

Ombudsman's Determination

Applicant	Mr N
Scheme	Land Rover Pension Scheme (the Scheme)
Respondent	Jaguar Land Rover Pension Trustees Limited (the Trustee)

Outcome

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

Background information, including submissions from the parties

2. Mr N complains that the cash equivalent transfer value (**CETV**) he received from the Trustee was incorrect. He believes the CETV should have been based on the enhanced figure he was offered as a result of his serious ill health. He would like the Trustee to pay the difference.
3. Mr N was a member of the Scheme, a defined benefit pension scheme, which was administered by JLT Benefit Solutions Limited (**JLT**).
4. On 10 May 2017, Mr N telephoned JLT as it appears that he had been informed he qualified for early retirement on the basis of ill health, and in his opinion, this meant that the CETV quotations he had received would be increased. He wanted written confirmation of this from JLT as he could not find it in the Scheme Rules. It does not appear that this was provided.
5. On 12 June 2017, JLT sent Mr N his early retirement pack on the grounds of ill health. This provided two options which incorporated any pensionable service Mr N would have completed up to the age of 65:
 - A maximum tax-free cash sum of £171,975.32 with a reduced annual pension of £25,786.30; or
 - An annual pension of £37,245.42.
6. On 21 July 2017, Mr N's independent financial adviser (**IFA**) contacted JLT to request a CETV quotation and additional information.
7. Following this, JLT issued a CETV quotation of £919,211.69 on 6 September 2017. This showed Mr N's benefit details as:-

- Deferred Pension at calculation/leaving date (Payable at age 65): £33,860.31 per annum
 - Deferred Pension revalued to date of transfer quote: £33,860.31 per annum
 - Total Guaranteed Minimum Pension (GMP) at leaving date: £4,135.04 per annum.
8. Mr N subsequently completed the relevant forms for the CETV, and JLT confirmed on 4 October 2017, that the transfer had been completed. In doing so, Mr N had agreed to the following statement:-
- “I acknowledge that in complying with my requirement to pay the [CETV] as requested above the Trustees are discharged from any obligation to provide me, my spouse or dependants with any further entitlement (on my retirement or death) under the Transferring Scheme in respect of my benefits under the Scheme to which the [CETV] that is paid relates.”
9. On 1 May 2018, Mr N complained to the Trustee. He said that he would have been awarded an enhanced pension because of his ill health but that he had decided to accept the CETV instead. After he received the CETV, he realised that the calculation had been based on his deferred pension value. He believed that the CETV should have been based on the enhanced pension he was “sacrificing”.
10. On 21 May 2018, the Trustee wrote to Mr N under stage one of the Scheme’s internal dispute resolution procedure (**IDRP**). As it did not agree with his complaint, he asked for the decision to be reviewed.
11. On 30 July 2018, the Trustee issued its response under stage two of the IDRP. It said that the serious ill health provisions under the Scheme’s Rules were specific to the Scheme and were not set out in legislation. Members were also entitled to a CETV quotation in certain circumstances, but the value of this was based on statutory criteria. So, it did not reflect the benefits Mr N may have received had he remained in the Scheme and drawn a serious ill health pension. The Trustee noted that Mr N’s IFA should have made him aware of the differences between his benefits under the Scheme and the CETV.
12. The Trustee has provided additional information. The key documents are noted below:-
- The Scheme Rules effective from 6 April 2017 in relation to ‘Serious Ill Health’ and ‘Leaving the Scheme’ (see Appendix A for the relevant excerpts).
 - Confirmation that Mr N’s CETV was calculated based on his accrued benefits in the Scheme at the time of his ceasing to be an active member, which did not include any enhancement for ill health. “There is no requirement, whether under legislation or under the Scheme’s [Rules], for a CETV calculation to take into account either a member’s health or the value of an alternative benefit that he was entitled to when leaving active membership but chose not to accept.”

- A copy of the new starter pack that Mr N would have received.
 - “If the trustee agrees that you are too ill to work again, you will receive an immediate pension based on your earnings on the day you stopped work and on all the pensionable service you could have completed up to age 65.”
 - “What if I’m too ill to work again? [...] You have to apply to the company and the trustee for this pension. You can apply at any age.”
 - “Can I transfer my pension to a new scheme? Yes. You can transfer your pension at any time before you reach 64. We will work out the transfer value in line with the methods approved by the trustee on the advice of the scheme’s actuary. This is done by assessing the current cash value of your pension, including increases described earlier, based on current investment conditions.”

Adjudicator’s Opinion

13. Mr 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:-

- Mr N should have been aware that the CETV had been calculated using the value of his deferred benefits, as this was shown on the CETV quotation. In the Adjudicator’s view, if the transfer of his benefits was conditional on the CETV being based on the enhanced ‘ill health’ figures, Mr N should have checked how the CETV had been calculated prior to agreeing to the transfer.
- It was clear that the option to transfer Mr N’s benefits and the option to claim his benefits early, through ill health, would be treated differently. This was demonstrated in the new starter pack.
- The provision of an ill health pension was a benefit that a member may be entitled to from the Scheme. A CETV was a separate option, which would allow the member to transfer their benefits away from the Scheme. In doing so, it would remove the Trustee’s liability to pay for their benefits. So, it would be subject to different rules and was supported by the fact that there was no mention of an ‘ill health’ CETV in the “Serious Ill Health Options” section of the Scheme Rules.
- The Trustee’s statutory requirements for the provision of a CETV quotation are set out in The Occupational Pension Schemes (Transfer Values) Regulations 1996, as amended by The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 (**the 2008 Regulations**) (see Appendix B for relevant excerpts). These require the Trustee to calculate a CETV so that it is the amount needed, at the guarantee date, to provide the member’s accrued benefits, options and discretionary benefits. The Trustee must also use economic, financial and

demographic assumptions, as determined by the 2008 Regulations. There is no requirement for the Trustee to pay an enhanced CETV due to ill health.

14. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided 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 N for completeness. His comments were, in summary:-

- He did not agree that he discussed the impact of the ill health option on CETVs during the phone call on 10 May 2017.
- He said that the CETV is a government led requirement which was meant to give the applicant funds to purchase a pension from a different source. The pension enhancement was awarded because his circumstances meant that he had a poor life expectancy and no earning capacity. He put emphasis on the 'equivalent' part of the CETV abbreviation and said that his life expectancy did not change by leaving the Scheme and so questioned why it was governed by different rules.
- He questioned whether the 'options' referred to in 7A (3) (a) of the 2008 Regulations, included his ill health option.
- He questioned how the Trustee was able to remove its offer to provide benefits up to his normal retirement date. He thought this effectively categorised him as a person with 'ill health', where he could take his benefits early without a reduction, rather than 'serious ill health'.

Ombudsman's decision

15. The CETV quotation clearly demonstrated that Mr N's deferred benefits had been used for the calculation of the CETV, and not the enhanced figures issued as a result of Mr N's ill health. So in the first instance, Mr N and his IFA, if he shared the information with his IFA, should have known that this was the case. I have seen nothing to suggest that the Trustee said or implied that the CETV should have included the pensionable service up to age 65. Rather, the information provided and available to Mr N suggested the opposite. Namely, when JLT provided the serious ill health options to Mr N, there was no mention of an 'enhanced CETV'. Nor does it appear in the new starter pack or the Scheme Rules.
16. Mr N argues that because he has a poor life expectancy and no earning capacity, the CETV should factor in his pensionable service up to age 65. However, a CETV should not be considered as a retirement option. As Mr N has identified, it allows a member to transfer the benefits that have been accrued, at the point of the request, to another pension scheme, should they wish. There is no requirement for the CETV to incorporate a discretionary retirement benefit that was offered, but not accepted. So, this would result in Mr N's CETV calculations being treated similarly to an 'ill health' member, as only the accrued benefits up to the calculation date would be factored in.

17. The 2008 Regulations say that a member's options and discretionary benefits must be considered. I understand Mr N believes that perhaps the serious ill health option falls into this category, but I do not consider that it does. The Pensions Regulator has regulatory guidance on 'Transfer values' which addresses the options and discretionary benefits mentioned in the 2008 Regulations but does not make reference to serious ill health. Even if it were to do so, it is up to the Trustee to establish what options and discretionary benefits should be included under the Scheme Rules. Taking this into account, I have found no regulatory or Scheme requirement which means that Mr N's CETV ought to have incorporated his serious ill health offer.
18. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
18 November 2019

Appendix A

Scheme Rules relating to “Serious Ill Health”

“Serious Ill Health’

Ill Health which the Principal Employer and the Trustees agree (having regard to such medical or other evidence as they may require) makes it unlikely that the Member or Suspended Active (Category B) Member will recover his earning ability to a material extent before the age at which the Principal Employer and the Trustees would expect him to retire if he was not incapacitated.”

“12 Pension on retirement due to Serious Ill Health

12.1 Serious Ill Health Options

Subject to sub-rules 12.3 (Suspended Active Member) and 12.4 (Suspended Active (Category B) Member) on retirement from Service before Normal Retirement Date on account of Serious Ill Health, an Active Member or a Special Deferred Member will be entitled, if he so chooses, to a yearly pension as an alternative to the benefit under Rule 13 (leaving the Scheme).

12.2 Calculation of Serious Ill Health Pension

If the Member is retiring under sub-rule 12.1 (serious ill health options), the Serious Ill health pension will be:

In the case of an Active Member, the amount calculated in accordance with Rule 9 (normal retirement) but on the basis that his Pensionable Service includes the period of CARE Pensionable Service which would have been completed if he had remained in Service as an Active Member and Pensionable Earnings at the date of leaving Service continuing at the same amount until Normal Retirement Date; and

In the case of a Special Deferred Member, the amount calculated in accordance with Rule 13.5 (payment and calculation) and increased under Rule 13.5(a) to the date of the Special Deferred Member’s retirement, but with no reduction applied on account of early payment.”

Scheme Rule 13, ‘Leaving the Scheme’

“13.5 Payment and calculation

A deferred pension will be payable for life on surviving to the later of Pensionable Age or the date he leaves Service and will be the total of:

(a) an amount calculated in accordance with Rule 9 (normal retirement), and increased on each 1 May occurring after the date on which the Deferred Pensioner ceases to be an Active Member up to and including 1 May immediately preceding the Normal Retirement Date:

(i) In respect of the deferred pension attributable to Pre CARE Pensionable Service, at the rate of:

(A) 5 per cent, or if less, the increase in the Index in the period of 12 months ending at the end of the immediately preceding February in respect of Pensionable Service up to and including 5 April 2009; and

(B) 2.5 per cent, or if less, the increase in the Index in the period of 12 months ending at the end of the immediately preceding February in respect of Pensionable Service on and from 6 April 2009

Subject to the Revaluation Requirements and the Contracting-out Laws; and

(ii) in respect of the deferred pension attributable to CARE Pensionable Service, the percentage rate required by the Revaluation Requirement; and

(b) any discretionary increases made under Rule 14 (augmentation) up to the date the deferred pension commences.

13.6 Retirement

A Deferred Pensioner may retire from such date earlier than normal Retirement Date but except in cases of Ill Health, not earlier than his Minimum Pension Age as he may choose by notice in writing to the Trustees before Normal Retirement Date. A Deferred Pensioner will not be permitted to choose an alternative date under this sub-rule:

(a) if it is on the grounds of Ill Health and he is under Minimum Pension Age unless the Trustees agree and he gives them any evidence of his health which they may require: or

(b) if he is in Service; or

(c) if the Contracting-out Laws are not met.

The pension will be calculated on the same basis as his deferred pension under Rule 13.5 (payment and calculation) but reduced by such amount as shall be determined by the Trustees after considering the advice of the Actuary to take account of early payment.

The Deferred Pensioner will receive a pension at his actual date of retirement which will be increased so that its value (including the value of any increases to it in accordance with Rule 15 (pension increases)) is no less than the value of the pension which would have been payable from normal Retirement Date in accordance with Rule 13.5 (payment and calculation)."

Appendix B

The Occupational Pension Schemes (Transfer Values) Regulations 1996

Manner of calculation of initial cash equivalents for salary related benefits [other than cash balance benefits not calculated by reference to final salary]

7A.— (1) For salary related benefits [other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary], the initial cash equivalent is to be calculated—

- (a) on an actuarial basis; and
- (b) in accordance with paragraph (2) and regulation 7B.

(2) The initial cash equivalent is the amount at the guarantee date which is required to make provision within the scheme for a member's accrued benefits, options and discretionary benefits.

(3) For the purposes of paragraph (2), the trustees must determine the extent—

- (a) of any options the member has which would increase the value of his benefits under the scheme;
- (b) of any adjustments they decide to make to reflect the proportion of members likely to exercise those options; and
- (c) to which any discretionary benefits should be taken into account, having regard to any established custom for awarding them and any requirement for consent before they are awarded.

[Initial cash equivalents for salary related benefits [other than cash balance benefits not calculated by reference to final salary]: assumptions and guidance]

7B.— (1) The trustees must calculate the initial cash equivalent for salary related benefits [other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary]—

- (a) by using the assumptions determined under this regulation; and
- (b) where the scheme falls within paragraph (6), in accordance with the guidance referred to in that paragraph.]

(2) Having taken the advice of the actuary, the trustees must determine the economic, financial and demographic assumptions.

(3) In determining the demographic assumptions, the trustees must have regard to—

- (a) the main characteristics of the members of the scheme; or

(b) where the members of the scheme do not form a large enough group to allow demographic assumptions to be made, the characteristics of a wider population sharing similar characteristics to the members.

(4) [Except where the scheme falls within paragraph (6), the trustees must] have regard to the scheme's investment strategy when deciding what assumptions will be included in calculating the discount rates in respect of the member.

(5) The trustees must determine the assumptions under this regulation with the aim that, taken as a whole, they should lead to the best estimate of the initial cash equivalent.

[(6) A scheme falls within this paragraph if it is a public service pension scheme in respect of which guidance has been prepared, and from time to time revised, by the Treasury for calculating the discount rates.]