

## Ombudsman's Determination

Applicant	Mr D
Scheme	The Carillion Public Sector Pension Scheme ( <b>the Scheme</b> )
Respondents	Barnett Waddingham LLP ( <b>BW</b> ) Independent Trustee Services Limited ( <b>ITSL</b> )

## Outcome

1. I do not uphold Mr D's complaint and no further action is required by BW or ITSL

## Complaint summary

2. Mr D has complained about his pension benefits being reduced after the Scheme entered the assessment period of the Pension Protection Fund (**the PPF**) and that his pension is no longer index linked He has also been told he has received an overpayment of pension benefits that must be repaid. Mr D does not think this should apply to him because he took his benefits early due to ill health.

## Background information, including submissions from the parties

3. 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.
4. The PPF was brought into being by the Pensions Act 2004 (**The 2004 Act**). The PPF is not an occupational pension scheme. It is a compensation scheme. It is intended to provide compensation to members of an occupational pension scheme where that scheme is unable to pay the benefits which had been promised to its members. The relevant extracts from the 2004 Act are provided in the Appendix.
5. Mr D was employed by Carillion and was a member of the Scheme which was a defined benefit arrangement. The Scheme is administered by BW.
6. In December 1994, Mr D was made redundant by Carillion, and he became a deferred member of the Scheme.
7. In December 2016, Mr D left his then current employer after a period of ill-health. Mr D did return to work on reduced hours, but he was unable to continue in his current

employment and took early retirement. Mr D was age 58 at the time. His normal retirement age (**NRA**) in the Scheme was 60.

8. In January 2018, Carillion went into administration.
9. On 16 February 2018, the Scheme entered the PPF assessment period.
10. On 19 March 2018, ITSL was appointed as Trustee of the Scheme.
11. On 13 April 2018, BW sent a notification to Mr D that the Scheme was now in the PPF assessment period. BW explained that it was required to reduce members' benefits payable during a PPF assessment period to ensure that they did not exceed the compensation payable by the PPF. As such, any members who had a pension in payment but had not reached their NRA on 16 February 2018 would have their pension reduced by 10%. This was because the PPF would only pay 90% of the pension due for those members who had not reached their NRA at the time the employer became insolvent. The notification also set out that any pension benefits accrued before 6 April 1997 would no longer be index linked.
12. Between May and November 2018 Mr D corresponded with BW regarding the circumstances of his retirement. The key points raised were:-
  - Mr D said that he had retired early due to ill health and so in accordance with the PPF rules and procedures his pension should not be reduced. He also said that BW had applied the rules that applied to a member becoming ill while in service, which was not the case for his circumstances. Mr D had now been told his pension had been overpaid and he did not think this was correct.
  - The Scheme Rules did not appear to definitively state when the proof of ill health had to be provided to the Trustee. Rule 5.2 of the Scheme Rules referred to deferred benefits with subsection (3)(c) being the relevant part.
  - BW said that there had been a change in process at the PPF and that there had been a change in retirement classification. This may result in Mr D's early retirement being treated as ill health early retirement (**IHER**) under the PPF. As a result, Mr D could provide medical evidence of his health at the time of his retirement.
  - BW also incorrectly said that pension benefits built up before 6 April 1997 would be index linked.
13. On 12 December 2018, Mr D sent a letter to ITSL and said he had been informed by BW in its 13 April 2018 notification that his pension was no longer index linked however BW had now contradicted this. He said in summary:-
  - In previous correspondence he had been informed that the pension benefits built up before 6 April 1997 would receive no annual increase. Benefits built up/on or after that date would be increased by the change in the Consumer Price Index (**CPI**) to a maximum of 2.5%.

- He had received a letter from BW which indicated that there had been changes at the PPF and that only benefits related to pensionable service prior to 6 April 1997 were eligible for increases in payment. He asked for confirmation that it would stand by BW's statement rather than the earlier information he had been provided with.
- He had previously been referred by BW to the 2004 Act , in particular Schedule 7 and paragraph 28. Sub paragraph (3) of paragraph 28 defined the "underlying rate" as:

"the aggregate of so much of the amount mentioned in sub-paragraph (3)(a) of the paragraph in question as is attributable to post-1997 service", and

"the amount within sub-paragraph (3)(b) of that paragraph immediately before the indexation date".

- In the second part of the quotation, it made no reference to pre or post 1997 and appeared that sub-paragraph (3)(b) was indicated to be "2.5%", as quantified in sub-paragraph (3). On that basis, all of the pension should be increased by at least 2.5% annually, irrespective of it being pre or post 1997, so BW's later statement should stand.
  - The PPF should theoretically replace the Scheme. The Scheme's Rules were that pensions accrued from April 1988 to April 1997 increased annually, generally in line with the CPI subject to a cap of 3 to 5%.
  - Over 75% of his pension was accrued as part of the Principal Civil Service Pension Scheme (**the PCSPS**). When the section of the Civil Service known as the Property Services Agency that he was employed by was privatised, he was positively encouraged to join the privatised company and to transfer his pension to the Scheme. Since such a large proportion of his pension was essentially a Civil Service public sector pension arrangement, at least that element should be fully protected, including index linking, as it would have been with the PCSPS. If ITSL said that his pension was not index linked it would now appear that he was given poor advice.
  - His decision to retire early and his conclusion that he could just afford to retire in 2016, was based on him receiving the full amount of the pension that was quoted by the pension administrators, also taking into consideration that it was index linked. To threaten to reduce someone's pension after they started receiving it, either directly or indirectly made it impossible for someone to budget for retirement, as the Government promotes.
14. In December 2018, Mr D provided BW with a letter from his GP dated 20 December 2018 saying that said he could no longer work, and this was passed to ITSL to consider.

15. On 15 January 2019, ITSL sent a letter to Mr D under the Scheme's Internal Dispute Resolution Procedure and said in summary:-

- It had reviewed the correspondence he had received from BW and there was a typographical error. The correct position was that only benefits related to pensionable service after 6 April 1997 would be increased in payment going forward. It was sorry for the misinformation provided by BW.
- The Pensions Act 1995 introduced a requirement for all pensions earned after April 1997 to have a guaranteed increase in payment applied to them. Before this there was no legislative requirement for pensions in payment to increase each year.
- When the PPF was created it was decided that the increases payable on compensation/assistance would be the same as the increases that defined benefit pension schemes were obliged to provide as a minimum. As there were no statutory requirements for defined benefit pension schemes to pay increases on pre-6 April 1997 accrued benefits, PPF compensation reflected those statutory minimum requirements.

*Provision in the 2004 Act for pension increases*

- In respect of the 2004 Act he was correct in that pension increases under PPF compensation were defined by Schedule 7 of Paragraph 28. Sub paragraph (2), which explained how a person became entitled to an increase, what the appropriate percentage was and that the amount of the underlying rate immediately before the indexation date would be applied.
- The "underlying rate" was defined as: in the case of periodic compensation under any of the paragraphs mentioned in sub-paragraph (1) the aggregate of –
  - (a) so much of the amount mentioned in sub-paragraph (3)(a) of the paragraph in question as attributable to post-1997 service and
  - (b) the amount given within sub-paragraph (3)(b) immediately before the indexation date.

The key points were underlined to determine what was increased.

- Part (a) above stated that the "underlying rate" was the amount mentioned in paragraph (3)(a) and related to the protected pension rate. This being the rate of pension immediately before the assessment date following any adjustments to PPF levels. But only the part of this attributable to post-1997 service.
- This legislation confirmed that only benefits based on post 6 April 1997 pensionable service would increase under PPF compensation legislation and at the prescribed rate. This was currently the CPI with a maximum cap of 2.5%.

- It understood why he was unhappy that he was not receiving the increases he was expecting and the impact of this financially. However, it was hoped he could appreciate that once a Scheme fell into a PPF assessment period, as Trustee it had to abide by all overriding legislative requirements.

*Transfer from the PCSPS*

- It was not aware of any advice that was provided to members when they decided to transfer their pensions into the Scheme. If he felt he was misinformed, he would need to take this up with the advising body that provided him with the advice.
  - When he transferred his pension from the PCSPS it became part of a private sector scheme and was then no longer funded or supported by the Government but by the participating employers under the Scheme.
  - Unfortunately, those participating companies had become insolvent, and the Scheme was underfunded. It was only able to pay out compensation in line with PPF legislation. As Trustee it could not provide or guarantee payments that exceeded those compensation levels.
16. On 25 January 2019, BW sent a letter to Mr D and apologised for the typographical error in its previous correspondence. As stated by ITSL, it could confirm that the letter should have detailed that only benefits related to pensionable service after 6 April 1997 were eligible for increases in payment.
17. On 12 April 2019, BW sent a letter to Mr D and said in summary:-
- ITSL had been in consultation with the PPF regarding his potential claim for IHER. The PPF agreed that he did suffer from ill health and after a period of working in a reduced capacity this directly led him to leave his employment and take voluntary redundancy.
  - However, under Rule 3.2 (1) (b) it stated that the illness or disability must be of a permanent nature. The PPF and ITSL agreed that there was not sufficient evidence to show he met this criteria.
  - His GP advised him in November 2015 that he should leave his employment and take voluntary redundancy and/or early retirement. At the time redundancy was not an option offered to him. He could have pursued IHER but there was no evidence that he did so.
  - He returned to work after three months sick leave albeit in a reduced capacity. This indicated that he was able to continue working. He was subsequently granted voluntary redundancy rather than retiring on ill health grounds.

- For the above reasons the PPF and ITSL had concluded he should not be treated as an IHER case. It would however be happy to consider further medical evidence that his illness at the time of his retirement was of a permanent nature.
18. On 1 August 2019, Mr D complained to BW that his Scheme pension had been reduced by 10% and he was being asked to pay back overpayments. He did not think this was correct as he had retired early due to ill health and had not worked since.
19. On 19 November 2019, BW sent a letter to Mr D and said that the correct process was followed from the time of his retirement and that there was insufficient evidence to show that he met the criteria for IHER. It said in summary:-
- It was agreed that he did suffer from ill health and that this directly led him to leave his employment and take voluntary redundancy. However, Rule 3.2 (1) (b) stated that the illness or disability must be of a permanent nature.
  - He previously stated that he had returned to work in a reduced capacity, following three months of sick leave which indicated that his illness was not of a permanent nature.
  - Following a review of the medical evidence he provided ITSL concluded he did not meet the criteria for IHER. As the evidence he provided in relation to his ill health had not satisfied ITSL, as per Rule 3.3 (1) (b), he would not be treated as having taken IHER.
20. Following the complaint being referred to The Pensions Ombudsman ITSL and Mr D made the following submissions.

### **ITSL's submissions**

21. It was required to reduce the member's benefits payable during a PPF assessment period to ensure that they did not exceed the compensation payable by the PPF if it were to assume responsibility for the Scheme under section 138(2) of the 2004 Act. This meant that Mr D's pension that was accrued before 6 April 1997 was not index linked.
22. It had however reviewed the position regarding Mr D's qualification for IHER. BW had previously informed Mr D of the following:
- The PPF agreed that he did suffer from ill health and that this directly led him to leave his employment and take voluntary redundancy.
  - Rule 3.2 (1) (b) stated that the illness or disability must be of a permanent nature and
  - The PPF and ITSL agreed that there was not sufficient evidence that his ill health met this criteria.

23. Mr D was a deferred member at the time he drew his pension from the Scheme. In the circumstances Rule 3.2 of the Scheme Rules, which applied to active members, was the incorrect Rule to consider. Mr D did point this out, but it was not appreciated at the time. ITSL apologised for this.
24. Upon reconsidering Mr D's circumstances in the light of Rule 5 of the Scheme Rules, the PPF informed ITSL that Mr D would be treated as having taken IHER for PPF purposes and as such a 10% reduction would not be applied to his pension. Accordingly, Mr D's pension would be reinstated to its pre-reduced level and appropriate arrears would be paid. In addition, it would pay Mr D £500 as a distress and inconvenience award in recognition of the previous incorrect application of the Scheme's Rules.

### **Mr D's submission**

25. He was happy with ITSL's offer to treat him as having taken IHER and the resolution put forward to him in relation to that part of his complaint
26. He was still unhappy that his pension would not be index linked and it seemed grossly unfair that under the PPF Rules his pension was not as good as it had been previously. The contract he signed in respect of his original pension stipulated that all of the pension was index linked and so safeguarded, to a large extent, with respect to inflation.

### **Adjudicator's Opinion**

27. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by BW or ITSL. The Adjudicator's findings are summarised below:-
  - The issue regarding Mr D's IHER was resolved and Mr D was not required to pay back any of his pension, so the Adjudicator did not consider this aspect of the complaint any further. However, Mr D was dissatisfied that his pension would not be index linked now that the Scheme was in the PPF assessment period.
  - ITSL set out the relevant Rules from the 2004 Act, that limit the indexing of Scheme pensions to that which had been accrued after April 1997. Mr D argued that within the definition of the "underlying rate" the second part of the paragraph did not make any reference to pre or post 1997 service.
  - The Adjudicator explained that under paragraph 28(2) of Schedule 7, the "underlying rate" of a person's compensation in payment was increased on the "indexation date" by applying the "appropriate percentage" [see Appendix].
  - Paragraph 28(3) contains the definitions of the appropriate percentage, the indexation date, and the underlying rate [see Appendix]. The appropriate

percentage was the change in CPI prior to 31 May capped at 2.5% and the indexation date was annually each 1 January.

- The definition of “underlying rate” was that it was restricted to post 1997 service, and it was the amount applicable immediately before the indexation date. The second part of the definition did not reference pre or post 1997 pension accruals because this had already been defined as only applying to post 1997 service.
- As the Scheme was in the PPF assessment period ITSL could only pay the pension increases that were set out in the 2004 Act. As all of Mr D’s pension benefits related to pre 6 April 1997 pensionable service, ITSL could not apply any annual increases to Mr D’s pension.

28. Mr D did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. I agree with the Adjudicator’s Opinion and note the additional points raised by Mr D which are summarised below:-

- His pension with Carillon was index linked but now under the PPF assessment period it was not which was obviously unfair.
- The unfair loss of index linking would not only affect him but also would affect thousands of other Carillon pensioners in a similar position. The Adjudicator had only considered his own circumstances in isolation, but this was a much bigger issue due to the number of his former colleagues that had been affected by this issue.

### **Ombudsman’s decision**

29. Mr D has said that removal of index linking from pension benefits accrued prior to 6 April 1997 is unfair.

30. My role is not to make decisions on what is fair and reasonable. Rather, it is limited to a consideration of whether or not, the Scheme Rules and any relevant legislation have been followed properly by BW and ITSL.

31. In this case, as the Scheme is in the PPF assessment period, the 2004 Act sets out what compensation can be paid. The PPF is intended to provide compensation to members of an occupational pension scheme where that scheme is unable to pay the benefits which had been promised to its members.

32. Mr D cannot receive his full benefits from the Scheme as it is in financial difficulties and unable to pay them. I understand Mr D’s disappointment regarding this but in the circumstances the limiting of pension benefits to that set out in the 2004 Act is the only action that BW and ITSL can take. I do not find that there has been any maladministration by BW and ITSL regarding this matter.

33. Mr D has also referred to the fact that the change in index linking affects other Carillon pensioners, and his complaint has been considered in isolation. Once a



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Scheme has entered the PPF assessment period there will be implications for all members. However, my role is only to consider the circumstances of Mr D's individual complaint, and the information provided by the parties involved. I have found in this case that there has not been any maladministration on the part of the respondents

34. I do not uphold Mr D's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
4 November 2024

## **Appendix: Extracts from the Pensions Act 2004**

### SCHEDULE 7

#### PENSION COMPENSATION PROVISIONS

##### *Annual increase in periodic compensation*

28 (1) This paragraph provides for the increases mentioned in sub-paragraph (3)(b) of paragraphs 3,5,8,11,15 and 22.

(2) Where a person is entitled to periodic compensation under any of those paragraphs, he is entitled, on the indexation date, to an increase under this paragraph of –

(a) the appropriate percentage of the amount of the underlying rate immediately before that date, or

(b) where the person first became entitled to the periodic compensation during the period of 12 months ending immediately before that date,  $1/12^{\text{th}}$  of that amount for each full month for which he was so entitled.

(3) In sub-paragraph (2) –

“appropriate percentage means the lesser of –

(a) The percentage increase in the retail prices index for the period of 12 months ending with the 31<sup>st</sup> May last falling before the indexation date, and

(b) 2.5%;

“indexation date” means –

(a) The 1<sup>st</sup> January next falling after a person first becomes entitled to the periodic compensation and

(b) Each subsequent 1<sup>st</sup> January during his lifetime;

“underlying rate” means in the case of periodic compensation under any of the paragraphs mentioned in sub-paragraph (1) the aggregate of –

(a) So much of the amount mentioned in the sub-paragraph (3) (a) of the paragraph in question as is attributable to post-1997 service and

The amount within sub-paragraph (3)(b) of that paragraph immediately before the indexation date