

Ombudsman's Determination

Applicant	Mr E
Scheme	Nissan Pension Plan (the Plan)
Respondent	The Trustee of the Plan (the Trustee)

Outcome

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

Complaint summary

2. Mr E has complained about the commutation factor used when he took a Pension Commencement Lump Sum (**PCLS**).
3. Mr E has also said that the reduction in his residual pension did not reflect the cost of providing the PCLS, so there is an uneven approach between the members and the fund.

Background information, including submissions from the parties

4. The Plan is governed by the Plan Rules. Rule 4(iv)(a) states:-

"Commutation of pension for a cash sum at Normal Pension Date will be calculated in accordance with a conversion factor certified as reasonable by the Actuary. The Trustees may vary the conversion factor used for commutation from time to time without the agreement of the Members provided that such varied factor is certified as reasonable by the Actuary."
5. In 2013, the Trustee set the commutation factor at 11.73. This factor was certified by the Plan Actuary, as required under the Plan Rules.
6. On 31 March 2015, the Trustee completed a valuation of the Plan. As part of the valuation, the Trustee reviewed the commutation factor. During the review, it considered: the planned redesign for the amendment of future accrual to the Plan, the interests of members, the overall funding position, and that PCLS is a personal

decision for individual members. After consideration, the Trustee decided to retain the commutation factor that was agreed in 2013.

7. On 3 September 2018, Mr E raised a complaint with the Trustee. He complained that his residual pension had been reduced too significantly as a result of the commutation factor. He also complained that the Trustee, in significantly reducing residual pensions of members who took a PCLS, had not protected the interests of all members.
8. On 19 October 2018, the Trustee issued Stage 1 of its Internal Disputes Resolution Procedure (**IDRP**). It explained that the commutation factor was set by the Trustee and Plan Actuary. It said that the commutation factor was necessary to ensure that the correct benefits are paid to members who take a PCLS.
9. On 28 November 2018, the Trustee completed Stage 2 of its IDRP. It said that the commutation factor is a matter for the Trustee in conjunction with the Plan Actuary. It said that, “when a commutation factor is set, the Trustee will seek to ensure that it is not inconsistent with the assumptions that have been used by the Actuary to value the Plan’s liabilities for valuation purposes.” The Trustee concluded that it was satisfied that the commutation factor had been applied correctly.
10. On 28 February 2019, the Trustee provided The Pensions Ombudsman with its formal response. The Trustee confirmed that it used its discretion to set the current commutation factor. When it set the commutation factor it, “took into account all relevant information and no irrelevant information. The factor adopted was certified as reasonable by the Actuary and as such the decision that they made cannot be classed as perverse.”

Adjudicator’s Opinion

11. Mr E’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:-
 - The Plan Rules allow members to commute some of their benefits in order to receive a PCLS. Rule 4(iv)(a) clearly states that the Trustee has discretion to vary the commutation factor, without the agreement of members, so long as the varied factor is certified as reasonable by the Actuary.
 - When looking at the exercise of a trustee discretion, the Ombudsman would consider whether the decision made was rational in both process and outcome.
 - The Trustee reviewed its commutation factors on 31 March 2015, where it agreed to retain the 2013 commutation factor, which had been approved by the Plan Actuary.
 - The Trustee said that it considered: the planned redesign for the amendment of future accrual to the Plan; the interests of members; the overall funding position; and that taking a PCLS is a personal decision for individual members.

- The Adjudicator was satisfied that the Trustee considered all relevant factors and no irrelevant ones. He was of the opinion that the Trustee had illustrated thorough reasoning for its decision, so he was content that the decision had been made in a proper manner.
 - In response to Mr E's argument that the current commutation factor did not reflect an even-handed approach between members and the Plan, the Adjudicator disagreed. The commutation factor had been certified by an Actuary, so the Adjudicator felt that proper consideration had been given to the cost of providing the PCLS.
 - The Adjudicator was satisfied that the decision was made in a proper manner.
12. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
13. Mr E 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 E for completeness.
14. Mr E has argued that:-
- The decision to take a PCLS cannot be described as a personal decision to all members. Some members who have poor health or financial difficulties are forced to take a PCLS because of their individual circumstances.
 - The difference in lifetime allowance percentages shows that the commutation factor is incorrect. If Mr E took the full retirement option, it was worth 15.79% of his lifetime allowance. Whereas, if he had taken a PCLS his pension was only worth 13.43% of his lifetime allowance. He argues that this shows that the commutation factor is unfair.
 - Mr E has argued that the Trustee has a duty to treat all beneficiaries equally, he said that this responsibility does not disappear just because the commutation factor has been approved by an Actuary.
 - Mr E supplied an article published in The Actuary magazine, which said:-

"Defined benefit pension schemes typically use a factor of 12 to determine the reduction in pension of those who take tax-free cash at retirement. This is a lot less than the projected cost of the pension given up; the reduction in the cost of benefits improves the Scheme's funding position and/or reduces the employer's costs.
- This practice is wrong. Trust law requires trustees to be even-handed between members, the fund, and the employer. Members taking cash should not be penalised"

Ombudsman's decision

15. The Plan Rules allow members to commute some of their benefits in order to receive a PCLS. Rule 4(iv)(a) provides the Trustee with discretionary powers to alter the commutation factor, so long as the factor is certified as reasonable by the Plan's Actuary.
16. My role is to consider whether the decision to set the commutation factor was reached in a proper manner. There are some well established principles which a decision-maker is expected to follow in exercising its discretion. Briefly, the decision-maker must consider and weigh all the relevant matters and no irrelevant ones. Further, the decision maker must not reach a decision which no reasonable decision maker, properly directing itself, could arrive at in the circumstances.
17. If I am not satisfied that the decision has been taken properly, I can ask the decision maker to look at the matter again. However, I will not usually replace the decision maker's decision with one of my own, nor can I tell them what their subsequent decision should be.
18. The Trustee last reviewed the commutation factors on 31 March 2015, as part of its triennial valuation. During this review, it agreed to retain the 2013 commutation factor which had been approved by the Plan Actuary. The Trustee confirmed that it considered relevant matters, including: the planned redesign for the amendment of future accrual to the Plan, the interests of members, the overall funding position, and that taking a PCLS is a personal decision for individual members.
19. I find that the Trustee considered all relevant matters and no irrelevant ones. It is clear that the Trustee investigated all factors that may have led to a modification of the commutation factor, before deciding that the current level was accurate. The Trustee has provided a clear explanation of why it made its decision and I am satisfied that the decision was made in a proper manner.
20. Mr E has said that poor health and financial difficulties may force members to take a PCLS. I cannot accept this argument, whilst individual circumstances may affect member's decisions, as it is still an individual decision for a member to take.
21. The difference in lifetime allowance percentages is not a barometer on whether the commutation factor is acceptable. Mr E had the choice of whether he wished to take retirement benefits with or without a PCLS. He cannot argue he has suffered a financial loss by taking a PCLS, because this depends on the length of time his residual pension is paid. He had the option to decline a PCLS and receive a larger residual pension, but he chose not to do so.
22. With regard to treating all beneficiaries equally, there is nothing in the Plan Rules to say that commutation factors should reflect actuarial equivalence, merely that they should be certified as reasonable by the Plan Actuary. The Plan Actuary was satisfied that the commutation factor was reasonable, so the Trustee has fulfilled its obligation.

23. Mr E has referred to an article published in the Actuary magazine, the article said that the typical commutation factor of 12 is a lot less than the projected cost of the pension given up. It concluded that members taking a PCLS are being penalised by such a commutation factor. Whilst I understand Mr E's concern that the commutation factor means that the cost of the benefits given up may not equal the value of his PCLS, I do not find this general article to be a reason to uphold his complaint. The Trustee has regularly reviewed the commutation factors, which it is required to do, and has acted upon the Plan Actuary's advice.
24. I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
18 September 2019