

## Ombudsman's Determination

Applicant	Mr S
Scheme	The Jaguar Pension Plan (the Plan)
Respondents	The Trustee of the Jaguar Pension Plan (the Trustee)

## Outcome

1. I do not uphold Mr 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 S' complaint is that the Trustee does not agree that he is entitled to an unreduced pension from age 60 in respect of transferred in service from the Ford Pension Fund (**the Fund**).

## Background information, including submissions from the parties

4. In April 1976 Mr S was employed by Ford and joined the Fund.
5. On 1 June 2001, Mr S elected to transfer his employment to Ford's subsidiary, Jaguar under a Company Approved Transfer (**CAT**). Mr S stopped accruing benefits in the Fund and joined the Plan. Mr S' pension entitlement in the Fund was deferred, although it retained a link to his salary at Jaguar due to the CAT. This salary link ceased in June 2008, after Jaguar left the Ford Group.
6. On 22 July 2008, the Trustee wrote to Mr S and offered him the opportunity to transfer his Fund entitlement to the Plan. The Trustee said its "overall aim" in making the offer was for a member's Plan entitlement to be of broadly the same value as their Fund entitlement, if they chose to transfer. The letter also stated the Trustee and administrators could not give financial advice and Mr S could consult an Independent Financial Adviser (**IFA**).
7. In August 2008, Mr S agreed to transfer his benefits from the Fund to the Plan. He was credited with 26 years and 3 months additional service in the Plan, with a Normal Retirement Age (**NRA**) of 65.

8. On 17 January 2014, Aon Hewitt, the Plan's administrator, sent Mr S an early retirement estimate (**the Estimate**), with Early Retirement Factors (**ERF**) applied. It was projected to 31 January 2014 and stated he was entitled to a pension of £19,186.80 per year. The ERF applied to the tranche of Mr S' entitlement relating to his transferred-in service understated the reduction that should have been applied. However, the Estimate also stated that:

“this quotation is for illustration only and does not confer any right or entitlement to the benefits shown and should not be taken as an indication that the Company would approve your early retirement”.
9. On 30 April 2014, Mr S left Jaguar's employment and his Plan entitlement was deferred.
10. On 19 June 2014, JLT Benefit Solution Ltd (**JLT**), the Plan's new administrator, sent Mr S a statement of his Plan entitlement. It stated Mr S' pension entitlement at his date of leaving was £31,012.47 per year and that he might be able to retire before NRA, under certain circumstances.
11. On 22 June 2016, JLT sent Mr S a retirement quote calculated as at 31 July 2016. It stated he was entitled to a pension of £20,205.41 per year and it was calculated in accordance with the Rules.
12. On 12 October 2017, after a prolonged exchange of correspondence, Mr S raised a complaint under the Plan's Internal Dispute Resolution Procedure (**IDRP**). He said that he used the Estimate's figures and ERF in his financial planning and he would not have taken the decision to resign if he had been provided with accurate information in 2014. Mr S argued his Fund entitlement would have been available unreduced from age 60 and this should apply to his transferred-in Plan pension.
13. On 28 November 2017, the Trustee provided its IDRP Stage 1 response. It said there was differences between benefits Mr S was accruing in the Plan and the service he transferred from the Fund. The Trustee said the former (providing it was accrued prior to 31 January 2007) had an NRA of 60, while the latter had an NRA of 65 and was designed by the Plan's Actuary to be a broadly similar entitlement to the Fund. The Trustee apologised for the incorrect information given to Mr S in the Estimate. However, it also said Mr S had provided only assertions to support his claim that he would have chosen not to resign in 2014.
14. On 22 December 2017, Mr S requested that his complaint be considered under IDRP Stage 2. Mr S maintained that the transferred-in section of his Plan entitlement should only be reduced if he retired before age 60. He argued his contributions to the Fund had been made on this basis and this provision should be honoured in line with the “no loss transfer” he had made to the Plan.
15. On 12 March 2018, the Trustee provided its IDRP Stage 2 response. The Trustee said it had taken advice on Mr S' previous Fund entitlement and he would only have been entitled to retire at age 60 with Ford's consent. The Trustee said this did not

“constitute an absolute entitlement”. The Trustee also said it had found no evidence Mr S was informed he would be entitled to retire unreduced at age 60 in any of the documentation supplied to him before he agreed to transfer. The Trustee offered Mr S £500 in settlement of his complaint, in acknowledgement of the errors made in the Estimate.

## **Adjudicator’s Opinion**

16. Mr 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:-

- Mr S receiving incorrect information in the Estimate did not create an entitlement to the higher, incorrect amount. Mr S’ Plan entitlement must be calculated in accordance with the Trust Deed and Rules.
- The Plan Rules do not allow Mr S to retire unreduced at age 60. Mr S was not entitled to this previously under the Fund Rules. Unreduced, early retirement from Ford and Jaguar was subject to company consent and the rules for deferred members were different.
- The Estimate contained a caveat that it was an ‘illustration only’ and could not be reasonably relied upon as a definite promise.
- The Trustee acknowledged it had given Mr S misleading information in the Estimate and offered £500 to reflect the significant distress and inconvenience it had caused Mr S.
- Awards for distress and inconvenience made by the Ombudsman are usually modest and the Adjudicator considered £500 to be an appropriate award, based on the facts. It was not likely that an Ombudsman would award a higher level of compensation in this case.

17. 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**

18. Mr S argues that he was ‘mis-sold’ the opportunity to transfer to the Plan. However, mis-selling involves receiving unsuitable advice, not having risks explained or not receiving the necessary information to make a decision. Mr S’ complaint does not involve mis-selling. Mr S was offered the opportunity to consider a transfer of benefits and the decision to do so was entirely his. He was under no obligation to transfer and could have remained a deferred member of the Fund.

19. The Trustee stated in its July 2008 letter it could not give financial advice and provided Mr S with contact information for the administrators of both the Fund and Plan. The Trustee also said Mr S should consider taking independent financial advice, which he chose not to do. I have seen no evidence Mr S ever queried the terms of the transfer from the Fund to the Plan before agreeing to it. It would have been reasonable for Mr S to query the terms of the transfer before making his decision. Consequently, I find that Mr S should have ascertained his correct entitlement before agreeing to transfer to the Plan.
20. In his comments, Mr S argues there were insufficient warnings on the Estimate and if he could not rely upon information supplied by the Trustee, he had no access to reliable information about his Plan entitlement. I appreciate Mr Y was disappointed to ascertain the correct position. However, I do not agree that he could consider the Trustee's responses to be wholly unreliable after the provision of one incorrect estimate.
21. The Trustee has acknowledged it supplied Mr S with incorrect information before he made the decision to leave Jaguar's employment and the Plan. However, as the Trustee never led Mr S to the incorrect expectation he could retire without reduction at age 60, I do not agree it has caused him to suffer any loss of expectation.
22. Consequently, I find the Trustee's offer of £500 to be an appropriate award for the significant distress and inconvenience caused to Mr S by the over-stated estimate. If Mr S would like to accept the Trustee's offer he should contact the Trustee directly.
23. I do not uphold Mr S' complaint.

**Anthony Arter**

Pensions Ombudsman  
29 May 2019