

## Ombudsman's Determination

Applicant	Mr Y
Scheme	The Pension And Life Assurance Plan of NG Bailey ( <b>the Plan</b> )
Respondent	WPS Trustee Services Limited ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

2. Mr Y complained that he was not informed, prior to 2019, that the early retirement factor (**ERF**) that was applicable to the benefits he transferred to the Plan, from another pension arrangement, would be less generous than the ERF that was applicable to the benefits he had accrued in the Plan.

## Background information, including submissions from the parties

3. On 1 December 1995, Mr Y joined the Plan and started accruing benefits within the Plan (**the Accrued Benefits**). In September 1996, Mr Y transferred his benefits from another pension arrangement into the Plan (**the Transferred in Benefits**). Mr Y became a deferred member of the Plan on 31 May 2010.
4. On 11 March 2019, following Mr Y's request, KPMG, the Plan's administrator (**the Administrator**), sent Mr Y a pension benefit statement (**the March 2019 Statement**).
5. On 25 March 2019, following receipt of the March 2019 Statement, Mr Y emailed the Administrator with some queries. As part of his queries, Mr Y asked what ERF would be applied to his Accrued Benefits and what ERF would be applied to his Transferred in Benefits.
6. On 27 March 2019, the Administrator replied to Mr Y. It provided a table detailing the ERFs applicable to the different sections of the Plan.<sup>1</sup> The Administrator explained that the factors were subject to change and were provided by the Plan Actuary (**the Actuary**) based on the market conditions at the date of retirement.

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<sup>1</sup> This table is detailed in Appendix 1.

7. The Administrator also said:

“Your transferred-in pension of £26,101.92 is fixed at 9 June 2028, if you were to claim the benefits before this date they would be reduced in line with the Fixed early retirement factors outlined [in the table set out in the Appendix].”

8. Subsequently, between 27 March 2019 and 29 November 2019, there were further exchanges between Mr Y and the Administrator concerning the ERF that would be applied to the Transferred in Benefits. During this period:-

- Mr Y informed the Administrator that he was previously told the ERF for the Transferred in Benefits would be the same as the ERF for the Accrued Benefits. However, the figures it had provided (see Appendix 1) showed that the ERF for the Transferred in Benefits was worse than the ERF for the Accrued Benefits.
- The Administrator asked Mr Y to provide any documentation he had previously received advising that the ERF applied to the Transferred in Benefits would be the same as the ERF for the Accrued Benefits. It explained that it had been administering the Plan using the Plan Rules (**the Rules**) it had been provided by the former administrators, which indicated an ERF to be applied to fixed benefits such as the Transferred in Benefits.
- Mr Y confirmed that he did not have any documentary evidence that he was previously informed that the same ERF would apply to the Transferred in Benefits as those applied to the Accrued Benefits. However, he had always been told that his Transferred in Benefits would be treated the same as the Accrued Benefits and would have the same ERF.
- The Administrator confirmed that Mr Y’s Transferred in Benefits had a separate ERF to Accrued Benefits. After an extensive search of its records, it found no documentary evidence to suggest that the Transferred in Benefits should be treated differently to other transfers into the Plan.
- Mr Y requested and was sent a copy of the Rules. The Administrator informed Mr Y of the applicable Rule that prescribes how the ERF for the Transferred in Benefits should be calculated.<sup>2</sup>

9. On 4 November 2019, the Administrator sent Mr Y a retirement quotation (**the November 2019 Quotation**).

10. On 11 December 2019, Mr Y made a complaint to the Trustee under the Plan’s Internal Dispute Resolution Procedure (**IDRP**). In summary he said:-

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<sup>2</sup> The Administrator quoted an extract from Rule 10.2 of the General Rules. It also explained that Rule 4.1 of Part 2 of the Rules was not applicable to Mr Y because the Transferred in Benefits provided a fixed pension and no credited pensionable service was awarded in respect of the Transferred in Benefits. An extract of Rule 10.2 is detailed in Appendix 2.

- The basis of his complaint was that at no point was he informed that a significant portion of his benefits in the Plan would attract a different and less generous ERF. So, he was unable to make informed decisions concerning his pension provision.
  - He had received annual statements and trustee reports for many years, and none stated that there could be any difference in the ERFs for the Transferred in Benefits.
  - The Administrator had recently taken legal advice which highlighted a rule that stated there “could” be a different ERF for the Transferred in Benefits. He was not previously made aware of this.
  - If that rule was to be enforced and different ERFs were applied to different element of benefits, members of the Plan should have been informed of the actual rates to be applied, so they can make informed decisions.
11. On 4 February 2020, the Trustee replied to Mr Y’s complaint under stage one of the IDRP. A summary of the Trustee’s response is set out below in paragraphs 12 to 18.
  12. Following a full review of the information, including evidence Mr Y had provided and after obtaining legal advice, it decided not to uphold his complaint.
  13. It was currently reviewing the Plan’s factors, including the ERFs. The Plan’s factors were set at the discretion of the Trustee, following advice from the Actuary. These factors were reviewed periodically, such as following the triennial actuarial valuation of the Plan.
  14. When advising the Trustee on suitable factors, the Actuary considers matters including, but not limited to:-
    - The financial effect of the factors on the Plan overall.
    - Assumptions relating to the expected cost of providing pensions to members.
    - Financial market conditions.
    - Any restrictions on the factors which can be set, for example, restrictions set out in the Rules.
  15. All these matters can change over time, which is why the factors need to be updated.
  16. One of the roles of the Actuary when setting Plan factors was to consider the value of member benefits at their proposed retirement date, to make sure that any proposed factors did not unduly favour particular groups of members, such as a member who retired early compared to a member who retired at their normal retirement date (**NRD**).
  17. The Actuary generally looked to set factors that meant, on a particular basis, a member retiring early received the same overall value from their pension as they would have done, had they retired at their NRD, but over a different length of time.

18. The nature of the factor review process meant that it was not possible to provide relevant factors a long time in advance as they were subject to change.
19. On 11 March 2020, Mr Y wrote to the Trustee and requested that it reconsider its decision. In summary he said:-
  - The ERFs for the Plan had been advised in writing many times over the years. He had always been led to understand that the Transferred in Benefits were part of the Plan so would attract the same benefits, fees and penalties as the rest of the Plan.
  - Over the period of the last 25 years, he had been advised of changes to the Plan, but he was not informed that the Transferred in Benefits would be treated differently from the rest of the Plan. He had queried this with the Plan's previous administrator and was told that the Transferred in Benefits would be treated the same as the rest of his benefits in the Plan.
  - It was only when he received the November 2019 Quotation that he became aware that a 7% per annum ERF would be applied to the Transferred in Benefits and not the 3% per annum ERF that he was previously informed would be applied, should he retire earlier than his NRD.
  - As the Transferred in Benefits contributed to more than 50% of his prospective pension, the difference between 3% and 7% per annum ERF to be applied to those benefits was concerning and would significantly impact upon his ability to retire as planned.
  - His complaint was that he could not possibly have made suitable and informed choices regarding his pension provision and contributions if he was not given accurate pension information to work with in the first place.
  - During his employment of 38 years and 10 months he did not make any additional voluntary contributions (**AVCs**) or increase his pension contributions to ensure that he had a suitable income in retirement, as he did not believe he needed to.
  - He had complained to the Administrator about this issue and was informed by the Administrator that it was applying the Rules.
  - He subsequently requested a copy of the Rules. The Rules clearly stated that the ERF for early retirement is set at 0.25% per month which equalled to 3% per annum. He highlighted this to the Administrator and the Administrator informed him that it would seek legal advice.
  - Subsequently, the Administrator referenced Rule 10.2 in the General Rules. The wording of this Rule appears to state that a transfer in value could be treated differently to benefits accrued in the Plan. This did not address his complaint which was that he had never been informed of this alteration in terms. So, he had

been prevented from making suitable arrangements to ensure he had a suitable pension in retirement.

- He understood the need to update the Rules as required to ensure their suitability and fairness to all its members and ensure it remained legal and sustainable. However, he felt it was deeply unfair to make substantial changes to pension policies and not inform those who would be affected by such changes. He did not believe it was lawful or even fair and reasonable for members to only be informed of changes to their pensions that would affect them, so close to the point of their intended retirement.

20. On 14 April 2020, the Trustee replied to Mr Y under stage two of the IDR. In summary it said:-

- It had obtained professional advice and considered his complaint in detail. It concluded that his complaint should not be upheld and that the ERF that should be applied to the Transferred in Benefits was 7% per annum and not the 3% per annum that is applicable to the Accrued Benefits.
- The main reason for this decision was that Mr Y was a deferred member of the Plan and his benefits were governed by the Rules. The Rules relevant to him provided, in summary, that the ERF to be applied to his pensionable service shall not be greater than 0.25% for every month prior to normal retirement, that is 3% per annum.
- Pensionable service is a defined term under the Rules and it only includes transferred in service as agreed by the Trustee at the request of the employer. Where transferred in service is not included as pensionable service, an additional pension in respect of that transfer shall be provided as determined by the Trustee, acting on the advice of the Actuary.
- For the avoidance of doubt, this additional pension includes the ERF which is 7% per annum.
- There was no evidence to suggest that Mr Y's Transferred in Benefits were to be treated as pensionable service. This meant that the 3% per annum reduction should not be applied to his Transferred in Benefits.

### **Summary of Mr Y's position**

21. His complaint was that after all the years he had paid into the Plan, he was never informed that a large portion of his pension would be treated differently. Had he been informed that his Transferred in Benefits would have been treated differently to his Accrued Benefits, or that a less generous ERF would be applied to his Transferred in Benefits, he would have made other provisions to make up the shortfall, such as paying into an AVC arrangement.

22. The Trustee said that it determined the ERFs to be applied to the Transferred in Benefits. If this was the case, it should publish the determined values so that members could know what was going on and make informed decisions.
23. He agreed with the Trustee that the Transferred in Benefits were different to Accrued Benefits. It was an additional pension, not an amount of additional pensionable service, which had to be determined by the Trustee in accordance with Rule 10.2.
24. Rule 10.2 appeared to be describing how a pension was to be calculated for a member reaching NRD. In his case, the Principal Employer did not exercise its discretion to award credited pensionable service. However, this Rule also provided the mechanism to determine the pension payable from the Transferred in Benefits. His understanding was that the Plan received and accepted his Transferred in Benefits and an additional pension was provided, in September 1996, as is shown on the transfer statement he received at the time.<sup>3</sup>
25. He had queried what ERF would be applied to his Transferred in Benefits in an email sent to the Administrator on 25 March 2019, because he had received a letter from the Administrator dated 11 March 2019, which contained several errors and omissions. While he was querying those errors and omissions, he thought it would be prudent to clarify all the factors that could affect his ability to retire early. As his benefits had been transferred through various companies, he wanted to make sure that the Administrator had the same information that he was previously given.
26. Initially, he believed both his Transferred in Benefits and his Accrued Benefits would have the same ERF of 3% per annum. However, after reading the Rules carefully, he has realised that may not be the case. The Rules do not make allowance for ERFs for Transferred in Benefits.
27. He had received annual benefit statements and a “Trustees Report” each year. Neither of these annual documents mentioned the ERFs to be applied to his benefits.
28. He commenced claiming his benefits from the Plan on 10 July 2021.

### **Summary of the Trustee’s position**

29. Rule 10.2 of Part 1 of the General Rules, provides, as relevant, that a member for who a transfer value has been received and accepted by the Plan, of which there is no credited pensionable service, an additional pension shall be provided which, in the opinion of the Trustee, acting on the advice of the Actuary, is purchased by such transfer value.
30. Although Rule 10 relates to retirement at NRD, it is cross-referred to in Rule 13 relating to the retirement of a deferred member. It was clear from Rule 10.2 that the amount of the pension provided, as a result of a transfer in, was at the discretion of

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<sup>3</sup> Mr Y provided a copy of this transfer statement to The Pensions Ombudsman.

the Trustee acting on the advice of the Actuary. The Trustee exercised its discretion under this Rule to apply the ERF of 7% per annum to the Transferred in Benefits.

31. For completeness, the Trustee noted that, as far as it was aware, the ERF applied to Transferred in Benefits had always been less generous than the ERF applied to benefits accrued in the Plan.
32. In his email of 25 March 2019 to the Administrator, Mr Y specifically asked the Administrator to confirm what penalties his “transfer in” benefits would incur for early retirement, thereby demonstrating that he had an awareness that the Transferred in Benefits were subject to separate rules regarding early retirement.
33. There was no legal requirement to inform Mr Y, from time to time, of what ERFs would be applied to his Transferred in Benefits. Information concerning the ERFs to be applied to Mr Y’s Transferred in Benefits was provided to him when he requested that information. The Trustee’s approach concerning Mr Y, and any other member in the same position as Mr Y, in relation to the provision of information to members concerning factors, was in line with general pensions industry practice.

### **Adjudicator’s Opinion**

34. Mr Y’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, in paragraphs 35 to 42
35. There was no dispute that Mr Y’s Transferred in Benefits should be treated as a separate benefit to the Accrued Benefits, and not be added to the Accrued Benefits as credited pensionable service.
36. Mr Y argued that he had always been led to understand that the Transfer in Benefits were part of the Plan so would attract the same benefits, fees and penalties as the rest of the Plan. The Trustee has explained that, as far as it was aware, the ERF applied to Transferred in Benefits had always been less generous than ERFs applied to the benefits accrued in the Plan.
37. The onus was on Mr Y to prove that he was provided with information that informed him that the same ERF would apply to both his Transferred in Benefits and his Accrued Benefits. Mr Y had not provided any documentary evidence to prove that he was informed of this, and the Trustee had also not found any evidence that he was previously informed of such. Without evidence that Mr Y was told this, the Adjudicator was unable to conclude that Mr Y was provided with information, prior to 2019, that the same ERF would be applied to his Accrued and Transferred in Benefits.
38. Both elements of Mr Y’s benefits in the Plan were governed by the Rules. The Trustee explained that Rule 10.2 was applicable to Mr Y’s Transferred in Benefits and that this Rule was cross referenced with Rule 13 (see Appendix 2).

39. The Adjudicator appreciated that those Rules did not specify the ERF that should be applied to the Transferred in Benefits. However, Rule 10.2 gave the Trustee the discretion, following advice from the Actuary, to decide the value of the additional benefit that can be purchased with the transferred sum. So, it was the Adjudicator's view that there had been no maladministration by the Trustee, following advice from the Actuary, to set a different ERF for the Transferred in Benefits.
40. The Adjudicator appreciated that it may have been helpful to Mr Y if he had been made aware earlier, that a different ERF would apply to his Transferred in Benefits. However, it was customary for trustees, following advice from scheme actuaries, to decide or amend factors relating to scheme benefits such as ERFs. There was no requirement in legislation or the Rules for the Trustee to notify members of these changes as and when they occurred. So, there was no maladministration by the Trustee in not notifying Mr Y, sooner than it did, of the ERFs that would apply to the Transferred in Benefits, should he take his benefits prior to his NRD.
41. As awareness of the ERF applicable to the Transferred in Benefits was important in Mr Y's retirement planning, it was the Adjudicator's view that it would have been prudent for Mr Y to have requested confirmation of the ERF applicable to the Transferred in Benefits, in writing, prior to 2019.
42. In the Adjudicator's view, Mr Y had suffered a loss of expectation and not a financial loss. This was because he was never entitled to the same ERFs to his Transferred in Benefits and Accrued Benefits in the Plan, as the Rules did not state this.
43. Mr Y did not accept the Adjudicator's Opinion. In response, he made some additional submissions that led to further information being sought from the Trustee. This included confirmation from the Trustee that the ERF for the Transferred in Benefits complied with preservation requirements. A summary of Mr Y's and the Trustee's post-Opinion submissions have been summarised below.

#### **Mr Y's post-Opinion submissions**

44. The Adjudicator was reading too much into the discretion in Rule 10.2. This Rule undoubtedly gave the Trustee, on the advice of the Actuary, a discretion, where a transfer value had been received, to determine how much additional pension the transfer value could purchase. This was the only discretion. The purpose of this Rule was to prescribe the pension due to a member at NRD, where no reduction would apply. The discretion was exercised at the time a person joined the Plan and was provided with the additional pension.
45. Taking the pension provided in Rule 10 in circumstances other than at NRD is prescribed in different Rules which then prescribe how those pensions are to be calculated.
46. So, it is not possible to read this discretion as also applying to circumstances described in an entirely separate Rule, without an express cross reference to the discretion to purchase additional pension being extended to include reducing such



additional pension. Nothing in Rule 10.2 would suggest the discretion has any other purpose other than to determine the additional pension, and it has been so exercised.

47. There is no such cross reference in Rule 13 to Rule 10.2. The extract of Rule 13 the Adjudicator quoted in the Opinion (see Appendix 2) makes no reference to Rule 10.2 or indeed Rule 10. There is a cross reference in Rule 13.2 to Rule 10 in the context of the revaluation that is applied to the deferred pension for the period between termination of pensionable service ending and the member's NRD, which increases the deferred pension that has accrued.
48. Rule 13.5 allows a deferred member to take his pension early if over minimum pension age and that Rule also prescribes how the pension will be reduced, depending on the benefits the member had accrued.
49. Additional pensions are not expressly covered by those parts of the Rules, so there appears to be a gap in the Rules.
50. It feels odd to him that the Trustee does not have evidence of its practice to apply a more severe penalty in the past. Not sharing how a member's additional pension would be treated in different circumstances, such as taking it before their NRD, would likely be a breach of disclosure requirements. Trustees of pension schemes are under a duty to keep records of how members' benefits are to be calculated. So, the Trustee should be asked to provide the information it had provided to him at the time it exercised its discretion to determine his additional pension, and whether that statement included provisions around how that pension would be calculated should he take it early or late or if suffering from incapacity.
51. The Adjudicator seems to accept the Trustee's statements without requiring it to produce evidence, whereas he has to prove his evidence when he is most unlikely to have this information. He should be able to rely on the Trustee holding such information about members' benefits.
52. When his Transferred in Benefits were accepted into the Plan in 1996, he did not receive information that those benefits would have been treated differently to Accrued Benefits. The original transfer in benefit statement made no mention of any level of ERFs to be applied to the Transferred in Benefits, nor any mention that the Transferred in Benefits would be treated differently, and less favourably than the Accrued Benefits. The pension provider failed at the time of transfer in to provide this information. He reasonably expected the Transferred in Benefits would have been treated the same as his Accrued Benefits at his NRD or if he took early retirement.
53. He was informed that he was only able to obtain a pension forecast within 12 months of a selected retirement date. So, he was prevented from requesting confirmation of ERFs or other pension terms until he was within 12 months of age 55. Despite this, he had previously queried the value of the Transferred in Benefits and each time he did, he was referred back to the original transferred in benefits statement.

54. The Trustee stated that there is no requirement for the Transferred in Benefits to be treated the same way as benefits accrued in the Plan, and that it follows that less generous ERFs may be applied by the Trustee. The Trustee asserts that this is general practice. As a lay person, he could not reasonably be expected to know, if not informed, of the general practice, if correct, that Transferred in Benefits would be treated differently.

### **The Trustee's post-Opinion submissions**

55. The Trustee provided copies of the actuarial reports in relation to the review of the actuarial factors obtained for the Plan in May 2011, July 2013 and July 2022. It also submitted some additional comments. These have been summarised below, in paragraphs 56 to 66.

56. It was concerned from the way in which Mr Y referred to penalties or severe penalties that he may be under the misapprehension that the ERF that would apply to the Transferred in Benefits was taking away some of the value of those benefits. The ERFs that apply to Transferred in Benefits are intended to be broadly actuarially equivalent to the value of that benefit should it be taken at NRA. The reduction is applied on a broadly cost neutral basis to reflect that the benefits are paid over a longer period of time when a member retires early. Conversely, the 3% ERF that applies to Accrued Benefits are intended to be generous to members.

57. Provided an ERF is in line with the preservation requirements, it is perfectly acceptable to have a more generous factor applied to Accrued Benefits than to Transferred in Benefits. The Trustee considers that the 7% ERF complies with preservation requirements and has no concerns in this regard, nor have any previously been raised as far as the Trustee is aware.

58. The applicable factors for the Plan are reviewed periodically, albeit not on a retirement by retirement basis, and the Trustee receives, and has received periodic confirmation from the Actuary that the ERFs for the Plan are appropriate, including for the period relevant to Mr Y. The Trustee is satisfied that the factors have been properly reviewed by the relevant Actuary (the identity of whom has changed a number of times during the relevant period), to ensure that the relevant legislative requirements with regards preservation have been met.

59. In May 2011, the then trustee commissioned Towers Watson (as was) to review the actuarial factors. The report was intended to "assist the then trustees in deciding on the actuarial factors that are to be used in individual calculations." The report confirmed that:

- the starting point was that the reduction should be broadly cost-neutral;
- that the Rules limit the reduction which can be applied to benefits accrued in the final salary section to (in effect) 3% per annum and, since this was more generous than any cost-neutral reduction, no further consideration was given to the final salary reduction factor;

- separate reductions were applicable to the CARPS sections, and to relevant Transferred in Benefits, both of which are applicable to Mr Y, which were not limited to the same extent by the Rules; (original emphasis)
  - the responsibility for determining the ERFs applicable to Transferred in Benefits lay with the Trustee, subject to acting on the advice of the Actuary<sup>4</sup>;
  - that the then current factors had remained unchanged for over nine years, since adoption, although they had been reviewed in the interim, and so it was time for them to be reviewed again; and
  - the then current factors, as compared with slightly revised alternative factors, showed that the difference between the alternative factors calculated by the Actuary, and the then current Transferred in Benefits ERF factors was nominal at best. The then existing factors were found to be more generous than the alternative factors and may have still been considered appropriate, but that the then trustee should consider adopting either of the two less generous but cost neutral factors, namely the 2009 valuation basis factors, or the 2009 recovery plan basis factors.
60. Following the May 2011 report, the then trustee adopted the 2009 recovery plan basis factors.
61. In the July 2013 report, the Actuary concluded, in summary, that the factors recommended in the May 2011 report, adopted from July 2011, were now considered to be less generous than a cost neutral factor, on the 2012 recovery plan basis. Although an alternative analysis was provided, the Actuary noted that this would lead to minor funding gains where a member retired early which may not have been compatible with the final salary benefit reductions which were capped at a level which resulted in a funding strain rather than gain. In other words, the Actuary flagged that, although ERFs for final salary benefits were independent from those applicable to Transferred in Benefits ERFs, a compatibility of approach was suggested, and recommended that cost neutral factors should be applied.
62. It was also confirmed that the ERFs ought to be reviewed following each triannual valuation but, provided the underlying assumptions did not change, the factors were not expected to vary significantly over time.
63. In August 2013, the then trustee wrote to the company and confirmed its intentions to adopt increased factors with effect from 1 September 2013, in line with the 2012 recovery plan basis set out in the July 2013 report.<sup>5</sup>
64. As it understands, the usual pattern of events for the Plan would have been to review the factors at regular intervals, usually following the triennial valuation process. The

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<sup>4</sup> This was in accordance with Rule 10.2 Part 1 of the Scheme Rules.

<sup>5</sup> The Trustee said that this can be seen replicated in the table which was communicated to Mr Y on 27 March 2019. This table is detailed in Appendix 1.

May 2011 report supports this, given it confirmed that the intention had been to review the actuarial factors after the 2009 valuation. However, this was postponed until a decision had been made in relation to moving from the Retail Prices Index to the Consumer Prices Index.

65. The next valuation was completed in 2012, and the 2013 report followed thereafter. It expects, but has not been able to confirm with evidence, in the time available, that following the 2015 valuation, regard would have been had as to whether the factors needed another full formal review, and the conclusion was no. Given there had not been much fluctuation between the 2012 and 2015 valuations, and noting that in the July 2013 report, the Actuary had advised that the factors were not expected to vary significantly over time, provided the underlying assumptions had not changed. In its experience, this was entirely reasonable and quite commonplace.
66. It was clear from the actuarial reports that the factors remained relatively static over the period. Following the 2018 valuation, which was signed off in May 2019, and post-dated Mr Y's complaint, consideration was given as to whether a formal review of the actuarial factors was required at that stage. The decision was taken to instruct the then actuary. That process was delayed while the Trustee obtained (privileged) legal advice in relation to Mr Y's ongoing complaint, and shortly afterwards was postponed, in accordance with the Pensions Regulator's general guidance, during the period of market uncertainty during the start of the Covid-19 pandemic.
67. Thereafter, and once the landscape had settled somewhat, the new Actuary was instructed to recommence the factor review, which was concluded in July 2022. The July 2022 report confirmed that the new Actuary had considered the preservation requirements and made recommendations for slight updates to the factors on a cost neutral basis, in line with the previous valuation.

### **Ombudsman's decision**

68. Mr Y's complaint concerns the ERF that is applied to his Transferred in Benefits. He is disappointed that a less generous ERF is applied to his Transferred in Benefits than the ERF applied to his Accrued Benefits.
69. Having considered the information that all parties to the complaint have provided, I find that there has been no maladministration by the Trustee in setting a different, less generous ERF, for Transferred in Benefits than it does for Accrued Benefits. This is because the Trustee is permitted to have a different ERF for different sections of the Plan, provided that the Rules do not prohibit the Trustee from doing so. There is nothing in the Rules that prohibits the Trustee from setting different ERFs.
70. The Rules allow for different sections of the Plan to have different ERFs. The Rules specify that the final salary pension's ERF is capped at 3% per annum, but they do not specify the ERF for pensions that have been transferred in.

71. The specific ERF applicable to Transferred in Benefits does not need to be set out in the Rules, but the Trustee must ensure that it is acting in accordance with the Rules and that its actions are reasonable.
72. The actuarial reports provided by the Trustee evidence that there were no significant changes to the actuarial factors set out in the reports. I acknowledge that there were some notable gaps in obtaining updated actuarial reports, however, the Trustee has provided reasons for this. In any event, I find that it makes no material difference to the calculation of 7% ERF in respect of Mr Y's Transferred in Benefits. So, it is entirely reasonable to assume that had further actuarial reports been obtained, the factors would have been largely the same.
73. I do not consider disclosure regulations to have been breached in Mr Y's case. It is not unusual for different ERFs to apply to different sections of a pension scheme, and the specific ERF applicable will be dependent on variable factors, such as market conditions.
74. Mr Y has said that he could not obtain a pension forecast until he was within 12 months of his selected retirement date. While this may have been the case, I do not consider that this precluded Mr Y from seeking confirmation, in writing, of the applicable ERF, earlier than 12 months of his selected retirement date, given that he intended to claim his benefits before his NRD.
75. Although I have said I do not consider using a different ERF to be either in breach of the Rules nor to be unreasonable, the 7% ERF applied to the Transferred in Benefits does appear to be quite high, so I can understand why Mr Y is unhappy that this ERF has been applied to his Transferred in Benefits.
76. However, based on the information the Trustee has provided, it is in line with the actuarial advice the Trustee had received, so I do not find there was any maladministration on the part of the Trustee.
77. I do not uphold Mr Y's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

30 July 2024

**Appendix 1**

**Table detailing the early retirement factors applicable to Mr Y's Accrued and Transferred in Benefits as stated in the Administrator's email of 27 March 2019.**

<b>Years Early</b>	<b>CARPS</b>	<b>Final Salary</b>	<b>Fixed</b>
0	1	1	1
1	0.938	0.97	0.924
2	0.882	0.94	0.854
3	0.83	0.91	0.791
4	0.782	0.88	0.733
5	0.738	0.85	0.68
6	0.698	0.82	0.632
7	0.661	0.79	0.588
8	0.626	0.76	0.548
9	0.594	0.73	0.51
10	0.564	0.70	0.476

## Appendix 2

### Relevant Sections of the Definitive Trust Deed and Rules of the Pension and Life Assurance Plan of NG Bailey dated 2009.

“ ...

#### **PART 1 – GENERAL RULES APPLICABLE TO ALL MEMBERS**

...

#### **Rule 10 (Part 1): Retirement at Normal Retirement Date**

...

10.2 Subject to the limit specified in **Rule 10.4** below, the annual rate of pension payable to a Pensioner under **Rule 10.1** shall be the aggregate of the respective pensions calculated in accordance with the provisions applicable to each Benefits Section in which the Member has Pensionable Service (which, for the avoidance of doubt, may be calculated in part by reference to **Rule 11** (retirement before Normal Retirement Date) or **Rule 12** (retirement after Normal Retirement Date) as appropriate in the event that a member has accrued benefits in more than one Benefits Section and thereby may have different applicable Normal Retirement Dates) PROVIDED THAT, in respect of a Member for whom a transfer value has been received and accepted by the Scheme and in respect of which there is no Credited Pensionable Service, an additional pension shall be provided which in the opinion of the Trustees acting on the advice of the Actuary is purchased by such transfer value and shall in respect of unmarried male Members and female Members be guaranteed for a period not exceeding 5 years in accordance with **Rule 10.3** below. In all cases the pension shall be subject to the provisions of **Rule 10.4** below and the limits of Appendix 2.

...

#### **Rule 13 (Part 1): Withdrawal from Service Before Normal Retirement Date**

...

13.5 Where a Deferred Pensioner:

13.5.1 has attained Minimum Retirement Age, or

13.5.2 suffers from Incapacity at a date before attaining Normal Retirement Date

he may, by written notice to the Trustees request the payment of an immediate pension instead of the deferred pension. The immediate

pension shall be discounted or increased (for early or late retirement, as the case may be) at such a rate as is set out in the relevant Rule of **Part 2, Part 3** or **Part 4** as appropriate, provided that this option shall not be exercised if the level of benefits prospectively payable to the Deferred Pensioner at GMP Payment Age would be less than that required under **Appendix 1**.

...

**Rule 4 (Part 2): Retirement before Normal Retirement Date**

4.1 The rate of discount applicable to the immediate pension payable to a Pensioner in relation to his Membership of this Final Salary Section shall be such a rate (not exceeding the rate recommended as appropriate by the Actuary) as the Trustees may decide at the date such pension commences provided that:

- (i) for a Barber Member the discount rate shall be applied by reference to the period by which the Barber Member's actual retirement date precedes the age shown in the following table for the appropriate period of Pensionable Service

<b>PENSIONABLE SERVICE PERIOD</b>	<b>MEN</b>	<b>WOMEN</b>
Up to 17 May 1990	63	60
17 May 1990 to 31 December 1994	60	60
From 1 January 1995	63	63

- (ii) for any Member, the discount rate applied shall not be greater than 0.25% for every month of early payment prior to Normal Retirement Date (or, if appropriate, the age specified in the table contained in paragraph (i) above), for Pensionable Service to 1 March 2008."