

## Ombudsman's Determination

Applicant	Mr T
Scheme	CMG UK Pension Scheme ( <b>the Scheme</b> )
Respondents	CMG Pension Trustees Limited ( <b>the Trustees</b> ) JLT Benefits Solutions Limited ( <b>JLT</b> )

## Outcome

1. Mr T's complaint against the Trustees and JLT is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, for the part that is upheld, JLT shall pay Mr T £500 for the significant distress and inconvenience he has suffered.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr T's complaint against the Trustees and JLT is the basis for revaluing his Scheme pension benefits which was changed from Retail Prices Index (**RPI**) to Consumer Prices Index (**CPI**), but he was not informed.

## Background information, including submissions from the parties

4. Mr T was a member of the Admiral Retirement Benefits Plan (**the Admiral Plan**). Under Section 1.11 (Increase in pensions) of the Admiral Plan rules, it stated: -  
  
“(b) The rate of increase to be applied in terms of section (a) shall be 3 per cent per annum compound or such other rate, if any, as the Trustees, with the agreement of the Employer, shall from time to time decide.”
5. In March 1997, following a meeting of the trustees of the Admiral Plan, changes were made to the Admiral Plan rules, as follows:  
  
“RESOLVED that with effect from 6 April 1997 the following alterations be made to the Rules of the Scheme... “Revaluation Percentage” for the purposes of the Scheme means the revaluation percentage specified by the Secretary of State under Section 2 of Schedule 3 of the Pension Schemes Act in respect of each Revaluation Year which ends immediately prior to the end of calculation of each annual increase in pension.

Rule 1.11 Increase in Pensions... Delete section (b) and replace with the following: “(b) The rate of increase to be applied in terms of section (a) shall be (i) in respect of the part of the Member’s pension which relates to Qualifying Pensionable Service completed on or after 6 April 1997, an amount equal to the Revaluation Percentage...”

6. In around December 1997, Mr T received a booklet in relation to the Admiral Plan. Under Section 8 (Payments), it stated: -

“The part of your pension for service up to 5 April 1997 will increase at 3% each year. The part of your pension for service after that date will increase in line with the increase in the Retail Price Index over the year to 30 September in the previous calendar year – but not by more than 5% in any year.”

7. In 2002, the Admiral Plan was merged into the Scheme via a deed of transfer (**the Deed of Transfer**). Under Sections B.5 and B.6, it stated:

“By resolution of its board of directors dated 24 May 2002, the CMG Trustee resolved to accept the liabilities and assets of the Admiral Plan and provide benefits in respect of past and future service to members of the Admiral Plan as set out in this Deed.” [B.5]

“Under clause 6(a) of the Deed governing the CMG Scheme, the CMG Trustee may, with the consent of CMG as Principal Employer under such scheme, amend and alter the Deed and Rules and CMG and the CMG Trustee wish to do so as set out in clause 5. The actuary to the CMG Scheme has provided a certificate in accordance with the requirements of Section 67(3) Pensions Act 1995 to permit such proposed modifications of the rules of the CMG Scheme as set out in this Deed. A copy of such certificate is annexed to this Deed.” [B.6].

8. In the schedule to the Deed of Transfer (Terms of Pensions in Payment), it stated: -

“The part of the pension for service up to 5 April 1997 will increase at 3% each year. The part of the pension for service after that date will increase in line with the increase in the Retail Price Index over the year to 30 September in the previous calendar year – but not by more than 5% in any year.”

9. In April 2004, a deed of amendment (**the Deed of Amendment**) was made, which incorporated the Admiral Section rules into the Scheme. Under Section 3A.10 (Increases in Pensions), it stated:

“The rate of increase to be applied in terms of Section (a) shall be:- (i) in respect of the part of the Member’s pension which relates to Admiral Qualifying Service completed on or after 6 April 1997, an amount equal to the Revaluation Percentage...”

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10. In 2010, the Scheme was closed to future accrual. Mr T's benefits, as a former Admiral member of the CMG Scheme, became deferred.
11. The Government announced, as part of the June 2010 Budget, that it planned to use CPI rather than RPI as the measure by which annual increases to certain state benefits and public sector pensions would be increased, from April 2011. In July 2010, the Government announced that CPI would also apply to private sector occupational pensions from April 2011, and CPI would be used for statutory increases on pensions. These changes were brought in through Revaluation Orders. Mr T says he was not notified of these change at the time.
12. In around April 2015, Mr T was informed by JLT that his benefits were being revalued in line with CPI, not RPI. There was then various correspondence, between Mr T and representatives of JLT, in relation to this change.
13. In September 2015, Mr T complained to JLT about the change.
14. Between November 2015 and July 2016, there was further correspondence between Mr T and representatives of JLT.
15. In September 2016, Mr T referred his complaint to this Office. He included a summary of the complaint he had made to JLT:
  - he was not informed of the decision to change from RPI to CPI;
  - RPI had been the revaluation basis under the Admiral Plan;
  - the Deed of Transfer stated that RPI would be the applicable revaluation basis for pensions in payment. If this was not happening under the Scheme, it meant the Deed of Transfer had been executed incorrectly;
  - there had been misrepresentation at the time of deferment, as RPI was mentioned extensively as the applicable revaluation basis, even though it was known that the Government was considering switching to CPI; and
  - Mr T also questioned whether he should have received benefit statements over the years.
16. In November 2016, the Trustees wrote to Mr T under the Scheme's internal dispute resolution procedure (**IDRP**). They stated that :-
  - It was sorry Mr T was not informed of the change but it resulted from a Government decision to change in the index designated by the Pension Review Order, used as the basis of increases required under legislation. Due to the particular wording of the Scheme rules the change applied automatically. Rule amendments require member notification; in this case, there had been no rule amendment and so no breach of the rules.

- In practice, the index used to revalue benefits under the Admiral Plan was RPI. However, the rules did not specify which index should be used, so the index used was the one designated by legislation. Before 2011 that was RPI; after 2011, it was CPI. Whilst booklets relating to the Admiral Scheme, for example in 1997, mentioned RPI, they did not override the rules, and were only summaries with members referred back to the rules. The Scheme rules took precedence and this position had been supported by the Ombudsman.
- The rules of the Scheme and the Admiral Plan provided for increases for Admiral members in line with statutory requirements for benefits in respect of service from April 1997. The switch from RPI to CPI took place automatically in 2011. Therefore, CPI was the correct index for increasing pensions in payment. Whilst RPI was mentioned in the schedule to the merger deed, it was clear from the schedule and other provisions that the intention was to replicate the provisions of the Admiral Plan. It was also clear that the schedule was only a summary of those provisions. An announcement to active members of the Admiral Plan, in May 2002, affirmed that benefits would continue to be calculated in accordance with the rules of the Admiral Plan.
- At the time the closure of the Scheme was being discussed, and when the deed of closure was executed in April 2010, the Government was still using RPI. The decision to change to CPI for private sector occupational pensions was not made until July 2010. Before that, there was no reason to believe there would be a change to the index used, so there was no misrepresentation.

17. In December 2016, Mr T provided his comments on the Trustees' response. In summary they were:-

- He understood the Trustees thought he should ignore Scheme booklets and consult the underlying documents, but that they were also inaccurate, which was illogical. He understood the Trustees' position to be that summary booklets were irrelevant. In his view, that meant they were deceptive.
- Comparing and contrasting booklets for the Admiral Plan and the Scheme, the impression was that both sections of the Scheme were being treated equally. In his view, that was not the case.
- There was no reason for dismissing the Deed of Transfer's "definitive" statement of RPI as simply an abbreviation for any measure of inflation that the Trustees chose to apply. A transfer deed effectively changed the rules, regardless of any advisory announcements.
- It appeared to Mr T that the Trustees had exercised their discretion to award RPI increases to non-Admiral members within the Scheme, but not to former Admiral members. In his view, this discriminated against the latter.

- Whilst booklets contained disclaimers giving precedence to the rules, letters relating to the Admiral Plan did not. Several of these only mentioned RPI. Only in December 2016 was it made clear that, whilst Scheme members' benefits would be increased in line with RPI, former Admiral members' benefits would be increased in line with CPI. In his view, this demonstrated confusion and a lack of communication to members.
- He had been informed that, as a deferred member, he would receive no further annual benefit statements until retirement. He thought that was against the regulations. He also disputed that the change in revaluation rate did not constitute a change that the Trustees ought to have let him, and other members, know about.
- He had potentially lost out financially, as he might have chosen not to remain in the Admiral Plan if it had been made clear that his benefits, when transferred to the Scheme, might increase in line with CPI rather than RPI. He had lost the opportunity to mitigate any loss thus incurred.
- The Trustees had failed to respond to queries within eight weeks on several occasions. In addition, he had not been informed that there was a two-stage complaint process.
- He wanted clarification of the rules, so that he and other members could see exactly what benefits they would receive.

## **Adjudicator's Opinion**

18. Mr T's complaint was considered by one of our Adjudicators, who concluded that no further action was required by the Trustees, but that further action was required by JLT. The Adjudicator's findings are summarised briefly below:-

- Before 1997, benefits under the Admiral Plan were revalued at 3%. However, at that time the trustees of the Admiral plan changed the rules. Thereafter, the benefits would revalue in line with the "Revaluation Percentage" determined by the Secretary of State.
- Benefits under the Admiral Plan continued to increase in line with RPI after 1997, but only because that rate was specified by the Secretary of State.
- In 2002, the Admiral Plan was merged into the Scheme by a Deed of Transfer. The 1997 amendment, which had been incorporated into the rules of the Admiral Plan, was then incorporated into the CMG Scheme rules.
- RPI revaluation was not "hard wired" into the rules of the Admiral Plan. So no absolute right to that revaluation carried over into the Scheme.

- In 2011, the Relevant Percentage changed from RPI to CPI following an order of the Secretary of State. So there was no rule amendment and the Trustees were not required to inform members of the change.
- The Adjudicator did not think the Trustees were discriminating against former Admiral members. The Trustees were entitled to change the revaluation rate for those members.
- References to RPI in the schedule to the Transfer Deed were intended only to summarise the main rules and reflected the indexation rate set by the Secretary of State at that time. There was no absolute right to RPI revaluation under the Admiral Plan rules, and no such right was given to former Admiral Plan members under the Scheme. References to RPI in the Transfer Deed did not change that.
- References to RPI in summaries or Scheme booklets were not definitive. If there is any contradiction between the booklets and the rules the Scheme rules take precedence.
- There was, in any case, insufficient evidence that Mr T had relied on references to RPI to his detriment.
- Since Mr T's benefits were deferred, there was no automatic right to receive benefit statements, though statements could have been supplied on request.
- JLT's handling of Mr T's complaint could have been better. There were some examples of avoidable delays, and the whole experience would have caused him significant distress and inconvenience. So JLT should pay Mr T £500 to in recognition of the unnecessary stress which Mr T has suffered.

19. The Trustees and JLT accepted the Adjudicator's Opinion and made no further comments. Mr T did not accept the Adjudicator's Opinion. The complaint was therefore passed to me to consider. Mr T 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 T for completeness.

### **Ombudsman's decision**

20. I find that, as there was no rule amendment in 2011, the Trustees and JLT were not obliged to inform Mr T and other affected members of the change from RPI to CPI. Although it would have been helpful if they had done so, I do not find that it was maladministration in failing to do so. I have considered Mr T's comments regarding a notification that JLT apparently sent him, and other members, in this year's annual statement, regarding the difference between RPI and CPI. Mr T says the reason given for the notification was that the revaluation issue was the subject of misunderstanding and confusion. However, whilst I accept that some members may have been confused about the difference between RPI and CPI, it does not follow

that they were confused because of something the Trustees or JLT did incorrectly. Nor does it follow that the Trustees were wrong to change the revaluation rate from RPI to CPI for former Admiral members.

21. I am not aware of the revaluation rate currently being applied to non-Admiral members within the Scheme. In any event, the Trustees were entitled to change the revaluation basis for former Admiral members, like Mr T, when the applicable rate changed in 2011. There is no evidence that the Trustees gave any guarantees, before, during or after the merger, that the benefits for former Admiral members within the Scheme, would be the same as for non-Admiral members. In addition, it is not unusual for pension schemes to have different classes of membership. There is no evidence that Mr T, and other former Admiral members, are being discriminated against.
22. I consider that the important document, for purposes of establishing which revaluation rate applies to former Admiral members, is the Deed of Amendment. Mr T has stated the Trustees and JLT cannot dismiss the Deed of Transfer's "definitive" statement in reference to RPI as having "no legal standing or implication". However, the Deed of Transfer was the legal mechanism by which the assets and liabilities of the Admiral Plan were accepted into the Scheme. I do not consider it was executed incorrectly. In any case, under clause 6(a) of the Transfer Deed governing the Scheme, the Trustee may, with the consent of CMG as the Principal Employer, subsequently amend and alter the Deed and Rules, which is what happened by the execution of the Deed of Amendment.
23. The Deed of Amendment correctly incorporated the reference to "Revaluation Percentage", from the rules of the Admiral Plan into the rules of the Scheme. Before 2011, Revaluation Percentage referred to RPI; from 2011, it used CPI as the relevant index. So the Trustees acted correctly when they changed the revaluation percentage from RPI to CPI in 2011. The change was allowed for under the rules of the Admiral Plan, as incorporated into the Scheme rules by means of the Deeds of Transfer and Amendment.
24. However, I agree that an award of £500 is appropriate for the significant distress and inconvenience Mr T has suffered as a result of avoidable delays he experienced when he queried the revaluation issue with the Trustees and, especially with JLT.
25. Therefore, I uphold Mr T's complaint in respect of the significant distress and inconvenience he has suffered.

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**Directions**

26. Within 21 days of the date of this Determination, JLT shall pay Mr T £500 for the significant distress and inconvenience he has suffered.

**Anthony Arter**

Pensions Ombudsman  
12 December 2017