Ombudsman's Determination

Applicant	Mr N
Scheme	The Pension Protection Fund (**PPF**)
Respondents	The Board of the Pension Protection Fund (the **Board**)

Outcome

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

2. My reasons for reaching this decision are explained in more detail below.

Summary of application and background

Application Summary

3. The PPF Ombudsman has received a reference of a reviewable matter following a decision by the Board's Reconsideration Committee dated 24 February 2017. The referral concerns Mr N's entitlement to enhanced early retirement benefits.

Background

4. Mr N was a member of the Cramlington Textiles Limited Segregated Section of the Lonrho Textiles Limited Pension Plan (the **Plan**). He became a deferred member on being made redundant on 3 August 1995.

5. The governing document was the supplemental deed executed on 23 May 1990, together with subsequent trustees' resolutions. Rule 17 provided,

   "17. (A) (i) With the consent of the Employer a Deferred Member may on the grounds of Incapacity or on or at any time after attaining the age of 55 years in the case of a woman or the age of 60 years in the case of a man elect to receive an immediate Early Retirement Pension in lieu of such deferred pension payable from Normal Retirement Date …"

6. The 1994 Plan valuation showed it to be in surplus. In order to comply with the tax legislation in force at the time, the Plan's trustees were required to put a plan in place to reduce the surplus (the **Remedial Plan**). Amongst other things, the Remedial Plan referred to the steps taken to equalise retirement ages for men and women. Normal retirement age had been equalised from 17 May 1995. It stated men now had the

right to retire at age 60 without company consent but only pension accrued between May 1990 and May 1995 would not be reduced for early payment. It also stated men could retire at age 55 with the consent of the company but the pension would be subject to reduction for early payment.

7. Mr N wrote to the Plan's administrator in September 1999. He explained he was about to reach the age of 60 and asked for information about his pension options. The Plan's administrator responded, on 30 September 1999, setting out two options: an annual pension of £4,545.60 or a lump sum of £7,900 and an annual pension of £3,771.12. The letter stated these would be the options available to Mr N if he was granted consent to retire early by the Company. On 22 December 1999, the Plan's administrator wrote to Mr N again explaining that the Plan's trustees had granted consent to his early retirement but it also required the consent of the employer, Cramlington Textiles Limited (**CLT**). The Plan's administrator explained that, because CLT had gone into administration, it was now for the Administrator to CLT to decide to give consent. He said the trustees were pursuing Mr N's request with the Administrator to CLT.

8. On 21 March 2000, the secretary to the Plan's trustees wrote to Mr N explaining that they had written to the Joint Administrators to CLT seeking their consent to his early retirement. Mr N sought assistance from the Pensions Advisory Service (TPAS). They subsequently wrote to the solicitors acting for the Independent Trustee, who had been appointed following CLT going into administration. TPAS said the Administrator to CLT had written to the Plan's trustees, on 3 October 2000, saying that, in all cases of early retirement, the employer granted its consent provided that payment of the benefits was on an actuarially cost neutral basis.

9. The Independent Trustee wrote to Mr N, on 22 February 2001, explaining that the Administrators to CLT were of the view that they were required to give consent for early retirement. She said she had been advised that the power of consent may have passed to her but this was not clear. She said, in order to avoid a legal challenge, she was trying to get the consent of the Administrators to CLT. The Independent Trustee said it was possible that the Remedial Plan only applied to members who applied for early retirement whilst in service.

10. In April 2001, the Independent Trustee wrote to Mr N again explaining he would not be able to retire from the date he had requested because his early retirement pension would be less than his Guaranteed Minimum Pension (GMP). She said she had asked the Scheme's actuary to calculate Mr N's pension as at 1 May 2001. The Independent Trustee said Mr N's early retirement pension exceeded his GMP as at 1 May 2001 and he could, therefore, have a pension starting on that date. The Independent Trustee referred to the Remedial Plan and said Mr N's former employer's consent might be required. She also said its provisions might mean Mr N should get a larger pension if his employer gave its consent. The Independent Trustee again suggested the power of consent may have passed to her but said it

was not clear and Mr N's former employer might disagree. She said her legal advisers had written to the employer.

11. In her letter, the Independent Trustee set out the pension options available to Mr N; both on the basis that the Remedial Plan applied and if it did not. She said, if Mr N wanted to retire from 1 May 2001, she could arrange for the lower pension to be paid. She said this would be a temporary measure whilst the matter of consent was sorted out. Mr N opted to receive the lower pension and lump sum.

12. In September 2012, the Independent Trustee wrote to Mr N saying she had received legal advice to the effect that consent to early retirement could only come from his former employer. She said, if the Remedial Plan was to apply to Mr N, the Administrators to CLT would have to have given their consent. She said they had been approached on a number of occasions but had not formally replied to give consent. The Independent Trustee explained CLT had gone into liquidation in June 2011 and the Administrators had been discharged. She said the Official Receiver had been appointed as liquidator and there was no prospect of it giving the necessary consent. She said the pension which had been set up for Mr N could not be increased and, subject to PPF compensation rules, would continue to be paid on the basis upon which it had been set up in 2001.

13. The Plan entered the PPF in April 2014. Mr N asked the Board to consider his entitlement to increased benefits.

14. The Board's Reconsideration Committee issued a decision on 24 February 2017. The decision is summarised below:-

    - It had considered all of the correspondence Mr N had received from the Independent Trustee.

    - One of the former Plan trustees had been contacted. He had stated that it had been the practice for a number of years that consent to early retirement had been given by the trustees only.

    - The correspondence from the Independent Trustee had consistently stated that enhanced early retirement would only be available with the consent of Mr N's former employer or the Administrators to CLT.

    - The Independent Trustee had raised the possibility that the power of consent had passed to her but had said the legal position was not clear. She later received legal advice that the power had not passed to her.

    - Correspondence from the Independent Trustee had been drafted in the expectation that Mr N would receive consent quickly. This is why he was offered reduced benefits as a temporary measure in April 2001. It should have been expressly stated that, if he did not receive the necessary consent, he would not receive an uplift. This was, however, implicit from the Independent Trustee's letter.

- Correspondence from the Independent Trustee accurately set out the legal problems and the steps being taken to address them.

- The correspondence did not contain an unconditional promise that Mr N would be entitled to enhanced early retirement benefits.

- The information provided by the Independent Trustee was correct. Mr N did not have a legal right to enhanced early retirement benefits as a result of reliance on incorrect advice received from the Independent Trustee. His PPF compensation payments were correct.

- It did not have the power to override the Plan rules and award an enhanced pension when the necessary consent had not been given.

Grounds for referral

15. The Applicant's grounds for referring the reviewable matter to the Ombudsman are summarised briefly below:-

    - The advice he was given in 2001 was incorrect.

    - He has been treated differently to other former colleagues who have been paid the full amount due to them.

    - He has been expected to write letters and chase people to receive what is rightfully his.

16. Having been provided with an opinion by one of our Adjudicators, Mr N submitted the following further comments:-

    - It had been confirmed by the Adjudicator that things had not been made clear to him.

    - When he retired, the word "temporary" had been used which led him to believe that his initial pension payment was just that: temporary. It was not for him to question if this was the truth.

    - He should not have to accept that he has lost out on what is rightfully his because of errors and misjudgements along the way.

    - Two other employees, who were in the same position as him, have received their pensions. This should set a precedent.

    - The Plan administrator gave him bad advice so that he was misled from the outset. This should be a sound enough reason to change the outcome.

Representations from the Board

17. The Board's written representation is summarised briefly below:

- It acknowledges that it was unable to provide a Reconsideration Decision within 28 days of Mr N's application. It did respond to Mr N and gave a date by which it would aim to give a decision.

- Mr N's case involves issues which arose prior to its involvement with the Plan. His case relates to the calculation of his Plan pension and not to the application of the PPF rules.

- It is obliged to pay compensation in accordance with the Pensions Act 2004 and related legislation. It has no discretion to apply any other basis in deciding how much PPF compensation Mr N should receive.

- Mr N was over the normal pension age at the Assessment Date. He is, therefore, entitled to 100% compensation. This compensation level is applied to the annual pension to which he was entitled according to the Plan's rules.

Adjudicator's Opinion

18. Mr N's referral was considered by one of our Adjudicators who concluded that no further action was required by the Board. The Adjudicator's findings are summarised briefly below:-

- When Mr N opted to start receiving reduced benefits in 2001, it was in the expectation that these would later be increased. He was, at the time, aged 61. His benefits would ordinarily have been paid from his 65th birthday. The Plan rules provided for deferred members, such as Mr N, to take their benefits early with the consent of their employer.

- One of the issues Mr N faced, at the time, was that his former employer was in administration. It was not altogether clear who should give consent for him to take his benefits early. In addition, it appeared that, despite what was stated in the Plan rules, the trustees had been giving consent to early retirement. There was also the Remedial Plan in place which suggested that consent to early retirement was not needed for men over the age of 60. However, it was not clear whether this applied to deferred members.

- It appeared that the Independent Trustee tried to find a way in which Mr N could begin to receive, at least some, of his benefits early. She suggested putting reduced benefits into payment on a temporary basis whilst consent was sought from the Administrators to CLT. The Reconsideration Committee suggested that it should have been made clearer to Mr N, at the time, that if consent was not given his benefits would not be increased at a later date. Having read the letter from the Independent Trustee, the Adjudicator agreed that it could perhaps have been made clearer to Mr N that his benefits would not be increased if consent was not given. However, this was speaking with the benefit of hindsight. At the time, it appeared that the expectation was that consent would be given.

- Unfortunately, consent was not forthcoming in Mr N's case. In the absence of consent, the Independent Trustee was not able to increase Mr N's benefits.

- When the Plan transferred to the PPF, Mr N became eligible to receive PPF compensation. The calculation of PPF compensation is governed by the Pensions Act 2004 and related regulations. However, the amount of compensation is based upon the amount of pension Mr N was entitled to receive under the Plan rules. Since Mr N was not entitled to receive the increased benefits under the Plan rules, the Board cannot calculate his PPF compensation by reference to the increased benefits.

- The Reconsideration Committee appeared to have considered whether Mr N had a claim to the increased benefits on the grounds he had relied on incorrect information from the Independent Trustee. There are circumstances where a pension scheme member might have a claim to higher benefits than those strictly provided for under the rules of the scheme. This is where the member has been given incorrect information and can show that he relied on the information to his detriment.

- In Mr N's case, it was unlikely that such a claim could succeed because the information provided by the Independent Trustee was correct. Mr N was clearly told that his former employer's consent was required for early retirement. The Adjudicator acknowledged that Mr N was told that payment of the reduced benefits was a temporary measure but said this was in the context of seeking consent to the payment of the increased benefits. She expressed the view that Mr N would or should have been aware that, if consent was not given, the increased benefits could not be paid.

19. Mr N did not accept the Adjudicator's Opinion and the referral was passed to me to consider. Mr N provided his 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.

Ombudsman's decision

20. Mr N first sought information about the early payment of his pension just before his 60th birthday. In the response from the Plan administrator, he was told that early payment of his pension required the consent of his employer. That information was correct. I acknowledge that, at one point, Mr N was told the power to give consent might have passed to the Independent Trustee. He was, at the same time, also told

that the position was not clear and that consent was being sought from his former employer.

21. At the time Mr N opted to take a reduced pension, he was fully aware that there was an issue relating to the giving of consent. He knew that consent was being sought from his former employer or those now representing that company. He also knew that consent had not, at that time, been given and the Independent Trustee could only put a reduced pension into payment for him. Mr N might have hoped or believed that consent would be forthcoming but I do not consider that he could reasonably believe that, without such consent, an unreduced pension would be paid.

22. When the Plan was accepted into the PPF, Mr N became eligible for compensation. His compensation is based on the pension he was entitled to under the Plan rules. Having taken his pension early without the consent of his former employer having been obtained to waive the reduction, Mr N was only entitled to the reduced amount.

23. I note Mr N's reference to former colleagues having received their full pensions. My investigation of Mr N's referral extends to establishing whether or not he is in receipt of compensation in accordance with the relevant legislation. This is unaffected by what might have been paid to other members.

24. Therefore, I find that the decision by the Board's Reconsideration Committee was reached correctly and no further action is required by the Board.

Anthony Arter

Pension Protection Fund Ombudsman
28 November 2017