

Ombudsman's Determination

Applicant	Mr N
Scheme	ThyssenKrupp UK Plc 2006 Retirement and Death Benefits Plan (the Plan)
Respondents	Thyssenkrupp UK 2006 Pension Trustees Limited (the Trustee) Mercer Limited (Mercer)

Outcome

1. I do not uphold Mr N's complaint; however, Mercer shall provide Mr N with a provisional statement outlining the notional value of the preserved death lump sum that would be payable to his next of kin if he died on, or after, his normal retirement age.

Complaint summary

2. Mr N's complaint concerns the reinstatement of his benefits within the Plan, between 1991 and 1995, in particular the Guaranteed Minimum Pension (**GMP**).
3. He also says that any potential death benefits will be affected, as he did not pay any member contributions into the Plan between 1991 and 1995.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. Mr N was a member of the Hoesch Woodhead Retirement benefits Plan (**the Woodhead Plan**) between 1 April 1988 to 31 March 1991.
6. On 1 April 1991, Mr N was advised to opt out of the Woodhead Plan (a defined benefit occupational pension scheme) and set up a personal pension with Pearl Assurance (now Phoenix Life).
7. On 5 November 1995, Mr N opted back into the Plan, with the agreement of the former trustees.

8. In 1997, Pearl Assurance reviewed its involvement in selling Mr N a personal pension as part of an industry-wide pensions mis-selling review. It was decided that Mr N was mis-sold the personal pension and that Pearl Assurance would take steps to reinstate Mr N back into the Woodhead Plan. Pearl Assurance offered Mr N a guarantee certificate which explained that:-
- It would provide him, and his dependents, with benefits of at least the same value as those that he would have accrued between 1 April 1991 and 6 November 1995. This was if he had not opted out of the Woodhead Plan.
 - For the time being, under the guarantee certificate, his personal pension would remain in force until his normal retirement age; a transfer to another arrangement; benefits payable upon death; or until his benefits were reinstated in the Woodhead Plan. Whichever occurred first.
 - If he paid more premiums into his personal pension than he would have done by remaining a member the Woodhead Plan, these would be paid to the Woodhead Plan as additional voluntary contributions (**AVC**).
 - Upon his reinstatement back into the Woodhead Plan, the guarantee certificate would expire.
9. On 30 May 2002, Mr N left the Woodhead Plan and his benefits were preserved.
10. On 27 September 2002, Aon, the Woodhead Plan Actuary, wrote to Pearl Assurance and explained that it had calculated the cost of reinstating Mr N's pensionable service for the period he opted out. Aon said:-
- Mr N opted out of the Woodhead Plan on 31 March 1991, thereafter his benefits were preserved, using a final pensionable salary of £11,817, for a preserved pension of £508.79. This included post 1988 GMP of £113.88 with a fixed revaluation rate of 7.5% a year.
 - Mr N re-joined the Woodhead Plan on 5 November 1995 until 30 May 2002. This second period of pensionable service was calculated using a final pensionable salary of £15,457, for a preserved pension of £1,674.51. This included a post 1988 GMP of £95.16, with a fixed revaluation rate of 4.5% a year.
 - Over the course of Mr N's two periods of pensionable service his member contributions amounted to £4,998.65. This did not include any contributions between 1991 and 1995 as he did not pay any.
 - If Mr N was not mis-sold a personal pension with Pearl Assurance, he would have had one continuous period of pensionable service from 29 August 1988 to 30 May 2002, with a final pensionable salary of £15,457. This would provide a preserved pension of £3,542.23.
 - The cost to reinstate Mr N's pensionable employment between 1 April 1991 and 5 November 1995 (**the Reinstatement Period**) was £5,325.94.

- This calculation did not take into account what Mr N's preserved GMP would have been if he did not opt out of the Woodhead Plan. Nor did it take into account the member contributions that Mr N would have paid during the Reinstatement Period.
- If Pearl Assurance was happy with the cost of £5,325.94, it should issue a cheque to Aon or the Trustee.

11. Pearl Assurance additionally calculated that:-

- Mr N paid premiums totalling £5,364.18 into his personal pension, and that he had paid £1,174.67 in additional national insurance contributions¹. A total of £6,538.85, which when revalued to November 2002 increased to £11,296.08.
- Notionally, during the Reinstatement Period, Mr N would have paid £2,412.88 worth of pension contributions into the Woodhead Plan. This was based on a 4% deduction of Mr N's estimated salary for the period. Revaluation to November 2002 increased the sum to £4,202.99.
- Overall, Mr N had overpaid £7,093.09 worth of revalued contributions into a personal pension, which he was owed.

12. On 6 December 2002, Pearl Assurance sent Aon a cheque for £12,436.16 and explained that out of the total sum, £5,325.94 related to the cost of reinstating Mr N's pensionable service for the Reinstatement Period and £7,110.22 (£7,093.09 plus a small amount of interest) was the additional contributions paid by Mr N.

13. On 20 December 2002, Aon wrote to the Trustee and explained that it had received the reinstatement cost, £5,325.94, for Mr N. At present, Mr N had two preserved periods; however, his preserved benefits would now be re-calculated to allow for one continuous period of preserved membership. The remaining £7,110.22 was to be paid into the Woodhead Plan's AVC fund.

14. In May 2003, £7,110.22 was paid into an AVC with Friends Provident (now Aviva).

15. On 1 October 2007, the Woodhead Plan was transferred into the Plan and formed its own separate section (**the Woodhead Section**).

16. In December 2017, Mr N contacted JLT, the Plan's administrator, and asked for an up-to-date retirement illustration for his Plan benefits.

17. On 11 December 2017, JLT wrote to Mr N and incorrectly provided him with two separate preserved benefit statements and said that:-

- His preserved pension, at his date of leaving of 31 March 1991, was £508.79, revalued up to 8 December 2017, for a value of £1,511.90. This was comprised of

¹ If Mr N had stayed in the Woodhead Plan between 1991 and 1995 he would have paid a reduced rate of national insurance contributions, as the Woodhead Plan was contracted out of the State Earnings Related Pension Scheme (**SERPS**).

a revalued post 5 April 1988 GMP of £746.56, and a post 5 April 1997 excess pension of £765.34.

- His preserved pension, at his date of leaving of 31 May 2002, was £1,674.51, revalued to 8 December 2017, for a value of £2,441.02. This was comprised of a revalued post 5 April 1998 GMP of £176.23, and a post 5 April 1997 excess pension of £2,264.79.
 - The total value of his two preserved pensions, at their respective dates of leaving, was £2,183.30, revalued to £3,187.58.
18. On 10 January 2018, Mr N telephoned JLT to query his entitlement as it did not appear to take into account the Reinstatement Period. He also contacted Phoenix Life, formerly Pearl Assurance, to query whether or not the reinstatement payment was made in 2002.
 19. On 24 January 2018, JLT wrote to Mr N and explained that it had received correspondence from the Trustee, and Pearl Assurance, from 2002. JLT's records did not contain any information about the Reinstatement Period, so it needed to investigate the matter further.
 20. On 6 April 2018, JLT wrote to Mr N and said that the Reinstatement Period was not accounted for on its records. Based on the evidence provided, and its own investigation, the Trustee agreed that he was entitled to the Reinstatement Period. Consequently, his amended total pensionable service was 13 years and 9 months between 1 April 1988 and 30 May 2002. The total value of his preserved pension, as of 30 May 2002 was £3,542.23. His AVC benefits were now held and administered by Aviva.
 21. On 1 April 2019, JLT was incorporated into Mercer, who became the new administrator of the Plan.
 22. In March 2020, Mr N telephoned Mercer to request an up-to-date preserved benefit statement.
 23. On 30 March 2020, Mercer sent Mr N an incorrectly calculated preserved benefit statement which did not take into account the Reinstatement Period. This was because JLT did not update its records, in 2018, when Mr N first made it aware of the Reinstatement Period.
 24. On 19 May 2020, Mercer sent Mr N an amended preserved benefit statement, which took into account the Reinstatement Period. As of 31 May 2002, his preserved pension was £3,542.23 revalued up to £5,481.56.
 25. On 26 May 2020, Mr N telephoned Mercer to query why he held two preserved periods of membership, as opposed to one continuous period.
 26. On 27 May 2020, in response, Mercer wrote to Mr N and apologised for the error in calculating his previous preserved benefits statement and said:-

- JLT did not update its records to reflect the Reinstatement Period, in spite of its investigation in 2018. Consequently, Mercer’s records were incomplete as well.
- He was sent a revised preserved benefit statement on 19 May 2020, which said that his revalued Woodhead Section entitlement was £5,481.56, which was correct.
- His preserved pension was revalued from his date of leaving, 30 May 2002, in line with statutory revaluation orders published by the Government. The GMP element of his pension was revalued at a fixed rate.
- Each tranche of his pension, at his date of leaving, was revalued by:

	Pension at DOL	Revaluation Rate Applied	Revaluation Factor	Revalued Pension
Post 1988 GMP	£209.04	Fixed 4.5%	2.1134	£441.78
Pre 1997 Pension	£2,002.17	51.20%	1.52	£3,027.28
Post 1997 Pension	£1,331.02	51.20%	1.52	£2,012.50
Total	£3,542.23			£5,481.56

- Because of the Reinstatement Period, his overall preserved pension was revalued from a later date, 31 May 2002, instead of as early as 31 March 1991.

27. In response, Mr N submitted a formal complaint about the way in which the Reinstatement Period had been applied and how his benefits were calculated.

28. On 23 September 2020, Mercer provided its response to Mr N’s complaint and explained that:-

- After the Reinstatement Period was implemented, Mr N’s total pensionable service amounted to 13 years and 9 months. The Woodhead Section’s accrual rate was 1/60, and Mr N’s final pensionable salary was £15,457. Mr N’s preserved pension, as at 31 May 2002 was calculated as follows: “ $13.75 / 60 \times 15,457 = £3,542.23$ ”.
- HM Revenue and Customs (**HMRC**) confirmed that Mr N had two periods of service where he was contracted out of SERPS. That was, between 29 August 1988 and 31 March 1991, and 6 November 1995 and 31 May 2002.
- The cost of the Reinstatement Period did not take into account retroactively contracting him out of SERPS between 31 March 1991 and 5 November 1995.
- Previously it had said that his GMP entitlement was subject to an annual fixed rate revaluation of 4.5%. However, as he held two separate periods of GMP entitlement:

- the GMP accrued between 29 August 1988 and 31 March 1991, attracted an annual fixed rate of revaluation of 7.5%; and
 - the GMP accrued between 6 November 1995 to 31 May 2002, attracted an annual fixed rate of revaluation of 4.5%.
- As at 30 October 2020, his entitlement under the Plan was an annual pension of £4,168.08. Alternatively, he could claim a maximum tax-free lump sum of £23,758.48 with a reduced annual pension of £3,567.84.
 - His entitlement was calculated by revaluing his preserved pension, in line with statutory revaluation orders, at his date of leaving, up until his date of retirement. The revaluation orders were based on annual changes in the retail price index, which changed over to the consumer price index in 2011, to a maximum increase of 5% a year.
 - As of 30 October 2020, his pension in excess of his GMP would be revalued by a statutory revaluation factor of 1.538 (18 years). This meant that his excess preserved pension increased from £3,333.19 to £5,126.45, an increase of 53.8%.
 - Mercer was satisfied that the Reinstatement Period had been correctly implemented and that his retirement benefits, as at 30 October 2020, were calculated correctly.
29. On 8 October 2020, Mr N submitted a complaint under the Plan's Internal Dispute Resolution Procedure (**IDRP**). Mr N said that he was unable to claim his benefits, at age 55, because he did not believe that he had been put back into the position he would have been in if he had not opted out of the Woodhead Plan.
30. On 2 December 2020, the Trustee provided its IDRPs response to Mr N and said:-
- The most recent preserved benefits statements he received took into account the Reinstatement Period. Mercer's records did not include any contributions for the Reinstatement Period as he did not pay any.
 - His GMP entitlement under the Woodhead Section was not continuous as it was split between two separate periods of pensionable service. Each GMP period held different revaluation rates. It held no GMP for the Reinstatement Period as, during this time, he paid into SERPS accruing an additional state benefit.
 - The death in deferment benefits would be amended so that any benefits paid, after his death, were not based on an incorrect level of member contributions. This was because he did not pay any contributions during the Reinstatement Period.
 - Any lump sum death benefits, for a preserved member, would be paid as if he had retired the day before his date of death. This method would be noted on his record and retained.

- The Trustee was undergoing a member engagement exercise that he was previously excluded from due to his queries about how his entitlement was calculated. He would now be included in this exercise, and details of his Plan entitlement would be sent out shortly.
 - As part of the member engagement exercise, details of an independent financial adviser (**IFA**) would be included, with whom the Trustee had negotiated favourable rates, should members need to obtain any advice on their benefits.
 - As a gesture of goodwill, if he wanted to obtain independent advice, the Trustee would cover £950 worth of the total cost of any advice.
31. Between December 2020 and 2023, Mr N continued to correspond with Mercer and the Trustee as he did not agree with his entitlement under the Plan. He believed that his GMP should be treated as continuous including the Reinstatement Period.
32. On 1 February 2021, Mercer wrote to Mr N and said that it had considered his comments about delays in receiving information and incorrectly calculated quotes. In recognition of this, Mercer was prepared to offer him £750.
33. Mr N accepted, and was paid, the £750 in full and final settlement of his complaint.

The Trustee's additional comments, provided by Gowling WLG (UK) LLP

34. After the Reinstatement Period was implemented, under the Woodhead Section, Mr N had one continuous period of pensionable service between 29 August 1988 and 31 May 2002. However, in spite of the Reinstatement Period, it was not always possible to perfectly replicate the benefits the member would have had if they did not opt out.
35. During the Reinstatement Period, Mr N paid into SERPS accruing an additional state pension. The Trustee could not retrospectively contract out Mr N's pensionable service between 1991 and 1995.
36. Under the Woodhead Section, if Mr N died before he claimed his retirement benefits, normally a refund of contributions would be paid to the next of kin. However, Mr N did not pay contributions during the Reinstatement Period, so he would be at a disadvantage.
37. To overcome this, the Trustee agreed that if Mr N died as a preserved member, the lump sum payable would be five times the value of the annual pension he would have received if he claimed his pension the day before he died. This was in addition to the spouse's pension. Consequently, if Mr N died as a preserved member, the lump sum payable would be significantly higher than a refund of contributions.
38. It noted that Mr N believed he had suffered a final loss of £3,000 worth of pensionable salary. This was in reference to the £5,325.94 sum that was paid by Pearl Assurance to facilitate the Reinstatement Period. Mr N's preserved pension at his date of leaving was less than the sum paid. It appeared that Mr N had misunderstood the basis on which the sum was paid.

39. The sum of £5,325.94 was not the amount of annual pension that Mr N was entitled to for the Reinstatement Period. The sum was calculated by Aon as the cost of providing Mr N with benefits covering the Reinstatement Period.
40. During the Reinstatement Period, Mr N was not contracted out. HMRC has also confirmed that he is entitled to full benefits from SERPS for the Reinstatement Period. To reinstate Mr N's GMP between 1991 and 1995 would be perceived as a "double recovery".
41. As Mr N had two periods of GMP service he was entitled to different levels of fixed rate revaluation on each GMP. The GMP accrued between 1988 and 1991 was revalued by 7.5% per annum, while the GMP he accrued from 1995 was revalued by 4.5% per annum. If Mr N's GMP entitlement was treated as continuous from 1988 to 2002 it would only revalue by 4.5% per annum.
42. Mr N had already accepted £750 in recognition of the poor service he received from Mercer. There was no reason to award additional compensation to Mr N.

Adjudicator's Opinion

43. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or Mercer. The Adjudicator's findings are summarised below in paragraphs 44 to 54.
44. Mr N opted out of the Plan between 31 April 1991 and 5 November 1995, after he was mis-sold a personal pension by Pearl Assurance. Following on from an industry-wide pension review exercise, in 1997, Pearl Assurance agreed to pay the cost of reinstating Mr N's membership back into the Woodhead Plan. From 1997 Mr N was provided with a guarantee certificate, from Pearl Assurance, which confirmed that it would pay the benefits Mr N would have received, until he was reinstated back into the Woodhead Plan. Thereafter, the guarantee certificate would expire.
45. After Mr N's benefits were reinstated, a separate AVC fund was setup to hold the premiums that he paid into the personal pension between 1991 and 1995. However, the Adjudicator was unable to investigate the way in which Mr N's excess benefits were reinstated from 2002. This was because it was time-barred under the Personal and Occupational Pension Scheme (Pensions Ombudsman) Regulations 1996.
46. The Woodhead Plan was contracted out of SERPS. Consequently, members, such as Mr N, paid lower National Insurance contributions. Because of this, the Trustee was required to provide Mr N with a GMP at State Pension Age (**SPA**), which was 65 for men. The GMP needed to be broadly at least equal to the benefit that would have been payable from SERPS.
47. Between 29 August 1988 and 31 March 1991, and again from 6 November 1995 to 30 May 2002, Mr N was contracted out of SERPS and paid a reduced rate of National Insurance contributions. Between 1 April 1991 and 5 November 1995, Mr N was no longer part of a contracted-out pension arrangement, and he paid additional National

Insurance contributions, through his employer, which formed his entitlement to a SERPS benefit during the Reinstatement Period.

48. It was the Adjudicator's view that reinstating Mr N's GMP entitlement during the Reinstatement Period would result in unjust enrichment. This was because HMRC had confirmed that he held a SERPS benefit equal to the GMP he would have accrued in the Woodhead Plan during the Reinstatement Period. Mr N was entitled to the SERPS benefit as a result of not being contracted out between 1 April 1991 and 5 November 1995.
49. There was no requirement, nor was it possible, for the Trustee or Mercer to reinstate his GMP between 1991 and 1995. Contracting out had been abolished since April 2016, so there was nothing further that the Trustee could do in this regard.
50. Under the relevant overriding pensions legislation, and under the rules of the Woodhead Section, Mr N's GMP was increased by fixed rate revaluation for each complete tax year between his date of leaving pensionable service, to the date of normal retirement, or death, whichever occurred first. The date a member left contracted out pensionable service determined the rate of revaluation the GMP would receive.
51. Mr N's GMP for his first period of service, up to 31 March 1991, was subject to a revaluation rate of 7.5% a year. The GMP he accrued from 6 November 1995 was subject to a revaluation rate of 4.5% a year. If Mr N's GMP was treated as continuous, the entirety of his GMP would only receive a revaluation rate of 4.5% a year. Holding two separate GMP records, meant that one of Mr N's GMPs would receive a more generous rate of revaluation.
52. Under the Plan, when a preserved member died, their next of kin received a refund of contributions. In recognition of this, the Trustee agreed that if Mr N died with preserved benefits, instead of a refund of contributions, his next of kin would receive a lump sum equal to five times the value of his annual pension, calculated as if he had died one day after retirement. This decision was made to ensure that Mr N was not disadvantaged by not paying contributions during the Reinstatement Period.
53. The Adjudicator believed that the workaround for the death benefits measure would likely provide Mr N's next of kin with a substantially greater lump sum than a refund of contributions would. This was also in addition to a spouse's/dependant's pension. To address any lingering concerns Mr N had on the matter, the Adjudicator asked Mercer to provide him with a provisional statement outlining the notional value of the preserved death lump sum that would be payable to his next of kin if he died on, or after, his normal retirement age.
54. It was recognised that Mr N had received conflicting information from Mercer, compared to that which he received from the Trustee. In recognition of any distress Mr N might have felt, the Trustee offered and paid Mr N £750. The Adjudicator was satisfied that this amount was sufficient and did not merit an additional payment.

55. Mr N did not accept the Adjudicator's Opinion, and the complaint 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 note the additional points raised by Mr N, which are:-
- The guarantee certificate provided by Pearl Assurance said that he was entitled to benefits equal to those he would have received under the Woodhead Plan. That is, if he remained a contributing member during the Reinstatement Period. Not reinstating his GMP for the Reinstatement Period meant that he would not receive his full entitlement under the Woodhead Section of the Plan.
 - He does not expect to receive both a GMP and excess benefits for the Reinstatement Period. However, by not reinstating his GMP, the Guarantee Certificate was not honoured.
 - "the offer, in regards to contributions would leave me 2412.28 missing from my transfer valuation contributions are included and have been in my transfer values leaving me with a benefit I have paid for but never had."
 - He did not believe that the IFA, recommended by the Trustee, could be said to be independent if there was a link between the IFA and the Firm. So, he paid for his own IFA to obtain advice on his Plan benefits and his missing GMP.

Ombudsman's decision

56. Mr N has complained that the Trustee will not agree to the reinstatement of his GMP for the Reinstatement Period. He therefore believes that his reinstated benefits are not equal to those he would have accrued if he had not been mis-sold a personal pension.
57. I appreciate that the subject matter of GMP, SERPS and the reinstatement of benefits is a complex matter and may be easily misinterpreted by a layperson. Based on Mr N's comments, and his understanding of the issues he is complaining about, I believe he has misunderstood the way in which the reinstatement of his benefits was implemented.
58. If Mr N remained a member of the Woodhead Plan during the Reinstatement Period, he would have continued to accrue a GMP, as the Woodhead Plan was contracted out of SERPS. He would also have continued to accrue benefits in excess of GMP. Once Pearl Assurance agreed to cover the cost of reinstating Mr N's benefits, Aon made clear that the figures provided to do so, did not include the cost of reinstating Mr N's GMP for the period. So, the amount paid to reinstate Mr N's benefits only covered the cost of reinstating his excess benefits between 1991 and 1995.
59. I agree with the Adjudicator's comments in that, the Trustee is not required to reinstate Mr N's GMP for the Reinstatement Period, as he built up a broadly equivalent benefit within SERPS, which he is eligible to claim at his SPA. To avoid

any confusion, SERPS, is a State benefit, and does not form part of Mr N's Plan benefits. Though it is broadly equal to the benefits he would have received, as a GMP, from between 1991 and 1995, if he had been contracted out of SERPS, and an active member of the Woodhead Plan.

60. For all intents and purposes, following the implementation of the Reinstatement Period, Mr N's overall benefits are broadly equivalent to those if he had not opted out of the Scheme.
61. Mr N refers to "£2412.28 missing from my transfer value contributions". I do not agree. The difference between the revalued sum of the pension contributions plus additional NI contributions that Mr N paid when he was a member of the personal pension and the revalued sum of the pension contributions that he would have paid if had remained in the Woodhead Plan for this period were paid into an AVC (see paragraph 13 and 14 above).
62. Turning now to Mr N's comments about the IFA recommended by the Trustee. While the IFA may be recommended by the Trustee, with preferential rates, this does not in any way mean that the IFA is not independent or unable to provide unbiased advice. Nor would there be any value in the recommended IFA providing biased advice. The fact that Mr N chose to engage with a different IFA was his decision to make.
63. I appreciate that this may not be the outcome that Mr N hoped for. However, in spite of the difficulties he experienced with JLT, Mercer and the Trustee in implementing the Reinstatement Period, I find he is now in the correct position and the Reinstatement Period has been appropriately recognised.
64. The Adjudicator requested that Mercer provide Mr N with a provisional statement outlining the notional value of the preserved death lump sum that would be payable to his next of kin if he died on, or after, his normal retirement age. I feel that this was a reasonable request and Mercer shall provide Mr N with this information as soon as reasonably practicable.
65. I do not uphold Mr N's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
18 November 2024