

Ombudsman's Determination

Applicant	Mr S
Scheme	Land Rover Pension Scheme (the Scheme)
Respondents	Jaguar Land Rover (JLR) Jaguar Land Rover Pension Trustees Ltd (the Trustee)

Outcome

1. Mr S' complaint against JLR and the Trustee is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) JLR shall award Mr S £500 in recognition of the significant distress and inconvenience which he has experienced dealing with this matter.
2. Furthermore, if Mr S decides to choose the backdated pension option, JLR should also pay him interest on the outstanding instalments of his pension and tax-free cash lump sum, if appropriate. The interest referred to above shall be calculated at the base rate for the time being quoted by the Bank of England.
3. My reasons for reaching this decision are explained in more detail below.

Complaint summary

4. Mr S complains that JLR:
 - failed to pay him the total amount held in his Lifestyle Account* (**LSA**) of £84,224.62 on a timely basis when he left JLR on 8 November 2017;
 - provided the Trustee in December 2017 with an incorrect lower final pensionable salary figure of £51,682.20 to calculate the deferred benefits available to him from the Scheme; and
 - after paying the LSA amount to him in May 2018, supplied the Trustee with a revised final pensionable salary figure of £55,202.60 pa which was still incorrect as it only allowed for part of what was held in the LSA for use when recalculating his benefits.

*Further details on the LSA may be found in the Appendix below.

5. Mr S also contends that:
 - a) the P45 which JLR sent him in November 2017 should have included the LSA amount of £84,224.62;
 - b) the calculation date of his deferred benefits should be 30 May 2018 when JLR eventually paid the LSA amount to him and not his date of leaving (**DOL**) the Scheme, 8 November 2017; and
 - c) he should have remained an employee of JLR and received his full salary until 30 May 2018.
6. To the extent that the matters raised in paragraph 5 constitute a dispute about the duration of Mr S's employment and the correctness or otherwise of the P45 which was issued to him, these are employment issues between Mr S and JLR which are outside of my jurisdiction and cannot be investigated by me. I have therefore not considered these issues in my Determination.

Background information, including submissions from the parties

7. Mr S was on long term sick leave until he resigned from his job on 8 November 2017 having given two months' notice. He received a P45 from JLR showing this leaving date.
8. Whilst working for JLR, Mr S saved overtime hours totalling 3,355.08 in his LSA. This was equivalent to additional gross pay totalling £84,224.62 which Mr S contends JLR should have paid out to him on 30 November 2017..
9. JLR, failed to pay this amount and a gross payment of £3,600.92 representing 20 days' unpaid leave together with Mr S' sick pay of £3,480.69 (gross) at the end of November. Because of this oversight, JLR also supplied the Trustee and Jardine Lloyd Thompson (**JLT**), the Scheme administrator, with an incorrect lower final pensionable pay figure of £51,682.20 which was used for the calculations of his deferred benefits and his cash equivalent transfer value (**CETV**).
10. On 6 December 2017 JLT sent Mr S, via his Independent Financial Adviser (**IFA**), a statement showing that he was entitled to a deferred pension of £20,271.25 per annum at his DOL and a current CETV of £488,655.39.
11. In his letter dated 21 January 2018 to JLR, Mr S complained that:

“In my wage slip that I received dated period ending 30/11/17 my LSA was not paid out.

That money was overtime worked for my pension and I was told it would go on my final pensionable earnings. As it stands none of my LSA goes to pension. I chose to pay into the pension with my overtime.

I had a meeting with Mr P about this matter and I am not satisfied with the answers I received. Mr D has told Mr P that it should have been paid out in the wage slip dated 30/11/17. Which it clearly wasn't. Why?"

12. In a further letter, dated 9 February 2018, to JLR, Mr S added that:

"My LSA...amounting to 3,355 hours is only to be paid out when this is added to my P45. Copy included with this letter. I do not want it paid any other way and it must be in the present tax year ending 5 April 2018.

My Pension Scheme Number is JLT... Please inform them that all my money has not gone into my pension pot and any calculations they are sending out are incorrect. I raised this issue with HR direct ref 202644 on 21 January.

I have spoken with Mr K at Pensions (JLT) about this problem... but he must be informed by JLR..."

13. JLR responded to Mr S in a letter dated 16 March 2018 as follows:

"I would like to clarify that we are currently working through the data and outstanding items in...your LSA, holidays...to be able to provide you with a detailed account of your outstanding queries.

In the meantime, I can confirm that you have a total of 3,355 hours in your LSA, of which as you are aware only a proportion of these hours will go towards your final pensionable earnings.

At present we are determining the...hours that will go towards the final pensionable earnings, in line with the pension scheme rules, which we have now been able to obtain."

14. In a letter dated 28 March 2018, Mr S informed JLR that he was unhappy it had taken so long to reply. He also said that:

"...this delay in sorting out my LSA is not helping me health wise. I have been told that it should be on my final earnings by all departments that I have spoken to and shown on my P45..."

I request an opportunity to meet with a representative from all departments concerned with this issue as soon as possible."

15. On 15 May 2018, JLR wrote to Mr S and said that, after carrying out a full review of his LSA, holidays and Reduced Hours Account (**RHA**), it calculated that he should have been paid an additional £50,088.43 (net) on 30 November 2017 and this payment would be made by BACs transfer by 30 May 2018.
16. JLR supplied Mr S with a revised payslip showing a full breakdown of all payments and deductions made which included:

- a gross payment of £15,509.87 for 617.86 hours held in the LSA which was pensionable;
- a payment of £68,714.75 for the remaining 2,737.22 hours held in the LSA which was not pensionable;
- a further £3,600.92 (gross) which was pensionable representing his 20 days' unpaid leave; and
- a total net payment of £51,019.35 (instead of the £930.92 as shown on the original payslip) and the amount consequently owed to Mr S of £50,088.43 (£51,019.35 – £930.92)

17. JLR informed Mr S that the amount of LSA which was pensionable had been calculated in accordance with the Scheme Rules, the relevant paragraphs of which have been reproduced in the Appendix below, and that it had asked JLT to recalculate his benefits after making the following changes to his pensionable earnings:

<u>Tax Year</u>	<u>Before</u>	<u>After</u>
2016/2017	£45,706.58	£61,216.45
2017/2018	£27,568.89	£31,169.81

18. JLR also said that:

“...you raised your concern that the Company did not contact you to ask whether you wished to cash-in your funds from your LSA. I can confirm that there has been a process change to reflect this, whereby, employees who are leaving the business are asked whether they wish to cash in funds from their LSA as well as their RHA. I apologise for any inconvenience this has caused.

Whilst it is recognised that this confirmation has taken a significant period... this has been due to the complex nature of the query and the requirement to review both the full procedure and the recent changes and the impact to the Scheme.”

19. Mr S responded on 17 May 2018 as follows:

“...I do not agree with the findings. I still think my final salary and P45 should contain all my overtime. I feel someone has deliberately stopped this being paid on my final wage slip dated 30 November 2017. This has prevented me from receiving a pension for six months through no fault of my own and therefore I feel some compensation should be paid up until the date that payment is paid into my bank account as JLR still has money owing to me.”

20. JLT recalculated Mr S's deferred pension benefits using the correct higher final pensionable earnings figure supplied by JLR of £55,202.60 pa and sent Mr S details of his revised benefits on 17 July 2018 which were:

- a deferred pension of £21,772.91 per annum as at DOL; and

- a current CETV of £545,029.09
21. On the same day JLT also sent Mr S early retirement quotations showing the benefits available to him assuming he decided to retire on either (a) his DOL of 8 November 2017 or (b) 16 July 2018.
22. The Trustee did not uphold Mr S' complaint at both stages of the Scheme Internal Dispute Resolution Procedure (**IDRP**) procedure in July and August 2018. It explained to Mr S that:
- its role was to ensure that the correct benefits were calculated and paid in accordance with the Scheme Trust Deed and Rules (**the Scheme Rules**);
 - it had correctly calculated his retirement benefits in accordance with the Scheme Rules and data provided by JLR in December 2017 and July 2018;
 - in its view, he had not suffered any actual financial loss for which he should be compensated by it;
 - it was unable to comment upon the employment issues which he had raised as these were matters solely between Mr S and JLR;
 - if he wished to take the benefits available to him in the Scheme, he could have them backdated to 8 November 2017 with the appropriate arrears or paid at a higher level from now; and
 - if he wished to proceed with a transfer, the CETV would be based on his benefits at the calculation date and therefore reflect any increase to them from his DOL.

Summary of Mr S' position

23. He had spent over 45 minutes on 16 November 2017 making 12 telephone calls to six different people at JLR trying to close the LSA. He says that JLR deliberately failed to close his LSA at the end of November 2017 following these calls.
24. As he had been on long term sick leave, JLR should have treated him as if he had been on paternity leave and sent him a letter asking whether he wanted to close his LSA. He did not receive such a letter from JLR.
25. JLR tried to arrange a meeting with him in order to try resolving the complaint which he had made on 21 January 2018. Such a meeting did not take place though.
26. His subsequent requests for a meeting with JLR to resolve this matter have been denied.
27. Mr S says that:
- according to the Citizens Advice Bureau (**the CAB**), "pensionable earnings must include overtime earnings each year; and
 - the CAB has provided him with the details of two solicitors who can assist him with the employment law issues and "conduct a full review of his pension" after his complaint has been determined by me.

Summary of JLR's position

28. Whilst an employee of JLR, Mr S should have submitted an electronic timesheet which included a box that he should have ticked when requesting his LSA to be paid out. At the time of Mr S' resignation, he was on long-term sick leave and did not have access to his computer. He was consequently unable to tick the relevant box on the timesheet to inform JLR of his decision and it did not pay out the amount held in the LSA account to Mr S on 30 November 2017.
29. Mr S ceased his pension contributions into the Scheme when he resigned on 8 November 2017. It therefore disagrees with his view that the deferred benefits available to him from the Scheme should be calculated as at the date on which he belatedly received the payment from his LSA on 30 May 2018.
30. It says that:

“...it is not possible to enhance the pension an employee can receive above the amount payable had the employee not paid into his LSA account (except to the extent that the 10% enhancement on applicable saved hours applies). We have considered that the issue has been complicated by Mr S' absence from work and the effect of benefit changes effective 6 April 2017 at which time benefits ceased to be based on a three-year average going forward but pensionable pay in the prior Scheme year.

...our DB schemes ceased to be final salary schemes and became CARE schemes with effect from 6 April 2017, after this date only LSA hours contributed after this date can contribute to the CARE pensionable pay at the point of withdrawal. As Mr S did not take his LSA until the Scheme year of leaving, this would have meant that strictly speaking none of his LSA would be pensionable, irrespective of when it was originally “banked”.

As a concession to Mr S...we decided to treat the withdrawal of LSA hours on leaving which were contributed in the 3 years up to 5 April 2017, as contribution towards his final pensionable pay at 5 April 2017.

Consequently, although there was a delay in providing these figures to JLT, his benefits have been calculated on a basis that, strictly speaking, is greater than that which should have been his entitlement following the change to CARE. For this to have been the case, Mr S would need to have withdrawn his LSA prior to 6 April 2017.

We agree that the issue was the late provision of the correct pensionable pay figure to the Trustee caused by the late payment of the LSA amount...

...we accept that the Company was ultimately responsible for the delay in providing the correct benefit options to Mr S and I can confirm that should Mr S indicate that he would accept a payment of £500 for non-financial injustice...we would be prepared to make such a payment.”

31. All financial spending at JLR has been frozen until further notice “due to the unprecedented events following COVID19”. It cannot therefore pay the award now due to Mr S until the freeze has been lifted.

Adjudicator’s Opinion

32. Mr S’ complaint was considered by one of our Adjudicators. The Adjudicator’s findings are summarised briefly below.
33. The evidence is clear that JLR failed to pay out the LSA amount to Mr S on a timely basis after he left the company on 8 November 2017. Having given two months’ notice of his leaving date, it was reasonable for Mr S to expect that JLR should have been able to pay the LSA amount to him on 30 November 2017. Its failure to do so was maladministration on the part of JLR.
34. Because of this failure, JLR also supplied the Trustee and JLT in December 2017 with an incorrect final pensionable salary figure to calculate the deferred pension and CETV available to Mr S.
35. Further when Mr S noticed the error, and brought it to JLR’s attention on 21 January 2018, JLR did not provide Mr S with the revised final pensionable salary until 15 May 2018. The amount of time taken by JLR to carry out its review was somewhat excessive.
36. Mr S contends that the revised final pensionable salary figure of £55,202.60 which JLR calculated is still incorrect because it does not allow for all the hours held in the LSA of 3,335.08 representing additional pay of £84,224.62. There is no concrete evidence to substantiate his contention.
37. According to the Scheme Rules, Mr S’ final pensionable salary is the highest annual average of pensionable earnings for any three consecutive Scheme years in the ten Scheme years immediately before 6 April 2017. Further, for cash converted from his LSA at any time prior to 6 April 2017 the definition of “earnings” used to calculate pensionable earnings is limited to only include cash converted for the extra hours accrued to the LSA in the three consecutive years immediately prior to 6 April 2017, commencing no earlier than 1 November 2003.
38. JLR has supplied details of the overtime credited to Mr S’ LSA clearly showing that only 617.86 of the 3,335.98 hours held were accrued in the three consecutive years prior to 6 April 2017 which was equivalent to an additional £15,509.87. That amount was included in the pensionable pay figure reported to JLT. JLR has also provided detailed calculations on how it split the hours held in Mr S’ LSA between pensionable and non-pensionable hours and there is no evidence to suggest the figures are incorrect.

39. In the Adjudicator's view, JLR has provided the Trustee and JLT with the correct revised final pensionable salary figure of £55,202.60 to recalculate the deferred benefits and current CETV available to Mr S based on his DOL of 8 November 2017. It follows that the figures which JLT provided Mr S on 17 July 2018 for his deferred pension, CETV and early retirement benefits have also been calculated correctly.
40. During the IDRP, the Trustee informed Mr S that the options available to him, if he wished to take his benefits, were a pension backdated to the date he left service on 8 November 2017 or to receive an actuarially increased pension to allow for late payment payable from now. Alternatively, Mr S may request a transfer of his pension rights and the CETV would be based on his benefits at the calculation date and therefore reflect any increase to them during the period since he left service.
41. In the Adjudicator's view, by offering Mr S the above benefit options, the Trustee and JLT have put Mr S back to the position which he would have been had JLR provided the correct final pensionable salary in December 2017.
42. Should Mr S decide to take the backdated pension option, the Adjudicator considered it would be reasonable to expect JLR to compensate him for late payment by awarding him simple interest calculated using base rates for the time being quoted by the Bank of England from the date each payment should have been made to the date of payment of the arrears.
43. It is also clear from the evidence that Mr S has suffered significant distress and inconvenience dealing with the matter because of the maladministration identified above. In the Adjudicator's view, this warrants a non-financial injustice award of £500 from JLR which is in line with current guidelines from the Pensions Ombudsman.
44. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr S for completeness.

Ombudsman's decision

45. Mr S is adamant that the final pensionable salary figure used to calculate the retirement benefits and CETV available to him from the Scheme should include all the overtime earnings held in his LSA, but has not pointed to any provision within the scheme rules in support of that argument. The definitions contained in schedule 2 of the rules provide that pensionable earnings include 'cash converted from the LSA which relates only to the extra hours accrued and allocated to an Active Member in the LSA in the three consecutive years immediately prior to 6 April 2017.'
46. I concur with the opinion of the Adjudicator that the revised final pensionable salary figure of £55,202.60 which JLR provided JLT to determine the benefits available to Mr S based on his DOL of 8 November 2017 has now been calculated correctly in accordance with the Scheme Rules. There is no evidence to suggest that the figures

which JLT supplied Mr S in July 2018 for his deferred pension, CETV and early retirement benefits have been calculated incorrectly.

47. My role is to put Mr S, as near as possible, in the position he would have been in had the maladministration identified not taken place. In my view, by taking the appropriate corrective action, JLR has in the main now put Mr S back in the position he would have been in had it not made the mistakes described above.
48. Therefore, I partly uphold Mr S' complaint against JLR only and make the appropriate direction below.

Directions

49. Within 28 days of the date on which its financial spending freeze has been lifted, JLR shall award Mr S £500 in recognition of the significant distress and inconvenience which he has experienced dealing with this matter.
50. If Mr S decides to choose the backdated pension option, JLR shall also pay Mr S interest on the outstanding instalments of his pension and tax-free cash lump sum from the dates due to the date paid. That interest shall be calculated at the base rate for the time being quoted by the Bank of England.

Karen Johnston
Deputy Pensions Ombudsman
14 April 2020

Appendix

Lifestyle Account – Excerpt from the JLR Employee Handbook

A Lifestyle Account (LSA) will be established for each employee. The LSA will allow employees to store hours. Stored hours can be used by employees to “retire” earlier or convert to cash...later...

Employees may credit the LSA with their RHA hours and...overtime. By taking hours out of their LSA to fund “early retirement” an employee may cease work in advance of their retirement date and use their LSA hours to fund a period on average earnings immediately preceding retirement...

Employees will be able to cash in any number of hours from their LSA (subject to a minimum of 10 hours) at any time...Less than 10 hours may be converted where an employee is cashing in all hours in their LSA...

For the purpose of Final Pensionable Earnings (**FPE**), the hours put into the LSA and cashed during the last 36 months will count towards FPE.

Relevant Definitions as shown in the Scheme Rules

“Final Pensionable Earnings”

- (a) In relation to a Member who has completed at least three years’ Pre-CARE Pensionable Service*...the greater of:
 - (i) the highest annual average of Pensionable Earnings for any three consecutive Scheme Years in the ten Scheme Years immediately before 6 April 2017...
 - (ii) the annual average of the Member’s Pensionable Earnings during the 36 months ending on 5 April 2017...
 - (iii) the Member’s Average Career Revalued Earnings

If cash is converted from the Member’s LSA at any time prior to 6 April 2017 then in respect of paragraph (a)(i) and (ii) above, in calculating Pensionable Earnings...definition of “Earnings”** will be deemed limited to only include cash converted from the LSA which relates only to the extra hours accrued and allocated to an Active Member in the LSA in the three consecutive years immediately prior to 6 April 2017 commencing no earlier than 1 November 2003.

*Pre-CARE Pensionable Service means “Pensionable Service before 6 April 2017”

**Earnings means “For a Member, his gross monetary earnings for the relevant period...including cash converted from the RHA or the LSA...”

“CARE Pensionable Earnings” means “...the Pensionable Earnings received in the year ending on 5 April immediately before the Benefit Year in question...”