have been made at the time. For example, by including reference to Section 51 of the Pensions Act 1995 or by stating that RPI was in use currently or subject to change.

- The point which has been consistently missed is that the WPS offered and continues to offer full RPI linkage. A correct and reasonable description of the MIS Scheme should have included the equivalent to the "best endeavours over 5%" for the WPS.

- The absolute linkage to RPI was the only stated advantage to the MIS.

Ombudsman's decision

20. Mr N has pointed out that the MIS Member's Guide was not provided with the 1992 Booklets. However, this document had been issued to members previously and details of how to obtain a further copy were provided. I do not consider it inappropriate for the Trustee or the Company to provide subsequent information on the basis that members can and will reference materials provided previously. This is particularly so when the document in question is a member's guide which a member can reasonably be expected to retain for further reference. It was not necessary for the Trustee or the Company to reissue the MIS Member's Guide to all members in 1992.

21. I do not agree that the Trustee or the Company are or were relying on "an obscure partial reference" to the MIS Member's Guide. Readers of the Water Mirror Image Pension Scheme Summary of Benefits Booklet were referred to the MIS Member's Guide early on in the document (page two). It was described as a "complete explanation of the benefits provided under the MIS" and readers were advised to consult a copy if they wished to "read about MIS in more detail". This made it clear that the Summary of Benefits Booklet was just that; a summary.

22. The MIS Member's Guide informed members that pensions would be "reviewed annually and increased by the rate applied to public sector pensions by Review Orders made under the Pensions (Increase) Act 1971". I find this to be an appropriate summary of the provisions of Rule 7 (see paragraph 9 above). It further stated that the "level of increase is announced by the Government and is in line with rises in the Retail Prices Index". At the time, this was entirely correct. This is the background information against which members could reasonably be expected to read the 1992 Booklets.

23. Mr N has pointed to a number of references within the 1992 Booklets to increases being in line with RPI. He suggests that these should have been qualified by stating

that this was the current position and/or subject to change. This is, however, applying the benefit of hindsight.

24. At the time the 1992 Booklets were published, the index used by the Government for the purposes of the Review Orders was RPI. CPI did not exist and there was no indication that the Government might use another index instead of RPI in the future. If the 1992 Booklets had stated that pensions were "currently" increased by reference to RPI, it is unlikely that Mr N or any other member would have thought anything of it. It is very unlikely that he would have thought a move to another index was probable or had any thoughts as to what that index might be.

25. I am happy to accept Mr N's assertion that pension increases were an important part of his decision. However, I think it is overstating matters to suggest that it is the single most important factor for most people. I find that the information provided in the 1992 Booklets was adequate and accurate in the context of a summary with references to more detailed information being available elsewhere.

26. Mr N has said that his concern was that there should be protection for his pension against very high levels of price inflation. He asserts that the protection offered by the MIS Section, prior to the move to CPI, was superior to that of the WPS. This is on the basis that the MIS Section guaranteed full linkage to RPI; whereas the WPS offered a "best endeavour" to provide the increase in RPI in full. Mr N says that it was for this reason alone that he decided to stay in the MIS Section; a decision he now believes to be to his detriment.

27. The position is that the MIS Section increases pensions by reference to the Review Orders issued by the Government each year. These are now linked to CPI. The WPS, on the other hand, increases pensions by reference to RPI up to a maximum of 5%. Increases over and above 5% may be provided on a discretionary basis depending upon the scheme's funding position. It is by no means clear that Mr N's decision to remain in the MIS Section is to his detriment. I acknowledge that CPI is generally considered likely to increase by a lower annual percentage than RPI in many years. However, Rule 7 does not apply a cap on the pension increase. In years when the annual increase in CPI exceeds 5%, the MIS Section still offers more of a guarantee that Mr N's pension will keep pace with price inflation than the WPS.

28. In summary:-

- Mr N is only entitled to the pension increase provided for under Rule 7; namely the increase provided for in the annual Review Order;

- The information provided in 1992 was adequate and reasonably accurate at the time;

- It could not have been foreseen, in 1992, that the Government would switch to CPI for the purposes of the Review Orders;

- Even if the 1992 Booklets had contained a more detailed summary of Rule 7 or referred to pensions increasing by reference to RPI "currently", it is unlikely that Mr N would have acted any differently;

- Mr N would have assumed that any reference to the Review Orders or to a price inflation index meant RPI because CPI did not exist;

- It is not clear that Mr N has acted to his detriment because there is no cap on pension increases under Rule 7, unlike that which applies under the WPS.

29. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
26 March 2020

Appendix

Scheme literature

30. In addition to the extract highlighted by Mr N, page two of the Water Mirror Image Pension Scheme Summary of Benefits Booklet said:

> "A complete explanation of the benefits provided under the MIS is set out in the Member's Guide which should have been issued to you previously. If you do not have a copy of this and would like to read about MIS in more detail, please contact …"

31. Page 4 of the Help Booklet referred to presentations which had been offered to members and noted there had been a lot of information. It said:

> "This booklet has therefore been prepared as a short summary so that you may consider the main points of the presentation at your leisure."

32. On page 13, the WPS section for pensions increases stated:

> "Guaranteed full RPI increase as Scheme's resources allow, and 5% in any event."

33. In addition to the extract highlighted by Mr N, page 10 of the Question and Answer Booklet, stated:

> "If you choose 5% contributions under WPS, the comparison is not as straightforward and your WPS pension may be lower."

34. On page 17, the Question and Answer Booklet, stated:

> "18. As MIS benefits are guaranteed to increase with price inflation, how does WPS compare?
>
> The Company is committed to providing increases under WPS in line with inflation as far as possible and pays contributions to the Scheme in accordance with this policy. As a continuation of full RPI pension increases depends on the Scheme's resources the Company's funding decision is vital.
>
> 19. How do the 2 Schemes compare on pension increase to date?
>
> The increases are awarded each April and to date have been as follows:

Year	WPS	MIS
	%	%
1989	6.8	5.9
1990	7.7	7.6
1991	9.3	10.9

Estimated for 1992 4.5 4.1

In both cases the rates represent a full increase in line with price inflation. A minor difference occurs due to the fact that for MIS, inflation is measured in September, whilst for WPS, it is measured in December.”

35. An address where further information could be obtained was provided on page 19.

36. Page two of the MIS Member’s Guide, dated August 1989, contained the following statement:

“About this Guide

The [MIS] has been developed to honour the undertaking given … in 1987 that members of the [LGPS] at privatisation would continue to enjoy the same benefits and to pay the same contributions afterwards …

Part 1 of the Guide sets out the key features of MIS …

But remember, nothing in the Guide can override the legal position set out in the MIS Interim Trust Deed, copies of which are held by your employer …”

37. Under the “Key Features” section, “Indexation” was described as:

“Full Retail Prices Indexation from age 55 unless ill-health retirement or spouse’s/children’s pensions”

38. In answer to the question: “Will my pension be reviewed regularly and how much will I receive?”, the Guide stated:

“Yes. Your pension will be reviewed annually and increased by the rate applied to public sector pensions by Review Orders made under the Pensions (Increase) Act 1971. The level of increase is announced by the Government and is in line with rises in the Retail Prices Index.”

39. In answer to the question: “Can MIS be changed or terminated?”, the Guide stated:

“<u>If no Trustee objects</u>, the Scheme can be changed at any time by agreement between your employer and the Trustees …”

40. An address at which further information about the MIS could be obtained was provided on page 22.