Ombudsman's Determination

Applicant	Mr R
Scheme	House of Fraser & Jenners Pension Scheme (**the Scheme**)
Respondent	House of Fraser Pension Trustees Limited (**the Trustee**)

Outcome

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

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr R's complaint concerns the increases that have been applied to his pension since retirement. He believes he has incurred a financial loss because the Trustee has not honoured the 3.5% annual increase to his pension in payment (**his benefits**), although he was told in writing, in June 1991 that the 3.5% annual increase to his benefits was guaranteed.

4. Mr R has also complained that his wife's widow's pension (**the widow's pension**) has not been calculated correctly.

Background information, including submissions from the parties

5. Mr R was a member of the Scheme until he retired in 1991. On 25 June 1991, Mr R wrote to the Trustee, to query the benefits he was entitled to, from the Scheme, specifically the interest which had been applied to his AVC. On 28 June 1991, the Trustee responded to Mr R and provided him with the information he had requested. The letter also said:

   "Your total pension will be increased by 3 ½% on the 1st December each year, this is guaranteed."

6. On 22 July 1991, the Trustee wrote to Mr R, in response to a further letter it had received from him. Amongst other things, the letter said:

   "The Pension purchased in the Plan is on a basis advised by our Actuaries. The Actuaries made various assumptions, one of which is a long term interest assumption of 9% (is this the figure you are seeking?) It has to born in mind [sic], however, that the pension being purchased does not just reflect interest expectations. The pension promised in return for AVCs is exactly the same as the main HoF Plan pension and it therefore includes provisions for: -

- a five year guarantee;
- annual excalation [sic] of up to 3 ½% (or whatever other increase is granted at the Trustee's discretion – e.g 5% this year) on the whole of the pension in excess of the GMP;
- widow's/dependants' pensions on the death of the member."

7. Mr R started receiving his benefits in December 1991.

8. In April 2017, Mr R complained to the Trustee because he did not believe his benefits were being increased in line with the guarantee, stated in the 28 June 1991 letter.

9. The Trustee responded to Mr R in October 2017. It referenced the two letters he had received in June and July 1991 and explained that under the Rules of the Scheme (**the Rules**), Mr R was not entitled to have his benefits increased annually, at a rate of 3.5%. The Trustee also explained that it is legally obliged to pay benefits in accordance with the Rules.

10. The Trustee explained that Mr R's benefits were previously calculated incorrectly and gave details of how his benefits had been calculated as well as how his benefits should have been calculated, under the Rules. The Trustee also said:

    "The Scheme actuary has recalculated your pension entitlement (both current and historic) and the corrected calculation method for pension increases has not resulted in any increase due to your pension payments…We have also updated your file to ensure that your pensions will be calculated on the correct basis going forward, taking into account RPI inflation since your date of retirement."

11. Unhappy with the Trustee's response, Mr R referred his complaint to us and made the following comments: -

    - In early December 2016, due to his failing health, he decided to put his financial affairs in order. He was shocked to find that the Trustee had misled him regarding his benefits and the widow's pension.

    - It was his understanding that his benefits would increase annually by 3.5% and that his wife would receive 50% of his benefits, should he die first.

    - The Trustee had sent him a letter in June 1991, which informed him that it was guaranteed his benefits would be increased annually by 3.5%. The word "guaranteed" is used to give the receiver "confidence and satisfaction in a product or financial service" should something go wrong. Otherwise, the word is meaningless.

- His enquiries show that the word is legally binding and therefore overrides any Scheme Rules.

- He believes he has suffered a loss because the Trustee has not honoured the guarantee he was promised.

12. In response to Mr R's complaint, the Trustee provided extracts from the 1981 Rules that are applicable to Mr R's pension (see the Appendix). In addition, it made some comments on Mr R's complaint, a summary of which is below: -

- Before Mr R's complaint, the administrative practice was to pay annual increases on his benefits, above the guaranteed minimum pension (**GMP**), of the lower of (i) the increase in the Retail Prices Index (**RPI**), over the preceding year, subject to a base of 0% or (ii) 3.5%.

- In response to Mr R's complaint, the Trustee investigated the historic increases on his benefits and sought extensive legal and actuarial advice. After obtaining legal advice, it was decided that under the Rules, his benefits should have been increased annually by the lower of (i) the increase in RPI since he retired and (ii) 3.5% (**since retirement increases**).

- The Trustee's actuarial advisers completed a comparison of the benefits Mr R has received since retirement with the benefits he could have received, using the since retirement increases. This showed that, under the increases paid on Mr R's pension, the value of his pension as at 1 December 2016 was £12,862, whereas if his pension had been increased using the since retirement increases, his pension as at 1 December 2016 would have been £12,621.

- However, the Trustee does not intend to reduce his benefits, to the minimum level provided for under the Rules. But the Scheme is in the PPF assessment period and this may impact increases going forward.

- Mr R is not entitled to increases at a fixed rate of 3.5% under the Rules. He is entitled to annual increases at the rate of RPI over the period since he retired, capped at 3.5%.

- Mr R argues that he is entitled to a fixed rate of 3.5%, regardless of what the Rules say, and this is based on the letter he received dated 28 June 1991. However, this letter was followed by a letter dated 22 July 1991 which clarified that pension increases would be up to 3.5%.

- Mr R does not give a breakdown of why he believes the widow's pension has been incorrectly calculated. But the Trustee believes that he has based his assertions on the calculations of his pension increases. The Trustee confirmed that the widow's pension will be 50% of his benefits.

- The Trustee acknowledged that there were some delays in resolving Mr R's query and explained that this was due to it needing to search historic documentation as well as seek legal and actuarial advice. However, it kept Mr R informed throughout the process and updated him frequently.

- In addition, in recognition of the distress and inconvenience the delay caused, the Trustee paid Mr R £500. The Trustee does not see any basis for The Pensions Ombudsman to increase this amount.

Adjudicator's Opinion

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

    - There was no dispute that the letter Mr R received dated 28 June 1991, informed him that his benefits would increase annually by 3.5%, and that this was guaranteed. However, a subsequent letter Mr R received from the Trustee dated 21 July 1991, informed him that his annual pension would be increased by up to 3.5% or whatever increase is granted at the Trustee's discretion. Therefore, in the Adjudicator's opinion, as the two letters provided Mr R with conflicting information, it would have been reasonable for him to have contacted the Trustee, to query the difference in the letters at that time, as he had previously contacted the Trustee for clarification of other points.

    - In the Adjudicator's opinion, it was not reasonable for Mr R to have solely relied on the information contained in the 28 June 1991 letter, to conclude that his benefits would increase annually by 3.5%. Further, the fact that the correct position was made known to Mr R, at the relevant time, invalidates the arguments for negligent misstatement and estoppel.

    - In addition, the Trustee can only pay Mr R benefits he is entitled to from the Scheme. Rule 6.6.4 of the Rules state:

      "any increase made in the Target Pension in accordance with Rule 6.6 shall if necessary be restricted so that the annual amount thereof as so increased shall not exceed such annual amount increased in proportion to the increase in the Government's Index of Retail Prices which has occurred since the date on which the first instalment of the Member's pension fell due…"

    - The Scheme Rules cannot be overridden because of an incorrect statement made by the Trustee. So, as the Trustee can only pay members the benefits they are entitled to from the Scheme, it was the Adjudicator's view that I would not direct the Trustee to increase Mr R's annual pension by 3.5%.

    - In relation to Mr R's complaint concerning the widow's pension, Mr R said he believed the widow's pension had been calculated incorrectly because when he joined the Scheme, he was told that the widow's pension would be 50% of his benefits. However, subsequent correspondence he received, suggested that the widow's pension varied.

- The Trustee confirmed that the widow's pension will be 50% of Mr R's benefits. So, as Mr R's wife is not yet entitled to receive a widow's pension, it is not yet known if that benefit has been calculated incorrectly. So, it was the Adjudicator's view that I would not uphold this element of Mr R's complaint.

- The Trustee acknowledged there were delays in responding to Mr R's complaint. In recognition of this, it paid him £500. In the Adjudicator's view, I would not direct the Trustee to make any further award as this is in line with my guidelines for non-financial injustice.

- In the Adjudicator's opinion, the Trustee incorrectly calculating Mr R's pension amounted to maladministration. However, the maladministration did not result in him incurring a financial loss and in fact, the value of his benefits is higher than it would have been, but for the maladministration. So, as Mr R had not suffered a financial loss, it was the Adjudicator's view that the Trustee did not need to make any further award to Mr R for any non-financial injustice he incurred.

14. Mr R did not accept the Adjudicator's Opinion and in response made the following comments: -

- He thanked the Adjudicator for confirming that should he predecease his wife, she would receive 50% of his pension. However, he finds the Adjudicator's opinion on his pension calculation unacceptable and does not make sense.

- The Adjudicator appears to be saying that a pension company can make as many promises, guarantees or administrative errors as it wishes and the employee has no redress. This is unforgiveable, a travesty of justice and maybe even illegal.

- When he was invited to join the Scheme, he was led to believe that his benefits would increase by a fixed 3.5% per annum. This was confirmed to him in writing in June 1991. Regardless of the contents of the Trustee's July 1991 letter, the Trustee has "violated that guarantee."

- The fact that the Trustee withdrew the guarantee a month later is irrelevant and dishonourable. He cannot understand how the Trustee can be allowed to break a guarantee which is legally binding.

- His claim against the Trustee has gone on for two and a half years but it should have been settled a long time ago.

15. As Mr R did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr R for completeness.

Ombudsman’s decision

16. The starting point where incorrect information has been provided to a scheme member is that a member is only entitled to receive the benefits provided for under the scheme rules. The entitlements flow from the scheme rules. A statement of benefit entitlement is not a freestanding contractual offer or guarantee.

17. Mr R believes that the Trustee has failed to honour the increase he was guaranteed, would be applied to his benefits. However, I find that the Trustee has not breached any guarantee that Mr R believes he is entitled to.

18. A complainant can only claim to be entitled to the misstated amount if the statement was clear and unequivocal and he can demonstrate that he reasonably relied upon it to his detriment. I accept that Mr R was incorrectly informed in writing in June 1991 that it was guaranteed that his benefits would increase by a fixed rate of 3.5%. However, the Trustee quickly corrected this error, by writing to Mr R in July 1991, to inform him of the correct benefits he was entitled to at retirement. I do not find that Mr R relied on the incorrect information he received in June 1991, to his detriment.

19. I note that Mr R has made the point that he was told his benefits would increase by s fixed 3.5% when he first joined the scheme. This aspect of his complaint has emerged since the Adjudicator’s opinion. It did not form part of the original complaint and was not investigated. I therefore make no finding about what Mr R was told when he joined the scheme and what the consequences of any such statements may have been for his decision making at that time.

20. Lastly, although the Trustee now considers that Mr R was entitled to a lower amount, it has not actually reduced the amount of benefit being paid to him. On those facts, I am satisfied that he has not suffered any financial loss as a result of any error they may have made.

21. Therefore, I do not uphold this complaint.

Karen Johnston

Deputy Pensions Ombudsman
11 September 2019

Appendix

Relevant Extracts of the Trust Deed and Rules 1981

"**Increase in pension in course of payment.** Subject to Rule 6.21 [Guaranteed Minimum Pensions] the annual amount of the Target Pension of a Member entitlement to payment of which has arisen on the Member's retirement from Service (excluding any part thereof commuted in accordance with Rule 6.4) shall subject as hereinafter provided in Rule 6.6 be increased

6.6.1 at the rate of 3% per centum per annum compound in the case of a pension payable to a Member who retires from Service prior to 6th April 1978 or attains Normal Retirement Date prior to 6th April 1978 and retires from Service on or after 6th April 1978 and

6.6.2 <u>at the rate of 3½ per centum compound in the case of a pension payable to any other Member who retires from Service</u>

The first increase thereon taking effect on the anniversary of the date on which the first instalment of such pension shall fall due and each subsequent increase taking effect on each subsequent anniversary of such date.

<u>Provided that</u>

6.6.3 if part of the Member's Pensionable Service consists of Pensionable Service prior to the date on which he became a Member and that Trustees and the Employer so determine the part of the Member's Target Pension calculated by reference to the part of the Member's Pensionable Service prior to the date on which he became a Member shall not be increased as aforesaid or it may be increased at such rate other than as hereinbefore in Rule 6t.6 specified as the Trustees and the Employer shall decide.

6.6.4 any increase made in the Target Pension in accordance with Rule 6.6 shall if necessary be restricted so that the annual amount thereof as so increased shall not exceed such an annual amount increased in proportion to the increase in the Government's Index of Retail Prices which has occurred since the date on which the first instalment of the Member's pension fell due…"