

## Ombudsman's Determination

Applicant	Mrs N
Scheme	Legal and General Group UK Pension and Assurance Fund ( <b>the Fund</b> )
Respondent	The Trustee of the Legal and General Group UK Pension and Assurance Fund ( <b>the Trustee</b> )

### Outcome

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

### Complaint Summary

2. Mrs N complains that she disagrees with the Trustee's decision to reduce her pension at age 65 and not age 66.

### Background information, including submissions from the parties

3. On 3 November 2009, the Trustee sent Mrs N an early retirement quote (**the Quote**) calculated as at 1 December 2009. The quote offered Mrs N the option to commute part of her Fund pension in exchange for an additional, temporary pension until State Pension Age (**SPA**) and a reduced pension thereafter (**the Levelling Option**). The Quote also said that:-

“on reaching SPA (19/04/2020) the value of your pension at that time will be reduced by £4,953.00 a year”.

4. On 9 November 2009, Mrs N completed and returned the retirement application form to the Trustee electing to retire and take the Levelling Option.
5. On 19 November 2009, the Trustee wrote to Mrs N about the arrangements for paying her Fund pension. The Trustee said that Mrs N was entitled to a pension of £11,478.00 a year, which included the Levelling Option of £4,953.00 a year. The Trustee also said that the Levelling Option would cease at age 65.
6. Mrs N retired on 1 December 2009.
7. On 3 November 2011, the Pensions Act (2011) (**the Act**) received Royal Assent. The Act accelerated previously proposed changes to the SPA for men and women. From

December 2018 the SPA for both genders incrementally increased to age 66 by October 2020. Mrs N's SPA changed to age 66.

8. On 28 May 2018, Mrs N raised a complaint under the Fund's internal dispute resolution procedure (**IDRP**). Mrs N said that the Trustee was not interpreting the Fund Rules correctly. Mrs N also said that the Trustee should continue to pay the Levelling Option until her revised SPA of age 66 and the Trustee was causing her to sustain a financial loss of £4,953.00 by ceasing it a year early.
9. On 15 October 2018, the Trustee provided its final response and did not uphold Mrs N's complaint. The Trustee's response is summarised below:-
  - a. The Levelling Option element of Mrs N's pension was calculated on a 'cost-neutral' actuarial principle and extending it beyond age 65 would result in Mrs N receiving more than her entitlement under the Fund Rules.
  - b. The Rules state that the Levelling Option is calculated at the date of retirement and all future changes to the SPA should be ignored.
  - c. The Trustee's correspondence with Mrs N has consistently stated that her Levelling Option pension will cease at age 65.
  - d. Within limits prescribed by legislation, the Trustee proposed to offer members the opportunity to commute more of their pensions to provide a further Levelling Option for members in Mrs N's position.

## **Adjudicator's Opinion**

10. Mrs N'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:-
  - a. The Adjudicator understood why Mrs N believed that the Trustee had misconstrued the Fund Rules and that her levelling pension should be paid until age 66. The Adjudicator also appreciated that Mrs N had no control over changes that were made to the SPA by the Act.
  - b. The Levelling Option was calculated in 2009 on a 'cost-neutral' basis to age 65 using actuarial factors. These factors were designed to ensure that Mrs N was paid the same amount of pension over her lifetime, whether she elected for the Levelling Option or not. In this case, the Levelling Option was calculated up to age 65 and no further.
  - c. If the Trustee continued to pay the Levelling Option at the same rate until age 66, without a further reduction of her pension beyond age 66, then Mrs N would receive a greater benefit than she is entitled to under the Fund Rules. Consequently, the Adjudicator did not agree that Mrs N had sustained a financial loss because the Trustee must pay her correct entitlement in accordance with the Fund Rules.

- d. The Levelling Option could only be extended beyond age 65 if Mrs N exchanged more of her future pension to pay for it. The Trustee said it was considering this option for members in Mrs N's position.
  - e. The Trustee had informed Mrs N, in its November 2009 letter, that the Levelling Option would cease at age 65. In the Adjudicator's view, its correspondence was clear on this point and consistent with the Fund Rules.
11. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her 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 Mrs N for completeness.

### **Ombudsman's Decision**

12. Mrs N maintains that the Fund Rules entitle her to receive the Levelling Option until her revised SPA. The relevant section of the Fund Rules is provided in the Appendix. I appreciate why Mrs N believes that her Levelling Option pension should be paid until her revised SPA. I also empathise with the position in which Mrs N finds herself. However, I do not agree that Mrs N's interpretation of the Rules is correct.
13. Rule 13 must be considered in its entirety and sub section 13(b) B states that the Levelling Option will not be affected by changes to the SPA that occur after a member's retirement. Mrs N retired in December 2009, and the Act did not receive Royal Assent until November 2011. The Act's provisions do not alter Mrs N's Fund entitlement, which must be calculated in accordance with the Trust Deed and Rules. The Levelling Option was calculated using actuarial principles to age 65. Consequently, I find that the Trustee has interpreted the Fund Rules correctly. Mrs N's Levelling Option must cease at age 65.
14. Mrs N also says that the Fund Rules are inconsistent with the information supplied in the Quote. She argues that the Quote states the Levelling Option will not cease until SPA. However, in every instance that her SPA is mentioned in the Quote, it explicitly states that Mrs N's SPA is 19 April 2020.
15. Although Mrs N's SPA was changed by the Act, the Trustee communicated that the Levelling Option would cease at age 65 in the Quote and in the subsequent November 2009 letter. That date did not automatically change with the change of the SPA date.
16. Having reviewed the papers, I am satisfied that the Trustee met its obligations to provide Mrs N with accurate information of her Fund entitlement. Consequently, Mrs N could not have expected her Levelling Option pension to cease at any other date, and she did not retire in reliance on that understanding, although I do understand her frustration that the date of SPA has been changed but not the date when her Levelling Option ceases.

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17. I do not uphold Mrs N's complaint.

**Anthony Arter**

Pensions Ombudsman

30 September 2019

## Appendix

### “13. Levelling Option

(a) A Member or a Deferred Member whose pension under the Scheme becomes payable from a date earlier than GMP Pensionable Age may, with the consent of the Trustees, elect, before the date his pension starts, that the amount of the pension (after the exercise of any other options under these Rules) will be payable at an increased rate until GMP Pensionable Age (or if later the date on which the Member or Deferred Member becomes entitled to benefits from the State Pension Scheme) and at a reduced amount afterwards. This is to enable him to receive, during his retirement, a total pension from the Scheme and the State Pension Scheme which will be approximately level in amount throughout the period of payment of his pension from the Scheme.

(b) The respective increase and reduction in the amounts of pension payable to a Member or a Deferred Member who exercises the option under sub-rule (a) of this Rule will be decided by the Trustees and will be notified to the Member or the Deferred Member.

Provided that:-

- (A) the value of the amounts of pension, as determined by the Trustees at the date on which the Member's or Deferred Member's pension starts, will be actuarially equivalent to the value of the pension which would have been payable to the Member or the Deferred Member if he had not exercised the option under this Rule;
- (B) in making that decision [the Levelling Option], the Trustees will have regard to the level of benefits payable from the State Pension Scheme in force at the date on which the Member's or Deferred Member's pension from the Scheme starts and will ignore any increases in the level of those benefits which are due, or which might take effect, from a date afterwards”.