

## Ombudsman's Determination

Applicant	Mr N
Scheme	ICI Specialty Chemicals Pension Fund ( <b>the Fund</b> )
Respondents	ICI Specialty Chemicals Pensions Trustee Limited ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

2. Mr N complained that the Trustee should have contacted him when he reached age 60 and informed him that he was entitled to take unreduced early retirement.
3. Mr N claimed that the Trustee failed to fulfil its trust law duty to "act in the best interest of the beneficiaries".
4. Mr N said he should be entitled to claim the retirement benefits he would have received at age 60.

## Background information, including submissions from the parties

5. Mr N commenced employment with National Starch & Chemicals Limited (**NSCL**) in December 1986 and joined the National Starch & Chemical Pension Scheme (**NCS**) in January 1987. NSCL was owned by Unilever.
6. In August 1990, a decision was made to integrate the Unilever Superannuation Fund (**USF**) with NCS. Consequently, Mr N received an invitation to join the USF. He authorised the transfer of his benefits from the NCS into the USF on 31 August 1990.
7. In 1998, Imperial Chemical Industries (**ICI**) acquired several businesses from Unilever which led to the creation of the Fund. The provisions of the Fund allowed employees to transfer benefits accrued in the USF to the Fund. The Fund was administered by ICI.
8. On 20 February 1998, Mr N joined the Fund. He was provided with a "Pension Pack" by ICI. The pack included a member's booklet which contained information about the

retirement benefits payable from the Fund, how these were calculated and the conditions for payment. It also included a transfer option form.

9. On 24 March 1998, Mr N signed the transfer option form and authorised the transfer of his benefits from the USF to the Fund.
10. On 1 July 2000, Mr N became a deferred member of the Fund after being made redundant by NSCL. Following this, on 26 July 2000, ICI provided Mr N with a statement confirming his pension entitlement and benefit options.
11. In 2005, ICI published its annual newsletter entitled "Pensions Review" which, among other things, explained the early retirement option. It stated that:

"All members of the Fund can currently choose to retire from age 50. This is the earliest age at which you may take your pension unless you are retiring due to incapacity".
12. The newsletter also mentioned that the earliest age at which a member could take benefits unreduced was dependent on the category of member, which was based on how and when they joined the Fund. (See Appendix)
13. On 11 December 2016, Mr N reached age 60 and was entitled to unreduced early retirement but says he was unaware of this.
14. On 29 July 2019, the new Fund administrator, Lane Clark & Peacock LLP (**LCP**), provided Mr N with a retirement pack and covering letter. The retirement pack contained information about Mr N's deferred benefits, if he were to take them from 1 July 2019, and the options available to him at that date.
15. On 25 October 2019, Mr N contacted LCP, and asked why he had not been informed of his entitlement to retire at age 60 with unreduced benefits. LCP informed him that it would raise this with the previous administrator, ICI, and the Trustee.
16. On 27 October 2019, Mr N wrote to LCP to request that his retirement benefits be put into payment.
17. On 18 November 2019, LCP wrote to Mr N to confirm that it had accepted his request and it would arrange for his retirement benefits to be paid with effect from 1 July 2019. LCP also provided a response to the enquiry Mr N raised on 25 October 2019. It stated that: -
  - As a trustee of a defined benefit scheme and in accordance with legislation, the Trustee was required to issue a retirement illustration six months before a member's Normal Retirement Age (**NRA**) which for Mr N was age 65.
  - Information about early retirement (reduced or partially reduced) from age 60 was provided in the Fund member booklet issued in 1998 alongside the "Pension Pack".

- When LCP were appointed as Fund administrators, the Trustee made the decision to extend its member communications. Its priority was to remind members of their option to receive an early unreduced retirement pension from age 60, as well as other options such as transferring out. That is why LCP wrote to Mr N on 29 July 2019.
18. On 11 January 2020, Mr N wrote to LCP raising a complaint as he was dissatisfied with LCP's response.
  19. On 24 February 2020, LCP wrote to Mr N, on behalf of the Trustee, to provide a response to his complaint. Mr N's complaint was not upheld. LCP explained its reasons and also enclosed the member booklet and the "option form" Mr N had signed when transferring his benefits into the Fund. This form stated that upon transferring into the Fund, Mr N would be provided with benefits in accordance with the terms of the information pack issued in 1998. LCP also explained that Mr N's complaint hadn't been made under the Fund's usual Internal Dispute Resolution Procedure (**IDRP**) and so, if he was dissatisfied with the response, the Trustee had given him the option to have his case considered at Stage 2 of the IDRP without the need for the complaint to be considered at Stage 1.
  20. On 21 March 2020, Mr N requested that his complaint be considered under Stage 2 of the Funds IDRP.
  21. On 11 May 2020, the Trustee provided its IDRP Stage 2 response. It did not uphold the complaint.

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

22. The Trustee had failed to fulfil the duties it owed him under trust law.
23. The Trustee failed in its duty to "act in the best interest of the beneficiaries" because he was not informed of the entitlement to retire early and unreduced at age 60. The Trustee had failed to act "prudently, responsibly, and honestly" because a retirement illustration like the one sent by LCP was not provided to him before he reached age 60. The duty to "act in the best interest of the beneficiaries" should include being proactive and informing members when their retirement benefits are due.
24. The Trustee should have sent him the necessary paperwork so he could put his retirement benefits into payment in line with his entitlement before he reached age 60. He did not feel that all reasonable efforts were made to contact him when his retirement benefits were due. Although he acknowledged that the Trustee's understanding of when the benefits were due could be different.
25. It was unprofessional to claim that he was sufficiently informed of his entitlement through the member booklet considering the document was issued in 1998, 18 years before he became eligible in 2016. Especially considering it was provided whilst a takeover was commencing, which was a stressful period.

26. The Trustee has not upheld the commitment it implied within the members' booklet. In support, he referred to a section entitled: "How can former members of the pension be sure that they will obtain their benefits when they retire?". This section clearly stated that the Fund would make all reasonable efforts to contact him when his benefits became due, it did not say that he would be contacted at NRA.
27. The Trustees' letter from 2000 was the first personalised document he received from the Fund, and it did not inform him of his option to retire unreduced at age 60.
28. It would be unreasonable to believe that the Trustee was only required to inform him of his retirement benefits in a general document issued in 1998.
29. If he had been informed of his entitlement before he reached age 60, there would be no reason for him to refuse 5 years of additional pension without incurring costs.
30. He selected his retirement options on 27 October 2019, but the Trustee was able to make payment from 1 July 2019. This demonstrated that the Trustee could backdate his retirement.
31. He believed it was fair for the Trustee to pay the money that "was owed" to him from age 60. the Trustees' failure to pay his pension for the last 2 and a half years was a further example of how the Trustee had failed in its duty to "act in the best interest of the beneficiaries". He also queried whether there was a legal principle that prevented the Trustee from paying the retirement benefits he missed out on at age 60.
32. How would failing to inform a member of their entitlement once it was due and later not permitting them to backdate their retirement request result in the Trustee acting in the best interest of the Fund beneficiaries as a whole?
33. If it was reasonable for LCP to send him a retirement illustration in July 2019, then why was the Trustee not able to provide a similar document in 2016?
34. The service he had received from the Trustee fell short in comparison to his other pension provider. The other pension provider sends him an annual retirement statement which informs him of the amount of retirement benefit he is entitled to as well as the transfer value. Whereas the Trustee has failed to provide such information at the time he became entitled to an unreduced early retirement.
35. Deferred members were not being treated equally as he had been disadvantaged in comparison to new members who would now be better informed about their retirement options.
36. Besides the change in the Fund administrator, there have been no fundamental changes in the Fund. If the Trustee now believes that informing members of their benefits when they become due would be the 'right thing' to do, then this should have been the case in 2016 as well.

## Summary of the Trustee's position

37. As Mr N had defined benefits within the Fund, the Trustee was statutorily required to disclose certain information when he joined the Fund, when he left pensionable service, and once his benefits became payable. It considers that these requirements have been met and that it was under no obligation to provide Mr N his options at age 60 when he became entitled to unreduced early retirement.
38. When Mr N joined the Fund, the Trustee fulfilled its duties by providing the member booklet in accordance with the Occupational Pension Schemes (Disclosure of information) Regulations 1996. This booklet informed him about the retirement benefits payable under the Fund and the conditions for payment.
39. When Mr N reached age 60 in December 2016, the Occupational and Personal Pension Schemes (Disclosure of information) Regulations 2013 (**the 2013 Disclosure Regulations**) were in force.
40. Regulation 20 of the 2013 Disclosure Regulations required the member to be informed once their retirement benefits had, or were about to, become payable. Mr N's benefits did not become payable until he selected his retirement options on 27 October 2019. Therefore, the Trustee did not consider the regulation to be applicable until 2019. Once his benefits became payable Mr N was provided with a retirement pack.
41. The Trustee looks to comply with its obligations under both the Fund rules and the law. However, there was no legal obligation for it to periodically and proactively remind Mr N of his entitlement to retire earlier than the NRA.
42. The Trustee also provides information which it is not legally obligated to provide. This is through the Fund's website and the "Pension Review" newsletters. Information about retiring early was included in the 2005 edition of this newsletter.
43. Mr N's pension entitlement was subject to the Fund rules dated 4 February 2003 (**the 2003 Rules**) (See Appendix). Mr N's NRA was 65. The 2003 Rules allowed him to retire at any point after age 55. This included the option to retire at age 60 or later. Mr N selected to retire at age 63 after LCP had written to him on 29 July 2019. He is now seeking to backdate his early retirement request as though he retired at 60 but the Fund rules do not give him an explicit right to do so.
44. The Trustee could only follow the retirement choices which were made by Mr N, at the time he made them and those that were within the boundaries of what is permitted by the Fund rules.
45. The Trustee is required to act in line with the powers granted by the Fund rules and applicable laws. It was required to pay the retirement benefits Mr N was entitled to under the 2003 Rules. The Trustee could not provide benefits that fell outside of this scope otherwise it would be acting outside of its powers, which could lead to tax penalties for both Mr N and the Trustee.

46. While there is no single law or Fund provision that prohibits Mr N from being able to backdate his early retirement request, it is the absence of such a rule that prevents the Trustee from permitting his request. The Trustee cannot allow him to exercise options not available under the Fund rules.
47. The Trustee now writes to deferred members who are over the age of 55 to provide them with information about the value of their retirement benefits and their options for taking them. This does not mean the information given in the past was inadequate. The Trustee is not required to provide this information and has previously used the member newsletter, the member booklet, and the Fund website to generically highlight early retirement options. The fact Mr N did not receive a similar letter in 2016 did not amount to a failure on the part of the Trustee to fulfil its obligations under the statutory disclosure regulation, the Fund rules, and the trust law duties it owed.
48. The duty to “act in the best interest of the beneficiaries” meant that the Trustee should exercise its powers under the Fund rules with a view to the best interests of the Fund beneficiaries as a whole, and not to a member’s best interest personally. This duty did not give additional powers to the Trustee allowing it to pay retirement benefits that fall outside of the Fund rules.
49. The level of information provided by the Trustee did not breach the trust law duties it owed Mr N. The 2013 Disclosure Regulations allowed for Mr N to request a range of information. He could have requested additional information in relation to his retirement benefits throughout the period of his deferred membership but choose not to do so.
50. If Mr N retrospectively believes he would be in a financially advantageous position, had he taken different action, this does not mean that the Trustee automatically breached its duties under trust law.

## **Adjudicator’s Opinion**

51. Mr N’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee.
52. The Adjudicator’s findings are set out below:-
53. The Fund is governed by the 2003 Rules which classified Mr N as being a person “other than a Pre-1987 Unilever Fund Contributor”, which meant his NRA was 65. However, under the 2003 Rules certain members, as a consequence of their previous service, had rights that allowed them to retire earlier than at age 65 without reduction to their benefits. Mr N was classed as a “Transferring Former Unilever Fund Member” as he had left active membership in the Fund before 8 July 2000. This meant he was eligible for payment of an early retirement pension at age 60, unreduced. Despite this eligibility, Mr N’s Fund NRA, for the purposes of the 2003 Rules and wider pensions legislation, remained age 65.

54. Mr N was sufficiently informed of his eligibility for unreduced early retirement benefits through the fund “Pension Pack” issued on 20 February 1998 which contained the member booklet and the 2005 “Pension Review” newsletter.
55. The information the Trustee was required to provide Mr N in relation to his early retirement was governed by the 2003 Rules and the 2013 Disclosure Regulation. After reviewing both, the Adjudicator determined that the Trustee had acted reasonably and provided Mr N with the information it was obligated to provide. The 2003 Rules themselves did not compel the Trustee to provide Mr N with his retirement options at age 60.
56. Mr N’s NRA was 65, consequently, under the 2013 Disclosure Regulations, the Trustee was only required to proactively provide retirement information before he reached that age. The 2003 Rules themselves did not compel the Trustee to provide Mr N with his retirement options at age 60. This information was given in the “Pension Pack” provided to Mr N in 1998. Mr N also signed the option form on 24 March 1998 which said he should only do so if he had read the related literature, so Mr N had agreed to, and had the requisite knowledge of, these terms when he signed the option form.
57. Mr N became an ‘early leaver’ after he left active membership in the Fund on 1 July 2000. At this point, the Trustee was obligated to provide him with certain information, however, the information about his eligibility to retire at age 60 was not required.
58. After LCP was appointed the new Fund administrator, the Trustee made the decision to extend its member communications. Its stated priority was to remind eligible members of their option to receive early unreduced retirement from age 60. This caused LCP to send Mr N a retirement pack on 29 July 2019. LCP did not provide the retirement pack in order to fulfil disclosure obligations but was simply implementing the Trustee’s new policy. Mr N responded to the retirement pack by requesting that his retirement benefits be put into payment on 27 October 2019. Had he not chosen to retire at age 63, the relevant elements of the 2013 Disclosure Regulations would only become applicable at his NRA of 65 when his pension would become payable. In the Adjudicator’s view, the Trustee could not be faulted for not providing Mr N information about his retirement at age 60 considering that was not his NRA.
59. The Adjudicator did not agree with Mr N’s claim that the Trustee failed to fulfil its trust law duty to “act in the best interest of the beneficiaries” as it did not inform him of his entitlement at age 60. She explained that this duty is complex in its application and the simple definition can give the impression that the Trustee has unlimited power and responsibility. Although Mr N was owed a duty of care, that duty does not extend to providing unsolicited advice or inducement, and the Trustee could not have known Mr N’s financial circumstances. The Trustee was not required to proactively inform Mr N about the benefits at age 60, so it follows that no breach of its duty of care has arisen.

60. Mr N argued that the Trustee's refusal to accept his request to backdate his early retirement as though he retired at age 60 had resulted in him incurring a financial loss of £32,098 and amounts to another breach of the duty to "act in the best interest of the beneficiaries". In the Adjudicator's view, it was unreasonable for Mr N to expect the Trustee to backdate his retirement request as he could have reasonably been aware of his eligibility to retire at age 60 but made no claim at the time.
61. Under trust law, the Trustee was not obliged to proactively approach Mr N at age 60, and it was only obligated to pay Mr N the correct benefits which he had already been receiving. There were also no provisions under the 2003 Rules that would allow Mr N to backdate his early retirement request. Had the Trustee accepted this request it would be overriding the 2003 Rules and therefore could be acting outside of its powers, which in turn would lead to it breaching the duty to "act in the best interest of the beneficiaries".
62. There is no evidence to substantiate Mr N's claim that all deferred members are not being treated equally by the Trustee. With the changes in the pensions industry, referred to by the Trustee as one of the reasons for more voluntary communications being issued, the Adjudicator could understand the Trustee's decision to now provide its deferred members with more support, however, this did not mean that the level of support it provided to members previously was lacking.
63. In the adjudicator's view the Trustee's actions did not amount to maladministration.
64. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
65. Mr N provided his further comments which do not change the outcome. In summary he said:
  - The Trustee ought to have made more of an effort to inform him of his option to retire early and receive an unreduced pension at age 60. A simple personalised letter would have been sufficient.
  - Over time people can forget the benefit options they are entitled to and therefore should be reminded when they have an option that can be exercised. So, even if there was no statutory obligation for the Trustee to bring his early retirement option to his attention at age 60, The Trustee should have still written to him to satisfy its duty to "act in the best interest of the beneficiaries". It is unlikely that the original Trustee would have created the early retirement option for it to only be paid to members who are aware of the option or to those that remember it in real-time.
  - If he had been reminded that he could take his pension benefits without reduction from age 60, then he undoubtedly would have done so. He believed most people would have made the same decision.



- He is being treated unfairly in comparison to other beneficiaries of the Fund. The class of beneficiaries who will reach their enhanced retirement age after the 2019 policy change will be better positioned to make an informed decision about their retirement. If the Trustee now believes that it should communicate with deferred members to give them information in good time to make the right decisions. This means it no longer considers the 2018 booklet and the 2005 newsletter to be sufficient.
- He wanted an explanation in relation to the pension industry changes that led to the Trustee updating their member communications policy.
- His early retirement should be backdated as though he had retired at age 60. The Trustee has already backdated his retirement from October 2019 to July 2019. If his retirement can be backdated for several months, what prevents the Trustee from backdating it even further?
- When managing the Fund, the Trustee makes many decisions that are not subject to an explicit law. So, even if there is no single law or Fund provision that would allow for the Trustee to backdate his retirement, the Trustee should exercise its judgment and find that backdating his retirement is the correct course of action.

66. The Trustee provided its further comments regarding why Mr N's pension was paid from 1 July 2019:-

- The retirement date of 1 July 2019 was not a backdated retirement date, instead it represented the 'current date' on which Mr N's benefits became payable and the effective point of election for early retirement for the purposes of the Fund's rules.
- In 2019, the Trustee decided to send individually targeted communications to deferred members over the age of 55, to highlight the early retirement options available to them. As part of this process, it would produce an early retirement quotation at a certain date (in Mr N's case, 1 July 2019), which would then be sent to the member. Essentially, the letter invited Mr N to elect to retire from 1 July 2019 (or such later date as he may select).
- Given the time from the calculation of the early retirement quotation to the date of sending and Mr N being able to complete the relevant retirement forms, practically the pension would come into payment after the retirement date set out in the retirement quotation.
- Whilst it could have quoted a future retirement date, that was not considered appropriate for this exercise which was intended to highlight Mr N's immediate options.

67. I note the additional comments made by Mr N and the Trustee, but I agree with the outcome in the Adjudicator's Opinion and, for the most part, the reasoning given. My analysis for not upholding the complaint to the extent it differs in part from the Adjudicator is explained below.

## **Ombudsman's decision**

68. Mr N was a deferred member of a defined benefit, occupational pension scheme. While his NRA under the rules of the Fund was 65, he also had a right to retire at age 60 without any actuarial reduction being applied to his pension. However, Mr N says he was unaware of this right until he was informed of it by the Trustee in 2019, when he had already passed age 60. He then took his pension but says he would have taken it at 60 had he known that was an option. His complaint is, therefore, that the Trustee should have informed him of his right to retire early, unreduced, in December 2016, when he reached age 60. He believes he has been financially disadvantaged as a result.
69. As such, the complaint before me concerns events from, on or around 2016 when Mr N reached age 60, and the Trustee's subsequent actions. Only this time period is in scope of this decision. In setting out their respective positions, the parties have referred to information provided at earlier dates in time and disputed their significance. Even if these earlier matters were in time and I could provide a remedy in relation to them, they do not form the substance of the complaint at hand and, although I may make reference to them, I make no findings in relation to them.
70. After reviewing the evidence presented by both parties, I find the Trustee has satisfactorily met its disclosure obligations and has acted in line with the 2003 Rules (which I am informed are those relevant to Mr N's benefits).
71. The 2013 Disclosure Regulations set out communications that need to be made by the Trustee immediately prior to retirement. The 2013 Disclosure Regulations are, at times, difficult to apply in practice, and requires some more detailed analysis.
72. I agree that it is Regulation 20 that is relevant here (as Mr N had defined benefits in the Fund, and not flexible benefits that may have engaged Regulation 19). Regulation 20 sets out information that "...must be given to a person ... where benefit under the scheme has, or is about to, become payable to the person".
73. It is the information in Regulation 20(2)(a) that is of relevance to Mr N (with the other information requirements again relating to flexible benefits). The information that needs to be provided is, in summary, the amount payable to the member, the conditions for it continuing or being altered and the rights or options available on the subsequent death of the member.
74. The Regulation (at 20(3)(a)) also goes on to set out at what point the information needs to be provided to the member. In particular, the information must be given:
- "(a) where benefit becomes payable on or after normal pension age before benefit becomes payable, if practicable and in any event within one month after benefit becomes payable, or
- (b) where benefit becomes payable on a date before normal pension age, within two months of that date."

75. The question is then whether this requirement bites by reference to age 60 for Mr N, or at 65, his NRA under the 2003 Rules?
76. On one hand, the test for provision of information is made by reference not to NRA under the rules of the Fund, but rather by reference to “normal pension age” (“**NPA**”). NPA is not explicitly defined in the 2013 Disclosure Regulations, but in my view means<sup>1</sup> the earliest age at which the member is entitled to receive benefits, save that “any scheme rule making special provision as to early retirement on grounds of ill-health or otherwise is to be disregarded”. There is some uncertainty as to what “or otherwise” means in this regard, and what particular early retirement rules should therefore be “disregarded”. It has been argued that a normal early retirement provision, where another party’s consent is not required, does not get caught by the “otherwise” and so would still amount to a member’s NPA<sup>2</sup>. In this case, as Mr N has the right to retire unreduced at age 60, it is clearly possible to argue that age 60 is his NPA.
77. However, in my view I do not need to reach a definitive conclusion on that point, as the key trigger for the provision of information here is when the benefit “becomes payable”. In my view, for the purposes of these Regulations, a benefit only “becomes payable” once the member has elected to receive benefits (when it is contingent on his election, as was the case here<sup>3</sup>) and/or a pension commencement date is set. Prior to that the pension has not “become payable”, as it is still reliant on another event happening. At age 60, Mr N had not elected to receive his pension and/or had a pension commencement date set.
78. That reading makes sense from a practical perspective. For example:
- 78.1. Regulation 20(3) envisages a benefit becoming payable at various times: before, on or after NPA. It is not anchored to a fixed date (such as the member’s actual NPA). As a result, it caters for the member’s election to receive a benefit, which may be before, on or after NPA (as was the case here – for which see footnote 3, which sets out that early retirement could be “on or after age 60”). At the point the election is made, or the rules of the scheme provide that the pension will come into payment (which may happen automatically at some point, such as at NRA), the pension will be paid and the information requirement triggered; and

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<sup>1</sup> The 2013 Disclosure Regulations are made under, inter alia, the Pension Schemes Act 1993, and so in my view makes use of Section 180 of that Act to define “normal pension age”.

<sup>2</sup> See, for example, the Joint Office Memorandum No 78 which sets out that: “The legislation defines “**normal pension age**” (NPA) as the earliest age at which a member would be entitled to receive benefits from his/her scheme on his/her retirement from relevant employment, disregarding any special provisions for early retirement on grounds of ill-health or otherwise. This can mean that even though a scheme specifies that its retirement age is 65, the NPA could be earlier if, for example, members were given an unqualified right to retire on an unreduced pension from an earlier age if they so wished.”

<sup>3</sup> For example, Rule (E(1)(e)(iv)(B)) of the 2003 Rules sets out how a Transferring Former Unilever Fund Member can take his or her pension early without reduction: “...in the case of any Transferring Former Unilever Fund Member **who elects to receive** his retirement benefits **on or after age 60 and before Minimum Pension Age**...” (my emphasis added – which shows (i) the need for an election, and (ii) that early payment is not just at 60, but any time after it, at the choice of the member).

- 78.2. As set out in paragraph 73, the information provided under Regulation 20(2)(a) relates to the actual amount coming into payment, and the conditions around it, not a prospective amount reliant on the member's election to receive it, and that may change in the period between NPA and NRA, depending on when the election is made.
79. As a result, and in the absence of his election to receive his benefits at age 60, the obligation to write to Mr N in accordance with Regulation 20 did not arise immediately before age 60, as Mr N suggests.
80. Mr N said that even if there was no statutory requirement for the Trustee to bring his early retirement option to his attention at age 60, the Trustee should still have written to him in order to satisfy its duty to "act in the best interest of the beneficiaries". He said that over time members can forget the benefit options they are entitled to and should be reminded when there is an option that can be exercised.
81. In this case, I do not consider that the Trustee's duties, and in particular its duty to exercise its powers for the purpose which the trust was created<sup>4</sup>, compelled it to provide information beyond what was required in the Fund rules and applicable legislation (such as the 2013 Disclosure Regulations). I appreciate that it may have been desirable for the Trustee to write to Mr N at age 60 but it is not a Trustee's responsibility to advise beneficiaries to take their pension at a certain time. There is no general duty placed on the Trustee to advise beneficiaries in relation to pension rights before they become due.
82. Furthermore, it is clear that Mr N had in the past been informed of his right to retire early, without actuarial reduction, at age 60. As a beneficiary of the Fund, it was Mr N's responsibility to keep track of his pension and to ask pertinent questions about the retirement options available to him and for him to then decide, with separate advice if he wished to take it, whether those options would suit his personal circumstances. If Mr N had made such an enquiry, I have no doubt that the Trustee would have brought his early retirement option to his attention having previously already done so on several occasions, albeit several years ago.
83. Mr N claimed he is being treated unfairly in comparison to other beneficiaries of the Fund. He says deferred members who will reach age 60 after the 2019 policy change will be better positioned to make informed decisions about their retirement.
84. I do not agree that simply because there have been changes in the way the Trustee communicates with members of the Fund that this necessarily means the way information was provided in the past was inadequate or that it demonstrates unfair treatment on a certain membership group. The fact remains that through newsletters, the member booklet and the Fund website deferred members, including Mr N, were informed of their early retirement options before 2019.

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<sup>4</sup> Following Re Merchant Navy Ratings Pension Fund; Merchant Navy Ratings Pension Trustees Ltd v Stena Line Ltd and others [2015] All ER (D) 298, I agree this represents the better way of viewing what may previously have been seen as a duty to "act in the best interest of the beneficiaries".

85. When the Trustee updated its member communications policy in 2019 and decided to notify members who were eligible for early retirement, it was choosing to volunteer information it was not required to provide. The reasoning behind the Trustee's decision was set out in LCP's letter of 11 May 2020, which included a desire to increase engagement with deferred members in an effort to ensure that they were aware of the value of their pension rights, particularly when scams were increasing in the pensions industry. It is for the Trustee to make such a decision, providing information above and beyond its legal obligations, if it wishes to do so. Once the policy came into effect in 2019, Mr N received communication about his early retirement option.
86. Mr N is aggrieved that the Trustee has refused to backdate payment of his early retirement benefits to his 60<sup>th</sup> birthday. He said the Trustee has already backdated the payment of his retirement from 27 October 2019 to 1 July 2019 and so there is nothing that would prevent the Trustee from backdating it further to 2016.
87. However, the Trustee has explained that the retirement date of 1 July 2019 was not a 'backdated' date but represented the 'current' date on which Mr N's benefits would become payable even if he received the retirement pack and completed relevant forms after this given date.
88. I do not consider Mr N's retirement date in 2019 to have been backdated in the way Mr N suggests. It is essentially an 'offer' being made to Mr N, representing the value of the benefits at a particular date, which he is then at liberty to accept. In contrast, it is Mr N that is asking to receive the backdated benefits that he would have received from age 60, had he elected to do so at that time.
89. There is not an explicit provision in the Fund rules that would permit Mr N to backdate his retirement to 2016.
90. As such, I find the Trustee made a reasonable decision in refusing Mr N's request to backdate his retirement to 2016. Mr N did not begin the process of claiming his pension until he reached age 63, therefore it was appropriate for him to receive his pension benefits from this age. It is regrettable that Mr N did not enquire about his retirement options earlier, however, this was not due to maladministration on the part of the Trustee.

CAS-54214-V7J4

91. I do not uphold Mr N's complaint.

**Dominic Harris**

Pensions Ombudsman  
31 March 2023

## Appendix

### E1 - Leaving service before retirement age

#### (e) Amount of Benefits

A Contributor to whom **Rule E1(a)** applies shall be entitled to a deferred pension calculated in accordance with (i) to (vi) below:

#### (i) Benefits at date of leaving Pensionable Service

A Contributor to whom **Rule E1(a)** applies and who is a Transferring Former Unilever Fund Member, shall be entitled to a deferred retirement pension equal to:

- ◆ his Component 1 Pension; plus
- ◆ his Component 2 Pension,

based on Pensionable Service up until the date Pensionable Service ends and Final Pensionable Pay at the date Pensionable Service ends and then adjusted in accordance with (ii) to (vi) below as appropriate.

Any other Contributor to whom **Rule E1(a)** applies shall be entitled to a deferred retirement pension equal to the Fund Normal Retirement Pension based on Pensionable Service up until the date Pensionable Service ends and Final Pensionable Pay at the date Pensionable Service ends and then adjusted in accordance with (ii) to (vi) below as appropriate.

(ii) **Pension increases before date of payment**

The pensions referred to under (i) above shall each be increased between the date of leaving Pensionable Service and the date of payment to the extent required by **Rule I3 (Pension Increases)**.

(iii) **Revaluation of benefits**

To the extent applicable but no further each of the pensions referred to under (i) above shall be separately revalued between the date of leaving Pensionable Service and the date of payment (or (in relation to a Pre-1987 Unilever Fund Contributor) the Minimum Pension Age applicable to the component in question if earlier) to the extent required by **Rule I2 (Revaluation of Deferred Pensions)**.

(iv) **Reduction for early payment before Minimum Pension Age**

(A) Where a pension is paid before the Minimum Pension Age applicable to it, the pension (and in the case of a Former Unilever Fund Member each separate component of that pension) shall be reduced (after any increases under (ii) and (iii) above) by 5% a year for the period between the Minimum Pension Age applicable to it and the date it became payable.

(B) With the consent of the Principal Employer, the reduction for early payment under (A) above may be dispensed with for the period between age 60 and Minimum Pension Age where Minimum Pension Age is greater than age 60 PROVIDED THAT the consent of the Principal Employer shall not be required and the reduction for early payment under (A) above shall not apply in the case of any Transferring Former Unilever Fund Member who elects to receive his retirement benefits on or after age 60 and before Minimum Pension Age in relation to that part of his pension which is attributable to:-



## Early retirement options - Main Section

### 1 What is the earliest age at which I can choose to take my pension?

All members of the Fund can currently choose to retire from age 50. This is the earliest age at which you may take your pension unless you are retiring due to incapacity. Please note that, following the introduction of new legislation, from the year 2010 members will have to be at least 55 years of age before they can retire early. Some members will also need the consent of the Trustee and may be refused early retirement if their benefits are insufficient to cover their Guaranteed Minimum Pension at 60 or 65, as applicable.

### 2 How do I go about requesting early retirement?

If you are an employee member you should contact your local Human Resources Department. If you are a deferred pension member you should contact ICI Pensions Services. They will arrange a pension quotation for you, which will need careful study, so you may wish to obtain your own Independent advice on this.

### 3 Will my benefits be reduced for early payment?

Generally speaking, yes. If you take early retirement, your pension will be reduced to reflect the fact that it is paid for longer. The reduction is calculated based on the length of time between your chosen retirement date and the earliest date at which you could have taken your benefits unreduced.

The earliest age at which you can take your benefits unreduced is shown in the table below.

**Note:** Different rules govern the benefits of Section A members. If you are a Section A member and would like to know more about early retirement, please contact ICI Pensions Services.

As you will see, in some cases a member's benefit is split into two parts - service before and after a particular date. Such members may still have a reduction factor applied to that part of their pension which can only be paid unreduced from age 65, if they choose to retire before age 65.

### 4 What reduction will apply to my pension if I choose to retire early?

Currently, your benefits will be reduced by 5% for each year between the date you retire and the earliest age at which you could take your benefits unreduced.

### 5 Are there any circumstances in which the reduction factor does not apply?

If the earliest age at which you can take your benefits is 65, you may still be able to take your benefits unreduced from age 60 if your employing business, at its discretion, agrees to pay the additional cost.

Category of member	Earliest age at which you can take benefits unreduced
Pre 1 October 1987 Unilever Fund members	60
Post 30 September 1987 former Unilever Fund members	For service before 8 July 2001 - 60 For service after 7 July 2001 - 65
Members who have joined the Fund since 1 April 1998 and not in either of the above two categories or in Section A	65
<b>Section A members</b>	<b>Separate rules apply - for details, ask ICI Pensions Services</b>

