

## Ombudsman's Determination

Applicant	Mr W
Scheme	The Old British Steel Pension Scheme ( <b>the Old Scheme</b> )
Respondents	B.S. Pension Fund Trustee Limited ( <b>the Trustee</b> ); and Open Trustees Limited ( <b>Open Trustees</b> )

## Outcome

1. I do not uphold Mr W's complaint and no further action is required by Open Trustees.

## Complaint summary

2. Mr W has complained that the Trustee failed to provide him with sufficient information on how 'high/low' pensioner members would be treated in respect of the 'Time to Choose' exercise in order to make an informed decision of his options. A high/low pension is also known as a bridging pension where Mr W receives a higher pension up to State Pension Age and then it reduces once the State pension comes into payment.

## Background information, including submissions from the parties

3. The complaint coincides with the restructuring of Tata Steel (UK) Limited (**TSUK**) and its separation from the Old Scheme under a Regulated Apportionment Arrangement (**RAA**). Members of the Old Scheme were offered the choice of transferring into the New Scheme or remaining within the Old Scheme, which was expected to enter the Pension Protection Fund (**the PPF**). This choice was communicated to members during the 'Time to Choose' exercise.
4. Following a bulk transfer from the British Steel Pension Scheme (**the BSPS**) and its entering into a PPF assessment period, the BSPS changed its name to the OBSPS. Simultaneously, the Trustee was replaced by Open Trustees. The Trustee was the trustee at the time of the actions complained of. Open Trustees has been added to this complaint as the current trustee of the Old Scheme.
5. On 2 October 2017 Real Digital (a professional communications company instructed by the Trustee) sent Mr W a Time to Choose information pack and option form. The

documentation said that if a completed form was not received by the Time to Choose deadline, Mr W would remain in the Old Scheme and move with it to the PPF.

6. In November 2017 Mr W was sent a further Time to Choose pack which contained a section headed 'EXTRA INFORMATION FOR HIGH/LOW PENSIONERS and said:

"When you started taking your pension, you chose to take a higher pension which will step down to a lower pension at a later date - usually your State Pension Age. Your pension is currently at the high level and will still be at that level on 29 March 2018.

The government has said it is going to change the rules of the Pension Protection Fund. This would affect how your high/low pension would be treated if you moved with the current scheme into the Pension Protection Fund.

We will be writing to you within two weeks to give you more information about this. As you don't yet have all the information you need to choose your option, we're also giving you more time. We are extending the deadline to 22 December 2017 for high/low members whose pension is still at the high level. We won't be able to extend the deadline any further than this. **So, you will need to tell us your choice by 22 December."**

7. On 4 December 2017, the Trustee wrote to all high/low pensioners including Mr W and said:

**"The government plans to change the PPF's rules before March 2018. So please choose your option and return your form by 22 December 2017.**

When you started taking your pension, you chose to take a higher pension which will step down to a lower pension at a later date - usually your State Pension Age. Your pension is currently at the high level and will still be at that level on 29 March 2018.

**The new scheme and the PPF treat high/low pensions differently.** If you choose to switch to the new scheme you will keep the high/low arrangement and your pension will step down to the lower level as planned.

At the moment the Pension Protection Fund {PPF} works differently. Any pensioner who starts moving into the PPF before their normal retirement age {usually 65} sees their pension reduced by 10% - or more if a cap applies. After that, a high/low pensioner would keep their pension at the high level and never have it step down. This means they could be financially better off in the PPF over the long term than they would have been in their original pension scheme.

The government plans to change the PPF rules. It says that members being better off in the PPF 'was never the intention, so the proposed changes will correct this anomaly.' Earlier this autumn, the government held a consultation about what these changes should be.

Following that consultation, the government says it wants high/low pensions to work in a similar way to a normal scheme - stepping down to a lower level at a certain date. The government says that members who move into the PPF would end up getting benefits that 'more closely reflect the benefits that they would have received in their pension scheme.' However the 10% reduction would still apply for pensioners who have not reached normal retirement age before the scheme starts moving into the PPF. The reduction would apply before and after the step-down date.

...

**The rules are due to change before the current scheme enters the PPF.**

The government has confirmed that it has already decided to change the PPF rules, and that these changes are intended to happen in February 2018. Parliament has the power to stop changes like these but that very rarely happens in practice.

**How these changes affect your choice.** If the PPF rules were not being changed, most high/low pensioners with a step down date after 29 March 2018 might have decided that the PPF would be a better choice than the new scheme. But now the government's plans are clear, these pensioners might choose the new scheme instead. As explained in your pack, the new scheme offers the same or higher yearly increases compared to the PPF, no 10% reduction, and, in most cases, a higher spouse's pension.

**Make sure we get your option form by 22 December.** We have extended the deadline for members to return their option form. It's now 22 December 2017. We can't extend the deadline any further than this. So, you need to tell us your choice by 22 December. If you don't get your completed option form to us in time, you will automatically move with the current scheme into the PPF."

8. Mr W says that under the PPF rules, members under state pension age who were in receipt of their Scheme benefits would lose 10% of their benefit if they entered the PPF. However, those members who were in receipt of a benefit with a bridging element would not have a further reduction made to their benefit which meant that those members such as himself would benefit from moving to the PPF.
9. Mr W also says that the Chairman of the BPS made it clear that the government was likely to change the rules on entry to the PPF so that those on a bridging pension would not benefit from a windfall.
10. Mr W says he was notified on 4 December 2017 that the government had plans to change the PPF rules and that the Trustee had extended the deadline to 22 December 2017 to allow those affected members more time to make their choice. He did ring all the relevant helplines between the 12 and 14 December 2017 including TPR /PPF, TPAS and BPS helplines with a view to understanding the changes but although they were all very helpful, except TPR, they were unable to offer the exact information he required in order to make his choice. He was told, in particular, by the

PPF that the consultation had gone into technical consultation and that the current rules remained in place. At this point, he took the view that he could not make an informed choice on what was best for him and therefore defaulted into the PPF.

11. Mr W says it was only later that he discovered that Guy Opperman the Minister for Works and Pensions and Financial Inclusion had written to Frank Field the Chair of the Works and Pensions Select Committee on 15 December 2017, outlining the changes for scheme members and how they would be treated on entry to the PPF. The Minister encouraged all parties to draw attention to the dedicated helpline being provided by TPAS to ensure members received free and impartial guidance on their options.
12. Mr W says the Pension Regulator, the Trustee and the PPF were all acutely aware that the bridging element to members' pensions was going to be a major issue. Safeguards should have been put in place to ensure that all members had enough time to digest, understand and take financial advice, if required, on any pending changes regarding entry into the PPF. By denying such access to all relevant information, including any subsequent changes in legislation and entry into PPF, he was not enabled to make an informed decision. At the very least, effective information channels should have been provided as a matter of course by those who had a legal obligation to ensure that all members were treated equally and fairly.
13. Mr W has requested that his complaint is resolved by:
  - (i) Being treated as if the changes made to the PPF compensation due in respect of high/low pensioners do not apply to him (or any other high/low pensioner);
  - (ii) Being switched to the New Scheme; or
  - (iii) Being financially compensated by the parties, he claims were at fault, in order to put him in the position he would have been in, had he been able to make an informed decision.
14. Open Trustees say:-
  - To switch to the New Scheme, Scheme members were required to make a positive election by completing, signing and returning a Time to Choose option form. Scheme members were required to take this step because, as explained in the bullet-point below, they were providing their formal written consent to a specific amendment being made to the Scheme rules in respect of them, which would allow BSPFTL to switch them to the New Scheme.
  - Member consent was needed in order to allow BSPFTL to switch members to the New Scheme in a way that complied with section 67 Pensions Act 1995. This is because, on being switched from the Scheme to the New Scheme, the assets transferred to and the rights acquired for the relevant members in the New Scheme could potentially be less than the value of their Scheme benefits

prior to the switch. This structure and switching process, along with the Time to Choose exercise more generally, was considered in detail and agreed at the time between the Pensions Regulator, the PPF, TSUK and BSPFTL.

- Members were initially asked to provide their response by 11 December 2017, although this deadline was later extended to 22 December 2017. Members who did not respond to the Time to Choose exercise by 22 December 2017 remained in the Scheme by default.
- Following completion of the Time to Choose exercise, BSPFTL is only able to accept further switches of Scheme members where an administrative error occurred in respect of the relevant Scheme members during the Time to Choose exercise.
- Therefore, in the absence of an administrative error having been made by or on behalf of BSPFTL under the Time to Choose exercise, a Scheme member cannot now be switched to the New Scheme (or vice versa). Further, now that the Scheme has entered into a PPF assessment period, as a matter of overriding law, Open Trustees is not permitted to allow members to transfer out to the New Scheme or any other pension scheme (section 135(4)(a) Pensions Act 2004).

## **Adjudicator's Opinion**

15. Mr W's complaint was considered by one of our Adjudicators who concluded that no further action was required by Open Trustees. The Adjudicator's findings are summarised below.
16. Mr W's complaint is essentially concerned with whether he received sufficient information to make an informed decision about his options under the Time to Choose exercise. Mr W's position was complicated as he was a 'high/low' pensioner and the Time to Choose exercise coincided with a decision by the government to change the rules relating to the PPF for high/low pensioners.
17. Under the PPF rules in force at the time that the Time to Choose exercise commenced Mr W would, by transferring to the PPF, see his pension reduced by 10% or more if a cap applied, but after that, his pension would stay at the high level and never step down. This would mean that he could be financially better off in the PPF over the longer term than he would have been in the original pension scheme.
18. In November 2017 the Trustee, via Real Digital, wrote to Mr W to inform him that the government had said it was going to change the rules of the PPF. He was also informed that the Trustee would be writing to him further within the next two weeks to give him more information about this.
19. On 4 December 2017, the Trustee wrote to all high/low pensioners including Mr W and set out the government's proposals on how high/low pensioners would be treated

if they entered the PPF. The letter said that the government wanted high/low pensions in the PPF to work in a similar way to a normal scheme, stepping down to a lower level at a certain date. The government wanted high/low pensioner members who moved into the PPF to receive benefits that “more closely reflect the benefits that they would have received in their pension scheme.” Members entering the PPF would see their pension reduced by 10% or more if a cap applied.

20. The letter also explained that the new scheme offered the same or higher yearly increases compared to the PPF, no 10% reduction, and, in most cases, a higher spouse’s pension.
21. The Adjudicator was of the view that the information provided by Real Digital and the Trustee clearly set out what the impact of the changes to the PPF rules would be. A move to the PPF would result in a 10% reduction in Mr W’s pension and the high/low pension would, if the changes were introduced, also step down at State Pension Age. The Trustee also made it clear that although the legislation to change the PPF rules had not yet been enacted, it was almost certain that the changes would go ahead.
22. The Adjudicator explained that I can only uphold a complaint if it is found that there has been maladministration on the part of the Trustee, either by an administrative error or as a result of, say, misinformation. The Adjudicator was of the view that there had been no identifiable administrative error or misinformation in this complaint and there was no reason why Mr W should now be allowed to transfer to the New Scheme or why compensation should be paid.
23. Mr W did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr W provided his further comments which do not change the outcome. I agree with the Adjudicator’s Opinion and note the additional points raised by Mr W.
24. Mr W has said that, following advice from the Pensions Regulator’s office, he made direct contact with the Scheme’s administrators and raised a formal complaint regarding the Time to Choose Exercise on 28 February 2018. The complaint was acknowledged but no response was received on the content of his complaint. To comply with section 50 of the Pensions Act 1995, the complaint should have been answered by the Trustee.
25. Mr W has also said that the Trustee was in breach of section 67B 4 (l) (iii) of the Pensions Act 1995 by not providing him with adequate information in writing to explain the modification and the effects on him. He believed his existing rights would be protected under Section 67 as the default position, if the old Scheme entered the PPF. The Trustee did not explain the position adequately or give sufficient time for members to make an informed choice. The Trustee should have delayed the 22 December 2017 deadline.

## **Ombudsman's decision**

26. Mr W has referred to the Pensions Act 1995, in support of his complaint. Section 50 is concerned with the procedure for dealing with complaints and section 67 is concerned with alterations to schemes and certain restrictions imposed on such alterations without member consent.
27. Mr W has obviously spent some time researching the issue and believes that the Trustee failed to deal adequately with the complaint he made in February 2018. But his complaint was about the Time to Choose Exercise and was made after the consultation period had ended. The Trustee was subsequently replaced by Open Trustees and the complaint was dealt with by them and ultimately referred to my office. I do not find that there has been any maladministration in the Trustee not finalising a response to the complaint as this was subsequently provided by Open Trustees.
28. Mr W has also referred to Section 67 of the Pensions Act 1995. He believed that during the Time to Choose exercise, his existing pension benefits would be protected even if the Old Scheme entered the PPF. He says the Trustee did not explain the change adequately or give him sufficient time to make an informed choice.
29. Although Mr W may have believed he could rely on section 67 B (4)(iii) of the Pensions Act 1995, it is worth noting that this does not apply in the case of a transfer to the PPF because the Old Scheme did not require modification.
30. I can sympathise with the position that Mr W now finds himself in, but I agree with the Adjudicator that the information sent to him on 4 December 2017 did adequately explain the impact of the government proposals for high/low pensioners. The Time to Choose pack and the 4 December 2017 letter also made it clear that members entering the PPF would see their pension reduce by 10%. No reduction would apply to the new scheme. It is unfortunate that the consultation process for the proposed treatment of high/low pensioners extended beyond the 22 December 2017 deadline for Mr W's decision. However, this was not within the control of the Trustee and would not have justified deferring the deadline.
31. It would seem that Mr W clearly feels he would have made a different decision if he had been given more information. But the Trustee was not in a position to give advice and provided as much information as was available at the time. Mr W had to make his own decision but failed to do so and defaulted into the PPF. With the benefit of hindsight Mr W now realises that was the wrong course of action, but I do not find that the Trustee's communications were at fault.
32. I do not uphold Mr W's complaint.

**Anthony Arter**

Pensions Ombudsman

22 April 2021

