

## Ombudsman's Determination

Applicant	Mr R
Scheme	CMG UK Pension Scheme ( <b>the Scheme</b> )
Respondents	Mercer (formerly JLT Employee Benefits) CMG Pension Trustees Limited ( <b>the Trustee</b> )

## Outcome

1. Mr R's complaint against JLT is partly upheld. To put matters right, Mercer shall pay Mr R £1,500 for the serious distress and inconvenience he has experienced. No further action is required by the Trustee.

## Complaint summary

2. Mr R has complained that the Trustee and JLT Employee Benefits failed to reverse his full pension option and instead pay a tax-free cash sum and reduced pension within a reasonable timescale, thereby causing him a loss that he calculates to be £4,586.29. Furthermore, he has said that when he raised his complaint it was not dealt with in an appropriate and timely manner.

## Background information, including submissions from the parties.

3. JLT Employee Benefits (**JLT**) was rebranded as Mercer following its parent company's acquisition by Marsh & McLennan Companies, Inc. on 1 April 2019. For ease of understanding, I have referred to the organisation as JLT throughout this Determination, as many of the actions complained about predate the acquisition. The directions, however, are against Mercer.
4. Mr R was employed by the Computer Management Group (**CMG**) and between 1 February 1989 and 18 July 1992 was a member of the Scheme. During this time, he was contracted out of the State Earnings Related Pension Scheme.
5. The Scheme allows for payment of pension benefits, without any actuarial reduction, from age 60. In the period leading up to his 60<sup>th</sup> birthday, Mr R requested a pension statement and retirement forecast.

6. On 6 January 2016, JLT sent him a quotation. It says it also enclosed a 'Guide to the CMG (Computer Management Group) Limited UK Pension Scheme' (**the Guide**). Mr R denies having received the Guide at this time.
7. The quotation showed that he was entitled to either:
  - a pension of £4,555.08 p.a. (or £1,138.77 per quarter); or,
  - a tax-free cash sum of £20,072.90 and a reduced pension of £3,011.04 p.a.
8. Mr R says that in January 2016, on a clear understanding that his entire pension would increase annually in April by RPI<sup>1</sup>, he elected to take his full pension without any tax-free lump sum. He returned the required documents to JLT on 9 February 2016.
9. Following a query by Mr R, in April 2016, asking why his pension had not been increased as promised, JLT sent him a letter in May 2016 agreeing that such due increases had not been applied and that it was in the throes of resolving the position.
10. Following various subsequent exchanges between Mr R and JLT, in an email to Mr R dated 11 May 2017, JLT said:

"If we assume you take a tax-free cash sum of £20,072.90 and a reduced pension of £3,011.04 p.a., the key details are:

  - 1) The whole of your pension is treated as non-GMP up to age 65. This is because GMPs do not technically come into payment until then.  
  
As such, and as per the Scheme Rules, your pension would not increase until age 65.
  - 2) Your GMP was £1,632.80 p.a. as at the date of retirement. This continues to be revalued by 7.5% p.a. up to age 65.  
  
We have calculated that your GMP will be £2,180 p.a. as at age 65.
  - 3) At age 65, the position is as follows:  
  
GMP - £2,180 p.a. – increases in payment in line with the CPI<sup>2</sup> (capped at 3% p.a.).  
  
Excess - £831.04 p.a. – does not increase in payment."
11. On 2 October 2017, Mr R wrote to JLT to raise a formal complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said that:-

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<sup>1</sup> Retail Prices Index.

<sup>2</sup> Consumer Prices Index.

- On several occasions since 2010 he had asked about the amount and provisions of his pension at retirement. On each occasion he had been told that his pension would increase in line with RPI each April.
- This had been a significant factor in his decision to take his pension at age 60, in February 2016, rather than wait until age 65, thereby taking advantage of the Scheme's provision that he could do so without financial penalty. On this basis, he had decided to take the full pension with no tax-free cash.
- In April 2016, he had enquired why his pension had not been increased as promised. He had been told this was an oversight and was being corrected.
- Subsequently, he was told that his pension would not increase at all in payment and that the previous advice had been incorrect.
- He had formally complained, on 5 February 2016, but had not been told about the IDR process. He subsequently found, by means of a Subject Access Request, that a formal complaint had never been raised. Instead, he was told, in July 2016, that the matter had been referred to the Chairman of the Trustees who had decided that his complaint should not be upheld.
- In September 2016, JLT had offered him £150 in full and final settlement of his complaint, which he had rejected.
- In recognition of the fact he had been further disadvantaged by not having taken the tax-free cash, JLT had agreed to look at the possibility of 'undoing' the current pension and replacing it with tax-free cash and a reduced pension. This had still not been resolved.
- There had been many other caveats introduced, some of which had been subsequently disproved or not evidenced.
- In summary, he considered JLT's actions amounted to maladministration.

12. He said that he wanted:

- evidence to support whether the way in which JLT had managed the GMP and 'excess' elements of his pension was correct;
- year by year illustrations of the pension payable up to age 65 for both his current pension and the proposed reduced pension split between GMP and excess;
- confirmation of how JLT intended to treat the tax position between the full pension he had been receiving and the reduced pension he would have been paid; and
- how JLT intended to address his losses in terms of the promised indexation, the loss of investment opportunity from his tax-free cash, and recognition of the distress and inconvenience he had suffered

13. On 21 April 2018, Mr R confirmed to JLT that he wished to take the tax-free cash sum with the reduced pension. However, no pension payments were to be made until the overpayment had been repaid.
  14. On 23 May 2018, JLT wrote to Mr R to set out his revised pension options. Instead of the full pension of £4,555.08 p.a. he had been receiving since 8 February 2016 he would be entitled to a reduced pension of £3,011.04 p.a. and tax-free cash of £20,072.90. The overpayment of his pension to date would be offset against his quarterly pension payments until fully repaid. It made no reference to his complaint. The tax-free cash sum was paid on 24 May 2018.
  15. On 28 May 2018, Mr R replied to JLT. He said that JLT had agreed, on 20 April 2018, to write to him regarding compensation for his time, trouble and expenses incurred because of JLT's maladministration in the handling of his pension. Notwithstanding this he set out what he considered to be his principal direct losses:
    - loss of interest at 8% on the tax-free cash between 8 February 2016 and 24 May 2018, which he calculated as £3,678.02;
    - overpayment of tax at the basic rate of 20% on the difference between the full pension and the reduced pension between 8 February 2016 and 5 April 2018, which he calculated to be £665.84;
    - interest on the tax liability above at 8%, reduced by 50% in recognition of the fact this was not due for the full period, which he calculated as £57.43; and
    - an unspecified amount for distress and inconvenience.
- He also reminded JLT that he had still not received its response to his IDRPs complaint of 2 October 2017.
16. JLT responded to the IDRPs complaint on 30 August 2018. It said that it understood that Mr R had "reluctantly accepted" that his pension entitlement had been calculated in accordance with the Scheme Rules. His remaining complaint therefore related to JLT's failings in reversing his full pension option and instead paying a tax-free cash sum and reduced pension. JLT acknowledged that this should have been concluded more quickly and so offered £600 in recognition of this delay.
  17. Mr R instigated Court proceedings to recover his claimed losses. However, JLT petitioned the Court requesting the matter be referred to the Pensions Ombudsman's Office (**TPO's Office**), in the first instance. This was accepted by the Court.
  18. In his complaint to TPO's Office Mr R has said:-
    - His pension comprised two parts: 'GMP' and 'Excess'. He accepts that the GMP element is subject to fixed revaluation at 7.5% p.a. up to age 65 and thereafter increased by RPI.

- However, this is complicated by the fact he took his pension at age 60 instead of 65. The Scheme allows for this with no financial penalty for taking his benefits early. Accordingly, he expected, at the time of taking benefits, that his pension would be forward revalued as though he was taking it at age 65. However, JLT calculated it as at age 60 and say that it is frozen at this level until age 65. If this is correct, then he says he will have lost out on the year-by-year revaluations which would be tantamount to an actuarial reduction contrary to the Scheme's rules of taking benefits at age 60 without reduction.
- JLT further states that, at age 65 when it increases the 'GMP' element, the 'excess' will be reduced to offset (and negate) such increases. Again, this does not appear to him to be fair or correct.
- JLT claims its positions on these points are enshrined in legislation but has been unable to point to specific statutory instrument(s) that support such positions.

19. JLT has said:-

- It had agreed (while not compulsory) that it would reverse his original retirement option and pay Mr R a tax-free cash sum plus a reduced pension. Unfortunately, there was a delay implementing this for reasons that cannot be attributed to JLT as such. A large amount of time was spent getting Mr R to understand and accept some of the technical GMP aspects.
- The GMP in this case has been revalued using a section 148 order with a fixed rate revaluation of 7.5% applied each year on a compound basis.
- Once in payment the GMP built up before 6 April 1988 is not subject to a statutory requirement to be increased. However, GMP built up from 6 April 1988 to 5 April 1997 will be increased by the Scheme up to a cap of 3% p.a.
- Mr R says that from 2010 onwards he received misleading, or incomplete communications from the Trustee indicating otherwise, including a telephone call in August 2013. However, as he would have already been in possession of statements from 1994 and 1995, then this should have been queried at this point.
- It confirms that the excess pension is not used to fund the revaluation of the GMP.
- While it accepts some of the earlier confusion, the position regarding Mr R's benefits was certainly clarified as he went through IDRPs.

## Adjudicator's Opinion

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

- Much of the correspondence in this case relates to whether it was reasonable for Mr R to have relied on the information given to him regarding how increases would be applied to his pension.
- However, by agreeing to 'unwind' Mr R's decision to take a full pension, the Trustee and JLT have put Mr R back into the position he would have been in had he understood how his benefits would be revalued. In so doing, the Trustee and JLT have done no less than I would have directed. The Adjudicator therefore did not consider this aspect of Mr R's complaint.
- With regard to the revaluation of Mr R's pension and increases once in payment, the Adjudicator considered that the explanation in JLT's email of 11 May 2017 set out the position correctly. Mr R's pension at age 65, after allowance for tax-free cash, was £3,011.04.
- Under the concession set out in the Scheme Rules, Mr R was able to receive this pension, unreduced, from age 60. However, this pension was entirely 'excess' as the GMP could not come into payment until age 65. Under the Scheme Rules, any increase to this excess while in payment was solely at the Trustee's discretion.
- Once Mr R reached age 65 his GMP became payable. The GMP at age 60 was £1,632.80 and continued to be subject to revaluation at 7.5% p.a. up to age 65. Therefore, even though his pension was already in payment, Mr R's revalued GMP was £2,180. That is not to say that his pension at age 65 was any higher, it remained £3,011.04, but the revalued GMP element increased in payment in line with the Consumer Prices Index (capped at 3% p.a.). The excess amount of £831.04 continued to be increased in payment at the Trustee's discretion.
- There was no doubt that it took many months to 'unwind' Mr R's benefits. JLT's email of 11 May 2017 showed that this possibility was already being discussed, and yet it was not until 24 May 2018 that his tax-free cash sum was paid. He had asked that interest be paid on this sum backdated to February 2016 when he first took his benefits.
- In the Adjudicator's opinion, it would be unreasonable to award Mr R interest. While it was agreed that the form of his benefits could be 'unwound' in 2017, he nonetheless enjoyed the quantum of his benefits from 2016 onwards, just in a different form to that required. He was not asked to pay interest on the excess pension he had received in the interim and it would therefore be unreasonable to find that he should receive interest on the cash sum for that period.

- The Adjudicator was also of the view that Mr R should not be compensated for the additional tax he had paid. As the overpayments had been offset against his future quarterly pension instalments, he would have effectively received a return of that additional tax.
- The Adjudicator did agree that the twelve months, from 11 May 2017 to 24 May 2018, it took JLT to confirm and pay the revised benefits was an unreasonable delay for which Mr R was not responsible. Furthermore, the failure of both JLT and the Trustee to deal with his initial complaint properly under IDRPs and to subsequently take from 2 October 2017 to 30 August 2018 to respond to his IDRPs complaint all amounted to maladministration. The Adjudicator was in no doubt this would have caused Mr R serious distress and inconvenience.
- JLT had offered £1,000 to reflect the time taken to deal with Mr R's enquiry and to respond to his complaint. The Adjudicator's view was that this was reasonable and in line with the award I would direct in the circumstances.

21. Mr R accepted the Adjudicator's Opinion.
22. JLT did not respond within the agreed timescale, despite two extensions being granted, but on 30 March 2021 it confirmed that it also accepted the Adjudicator's Opinion. In doing so it agreed to write to Mr R within 14 days, confirming the terms of its offer and to arrange payment.
23. On 12 May 2021, Mr R wrote to my Office to say that JLT had neither corresponded with him nor made payment.
24. My Office contacted JLT but, despite several chasers, the agreed sum remains unpaid.
25. JLT's failure to comply with the commitment it made on 30 March 2021 displays a total disregard for both Mr R and my Office. This will no doubt have added to the distress and inconvenience suffered by Mr R in bringing his complaint to a conclusion. I therefore consider that an increased award is warranted.

### **Ombudsman's decision**

26. I uphold that part of Mr R's complaint relating to the time it has taken for JLT to deal with his enquiry and handle his complaint. This will clearly have caused him serious distress and inconvenience.

## **Directions**

27. Within 14 days of the date of this Determination Mercer shall pay Mr R £1,500 for the serious distress and inconvenience he has experienced.

**Anthony Arter**

Pensions Ombudsman  
24 June 2021