

## Ombudsman's Determination

Applicant	Mr S
Scheme	The Pension Protection Fund
Respondent	The Board of the Pension Protection Fund ( <b>the Board</b> )

## Outcome

1. I do not uphold Mr S' reference of a reviewable matter and no further action is required by the Board.

## Referral summary

2. The referral concerns the determination of Mr S' PPF compensation entitlement.

## Background information, including submissions from the parties

3. Relevant extracts from The Pensions Act 2004 (**PA'04**), are provided in the Appendix.
4. The Carillion Staff Pension Scheme (**the Scheme**) was established on 1 October 1999 to provide pension benefits for new members and members transferring from the Tarmac Staff Pension Scheme under demerger arrangements from the Tarmac Group.
5. Under Rule 4.4.2 of the Scheme rules dated 26 January 2010, employer and trustee consent was required to allow members who joined the Tarmac Staff Pension Scheme before 1 March 1991 to retire before the Scheme's normal pension age (**NPA**) without an actuarial reduction being applied to their retirement benefits. Mr S was in this category of members.
6. Mr S left the Scheme in 2000 and became a deferred member. He had two tranches of deferred benefits in the Scheme. The NPA for the first tranche was 60 and the NPA for the second tranche was 65.

7. In June 2015, the then Scheme administrator, JLT Employee Benefits Ltd (**JLT**), notified Mr S that his estimated pension (including transferred in benefits<sup>1</sup>) was £8,700 per annum.
8. In July 2017, Mr S requested a cash equivalent transfer value (**CETV**) of his Scheme benefits. He said he anticipated retiring shortly and would consult with his independent financial adviser (**IFA**) on the way forward once he received the quotation.
9. On 13 October 2017, JLT issued the CETV quotation to Mr S: a CETV of £156,435<sup>2</sup>, based on a total pension of £9,120 per annum. The CETV was guaranteed until 12 January 2018. The quotation was resent by recorded delivery on 28 October 2017, after Mr S complained that he had not received the original.
10. On 30 October 2017, Mr S requested an early retirement quotation with an effective date of 29 January 2018.
11. In November 2017:-
  - An announcement was issued to members that Carillion Plc (Carillion), the sponsoring employer, would no longer be providing its consent to any discretionary benefits under the Scheme. Consequently, members could no longer take their pension unreduced before age 65.
  - JLT wrote to Mr S and informed him that it had asked the trustee to review with its solicitor how retirement calculations for pre-1991 entrants were affected by Carillion's new policy and to confirm the basis to be applied.
12. In January 2018:-
  - Carillion (DB) Pension Trustee Limited notified members that Carillion had entered compulsory liquidation. It said:

“The Trustees have been very closely involved in all discussions with stakeholders over the last few months in order to protect members interests as far as possible. They will continue to work to understand the next steps and what these mean for members. This includes working with the PPF which provides compensation to members of defined benefit schemes whose sponsoring employer becomes insolvent.”
  - Independent Trustee Services Limited (**ITS**)<sup>3</sup> was appointed as a director of the Board of Carillion (DB) Pension Trustee Limited.

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<sup>1</sup> While a member of the Tarmac Staff Pension Scheme, Mr S transferred in benefits from Hilti GB Ltd and Birmingham City Council.

<sup>2</sup> Due to the Scheme's underfunding the full transfer value was reduced from £203,847 to £156,435.

<sup>3</sup> A professional trustee.

- An early retirement quotation was issued to Mr S. The options provided included an actuarially reduced total pension of £7,896.45<sup>4</sup> per annum, or a cash lump sum of £37,381.95 and a reduced pension of £5,607.29 per annum. Mr S took the latter option. He was then age 61.
13. On 16 February 2018, the last insolvency event occurred among the Scheme's participating employers and the Scheme entered the PPF assessment period. For the assessment period, ITS was appointed as the trustee<sup>5</sup> and Barnett Waddingham was appointed as the administrator.
  14. Paragraph 3(4)(a) of Schedule 7 to the PA'04 provides that a member who is a pensioner under NPA at the assessment date<sup>6</sup> is entitled to PPF compensation equal to 90% of the pension in payment at that date. Paragraph 3(4)(b) provides that a member who is a pensioner over NPA at the assessment date is entitled to PPF compensation equal to 100% of the pension in payment at that date.
  15. In July 2018, Mr S wrote to Barnett Waddingham. Mr S said £47,412 had been unlawfully deducted from his pension<sup>7</sup>, which had been increased prior to the issuance of the January 2018 retirement statement. He said he had already endured considerable financial loss "due to hindrance and deliberate obfuscation" in accessing his pension and that he would accept no further deductions.
  16. Barnett Waddingham replied to Mr S on 31 August 2018. It said:-
    - As the Scheme was underfunded in October 2017, the then trustee decided to reduce CETVs following advice from the Scheme actuary. The reduction was not unlawful. It was allowable under Schedule 1A of The Occupational Pension Scheme (Transfer Values) (Amendment) Regulations 2008.
    - Following Carillion's announcement that it would not be providing discretionary benefits to members, the then trustee removed the discretionary benefit that previously allowed members to retire from age 60 without a reduction to their benefits. JLT had confirmed this in its letter of 13 November 2017.
    - The Scheme was currently underfunded and was expected to transfer to the PPF at the end of the assessment period. During the assessment period the trustee was required to pay benefits in line with the PPF rules.

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<sup>4</sup> An early retirement factor of 0.861 was applied to the part of Mr S' pension with an NPA of 65.

<sup>5</sup> Carillion (DB) Pension Trustee Limited resigned. ITS' involvement was retained for continuity. ITS is on the Trustee Advisory Panel of the PPF.

<sup>6</sup> The date on which the assessment period in relation to the scheme began. In the case of the Scheme, 16 February 2018.

<sup>7</sup> See paragraph 9 and its accompanying reference above.

- As most of his pension had a NPA of 65 and he was age 61 at the assessment date, the trustee was required to reduce his NPA 65 benefit to 90% of its value in line with PPF compensation. This exercise was currently underway, and he would be notified ahead of any reductions to his monthly pension. The trustee was currently seeking legal advice to confirm the date that members' NPAs changed. So, initially the whole of his pension would be reduced to 90% to minimise any overpayments. Once the correct basis was established, his benefits would be revisited and any adjustments would be made.
17. Mr S' pension was duly reduced by 10% from £5,607.29 per annum to £5,046.56 per annum.
  18. From 1 November 2019, as a result of benefit rectifications<sup>8</sup> carried out during the assessment period, Mr S' pension was increased to £5,469.37 per annum.
  19. On 3 February 2020, Mr S wrote a letter of complaint to ITS. Mr S said:-
    - The financial performance of Carillion should not have impacted on the calculation of his pension until the date of the insolvency event.
    - If the Scheme needed to be rescued via the PPF then the deduction of 10% was equitable. However, restrictive and penal deductions had already been applied to his pension on the basis that the Scheme was in deficit, although at the time Carillion was still trading. To then apply a further 10% reduction was inequitable.
    - The provision of information about his pension of £9,120 per annum had been delayed and deliberately withheld by the administrator. Access to his pension should not have taken 76 emails and over 100 telephone calls.
    - He should be put back into the financial position of July 2017 less the PPF deduction.
  20. The Scheme transferred to the PPF on 5 February 2020.
  21. On 2 March 2020, Mr S forwarded his letter of complaint to the PPF.
  22. The PPF issued its stage one decision on 18 March 2020. The PPF explained that it was required to calculate compensation in accordance with PPF legislation, so it could not put him in the position he was in on a particular day prior to the Scheme transferring to the PPF. It confirmed that the compensation being paid to him was correct. It said it was unable to comment on the service he had received from the previous administrators.
  23. On 26 March 2020, Mr S requested that his complaint be reconsidered under stage two.
  24. The PPF issued its stage two decision on 22 June 2020. The PPF maintained its stage one position. It added that the early retirement reduction had been properly

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<sup>8</sup> For NPA equalisation and GMP equalisation.

applied to Mr S' pension and explained that the transfer value figures referenced by Mr S (including any underfunding reductions noted therein) were not relevant because he had not elected to transfer out of the Scheme.

25. On 12 July 2020, Mr S referred his complaint to stage three.

26. The Reconsideration Committee (**the Committee**) upheld the stage two decision. In a letter dated 17 September 2020, the Chair of the Committee said:

- It could only consider complaints of maladministration by the PPF and “reviewable matters” as set out in legislation (which included the calculation of compensation). Actions by third parties prior to the PPF’s involvement were outside of its mandate.
- When the Scheme entered the PPF assessment period it had a deficit exceeding two million pounds.
- The PPF’s reduction to his entitlement of 10% and the Scheme’s removal of the discretionary benefit of retiring at age 60 were made within legislation and the Scheme rules.
- Annual inflationary increases did not apply to service accrued prior to 6 April 1997.

### **Mr S’ position**

27. Mr S submits:-

- The PPF is responsible for the guidance and maladministration of his pension. This originates in 2017, when under its influence, his pension was adversely reduced.
- The Board maintains that the PPF was not involved with third parties and was not responsible for the Scheme until 5 February 2020. But:-
  - Carillion (DB) Pension Trustee Limited’s announcement of 15 January 2018, that the Carillion companies had entered insolvency, states that it had been closely involved in all discussions with stakeholders to protect members’ interests as far as possible. It says, it would continue to work to understand the next steps and what this meant for members, including working with the PPF.
  - In discussions during January 2018 with JLT, it was confirmed that the PPF was making the decisions/approvals.
  - ITS had previously been appointed as Director of Carillion (DB) Pension Trustee Limited.
  - JLT was removed and replaced by Barnett Waddingham as it is “experienced in working with schemes in PPF assessments”.

So, the PPF had prior involvement as a stakeholder and “its jurisdiction did impinge on the machinations” of the Scheme.

- No calculation was provided for the deduction from his CETV. His IFA advised him not to accept the transfer. He requested a retirement statement, which the IFA indicated should have been provided with the CETV as a matter of course. This was issued after a lot of interference by the “stakeholders” as confirmed by JLT.
- After he complained on 3 February 2020, ITS “promptly did a bunk” and his complaint was referred to the PPF.
- The stakeholders conspired to reduce the Scheme’s liabilities by every means possible during July 2017 through to January 2018.
- The PPF “cannot stand at barge pole length away from the liabilities of the Scheme”.
- The maladministration he has suffered is a double reduction and the bullying attitude on the telephone by certain employees.
- “It is a sheer dereliction of ethics” that he suffered a 10% deduction by the PPF when the first deduction was still under dispute. The equitable solution is to restore his pension back to the value it was in July 2017, and then apply the 10% deduction.
- The Department for Work and Pensions (**DWP**) estimated that his contracted-out pension equivalent (**COPE**) was £2,874.56 per annum. But he cannot find any enhancement to his Carillion Pension that equates to COPE, and the calculations provided by JLT, Barnett Waddingham and PPF make no reference to COPE.

### **The Board’s position**

28. The Board’s submits:-

- The PPF has no discretion on how to calculate compensation. It is required by law to pay compensation equal to 90% of the pension that was in payment at the Assessment date if a member was then under NPA. This is irrespective of an early retirement reduction prior to the Assessment Date. So, it cannot put Mr S in the position he would have been had he retired in July 2017, and the Scheme had not entered the assessment period.
- During the Scheme’s assessment period, work was completed which confirmed that the early retirement reduction applied to Mr S’ pension was in accordance with the Scheme rules. So, it is satisfied that Mr S was receiving his correct pension entitlement when Carillion became insolvent and the Scheme entered the assessment period.

- In September 2017, Carillion was entitled to withdraw its consent to unreduced early retirement benefits. At the time, the Carillion group was in serious financial difficulties.
- There is no basis for Mr S' allegation that the early retirement actuarial reduction to his pension was due to connivance between the PPF, The Pensions Regulator and the then trustee of the Scheme. The PPF was not involved in the trustee's administration of the Scheme or the calculation of his early retirement benefits prior to Carillion's insolvency. Once the Scheme entered the assessment period and it became clear that due to its funding position it would transfer to the PPF, the PPF's interest was solely in ensuring that members' benefits had been calculated in accordance with the Scheme rules and complied with the requirements of the PA'04.
- The Work and Pensions Committee and the Business, Energy and Industrial Strategy Select Committee undertook a joint enquiry into the collapse of the Carillion group. In their 2018 report there was no suggestion of any improper behaviour or failings by the PPF.
- Mr S has questioned why the Reconsideration Committee did not comment on the actions of the trustee prior to the assessment date. At no time did Carillion (DB) Pension Trustee Limited act on the PPF's behalf, and certainly not prior to the assessment date. The PPF and the Reconsideration Committee do not have any remit to consider, as part of a maladministration complaint, the actions of third parties who were not acting for the PPF.
- Section 161(3) of the PA'04 is clear that the liabilities of a scheme that are assumed by the PPF on the scheme's transfer do not include any liability to, or in respect of, any member of the scheme (other than liabilities in respect of money purchase benefits).

## **Adjudicator's Opinion**

29. Mr S' referral was considered by one of our Adjudicators who concluded that no further action was required by the Board. The Adjudicator's findings are set out in paragraphs 31 to 42 below.
30. Mr S said the PPF was responsible for the guidance and maladministration of his pension. He said this originated in 2017, when under its influence, his pension was adversely reduced.
31. As previously explained by the PPF, the transfer value figures referenced by Mr S were not relevant because he did not elect to transfer out of the Scheme. So, the quoted reduction was not applied to his pension.

32. Nonetheless, the PPF was not involved in the calculation of the CETV. As the Scheme was underfunded, the then trustee decided to reduce CETVs following advice from the Scheme actuary.
33. When Mr S retired at age 61, the tranche of his pension with an NPA of 65 was actuarially reduced. Again, the PPF was not involved in this calculation.
34. Once the PPF is informed of an insolvency event, the PPF carry out the necessary validation to satisfy itself that the insolvency is a qualifying event and the relevant eligibility criteria have been met. Where the criteria are satisfied, the PPF confirm that an assessment period has begun. The start of the assessment period was the date on which the insolvency event occurred. For the Scheme this was 16 February 2018 (the assessment date).
35. So, the PPF's involvement prior to the start of the assessment period was limited to establishing that the Scheme met the qualifying criteria to enter the assessment period.
36. The PPF has confirmed that during the Scheme's assessment period, work was completed which confirmed that the early retirement reduction applied to Mr S' pension prior to the assessment date was in accordance with the Scheme rules.
37. Because the Scheme's assets were insufficient to secure the PPF levels of compensation, the Scheme transferred to the PPF on 5 February 2020. At that point, the Scheme, effectively, ceased to exist and the PPF became responsible for the members.
38. The PPF had no discretion in the calculation of compensation. Under paragraph 3 of Schedule 7 of the PA'04, the PPF was required to pay compensation equal to 90% of the pension in payment at the assessment date if a member was then under NPA. This was irrespective of any early retirement reduction prior to the assessment date. As Mr S was 61 at the assessment date, the tranche of his pension with an NPA of 65 was reduced to 90% of its value in line with PPF compensation.
39. Mr S said the calculations provided by JLT, Barnett Waddingham and PPF made no reference to COPE.
40. The COPE amount within State Pension statements provided an indication of the additional retirement income a person may receive in retirement from their contracted-out scheme.
41. The calculation for Mr S' Guaranteed Minimum Pension was accounted for before the Scheme transferred to the PPF and was included in his PPF compensation. The estimate of COPE was included in the PPF compensation, albeit it was not usually separately identified. It was not an additional entitlement.
42. Mr S did not accept the Adjudicator's Opinion and the referral was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr S.



## Ombudsman's decision

43. Mr S has commented on the time it took for the provision of his requested CETV quotation and early retirement quotation. I have put both matters to one side as they are outside of the referral that my Office accepted for investigation. Nonetheless, as the Adjudicator explained in his Opinion, the PPF was not involved in the provision of either quotation.
44. Mr S has made comments about the involvement of ITS, Carillion (DB) Trustee Limited, JLT and TPR prior to the Scheme entering the PPF assessment period. Again, this is outside of the referral that my Office accepted for investigation. So, I have also put these to one side.
45. Turning now to the referral accepted for investigation.
46. Mr S has queried whether his GMP in deferment was increased. The PPF has confirmed that Mr S' pension has been correctly calculated. I have no reason to question PPF's response.
47. Mr S comments that his pension in payment has increased by a derisory amount since February 2018 and asks: "Although the non pre 97 element has been explained away by the PPF... why is the non-GMP element ignored by the PPF?"
48. As the Adjudicator previously explained, paragraph 28 of the Pensions Act 2004, 'Annual increases in PPF compensation', only provides for increases to that element of a member's pension in payment in respect of post 1997 service. The largest part of Mr S' pension was accrued in respect of pensionable service completed before 6 April 1997. So, under the prevailing legislation it is not eligible for an annual increase.
49. Mr S has asked why the PPF said in its stage one decision letter:

"The legislation governing the PPF is the responsibility of the Department for Work and Pensions and can only be changed by Parliament. If you wish to take this matter further you should contact your local Member of Parliament (MP) who can raise the matter with the relevant minister."
50. This was a factual statement. The PPF is required to abide by the legislation governing it. It has no discretion in the payment of compensation. Any change would require the consent of Parliament.
51. Mr S has commented on the funding position of the Scheme and the strength of Carillion prior to the assessment period. He says the PPF, via its sub-contractors, was obviously engaged then and asks why other options were ignored.
52. As the Adjudicator explained, the PPF's involvement prior to the start of the assessment period was limited to establishing that the Scheme met the qualifying criteria to enter the assessment period.
53. The PPF is a compensation scheme. It pays members compensation when their pension scheme cannot pay the benefits promised, and the amount and the terms

and conditions under which it is paid are set out in the PA'04 and 'The Pensions Protection Fund (Compensation) Regulations 2005'.

54. The PPF would not have taken over responsibility for paying compensation if it had been assessed that the Scheme could afford to buy members benefits from an insurance company which were equal to, or more than, the PPF pay. Effectively, Mr S is in receipt of compensation from the PPF, which replaces the pension he would otherwise have lost when the Scheme was wound-up in deficit.
55. Finally, Mr S comments that the PPF retains the services of ITS. While ITS is a panel trustee for the PPF, it is not a sub-contractor or commercially linked to the PPF. For continuity it was appointed as the trustee for the assessment period.
56. I do not uphold Mr S' referral.

**Anthony Arter CBE**

Deputy Pensions Protection Fund Ombudsman  
21 February 2023

## Appendix

### Pensions Act 2004

57. As relevant paragraph 3 of Schedule 7, 'Pensions in payment at assessment date', provides:

"(1) Compensation is payable in accordance with this paragraph where, immediately before the assessment date, a person is entitled to present payment of a pension under the admissible rules of the scheme.

(2) That person ( "the pensioner" ) is entitled to periodic compensation in respect of that pension ( "the pension" ) commencing at the assessment date and continuing for life or, in a case to which sub-paragraph (8) applies, until such time as entitlement to the pension would have ceased under the admissible rules.

(3) The annual rate of the periodic compensation is the appropriate percentage of the aggregate of—

(a) the protected pension rate, and

(b) any increases under paragraph 28 (annual increases in periodic compensation).

(4) In sub-paragraph (3) "the appropriate percentage" means—

(a) in a case to which sub-paragraph (7) applies, 90%, and

(b) in any other case, 100%.

(5) In sub-paragraph (3) "the protected pension rate" means the annual rate of the pension, under the admissible rules, immediately before the assessment date.

(6) In determining for the purposes of sub-paragraph (5) the annual rate of the pension immediately before the assessment date, any recent discretionary increase is to be disregarded if paragraph 35(3A) applies to the scheme.

(7) This sub-paragraph applies where the pensioner has not attained normal pension age in respect of the pension before the assessment date and his entitlement to the pension—

(a) is attributable to his pensionable service, and

(b) did not arise by virtue of any provision of the admissible rules of the scheme making special provision as to early payment of pension on grounds of ill health."

58. As relevant paragraph 28, 'Annual increase in periodic compensation', states:

“(1) This paragraph provides for the increases mentioned in sub-paragraph (3)(b)<sup>[9]</sup> of paragraphs 3<sup>[10]</sup>...

(2) Where a person is entitled to periodic compensation..., 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, ...

(3) In sub-paragraph (2)—

- “appropriate percentage” means the lesser of—
  - (a) the percentage increase in the general level of prices in Great Britain for the period of 12 months ending with the 31st May last falling before the indexation date, and
  - (b) 2.5%;
- “indexation date” means—
  - (a) the 1st January next falling after a person first becomes entitled to the periodic compensation, and
  - (b) each subsequent 1st January during his lifetime;
- “underlying rate” means, in the case of periodic compensation under paragraph 3..., the aggregate of—
  - (a) so much of the amount mentioned in sub-paragraph (3)(a) of the paragraph in question as is attributable to post-1997 service, and
  - (b) the amount within sub-paragraph (3)(b) of that paragraph immediately before the indexation date.

...

(3A) For the purposes of paragraph (a) of the definition of “appropriate percentage” in sub-paragraph (3), the Secretary of State may (from time to time) decide, as the Secretary of State thinks fit, the manner in which percentage increases in the general level of prices in Great Britain are to be determined.

(3B) The Secretary of State must publish any decision made under sub-paragraph (3A).

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<sup>9</sup> Sub-paragraph 3(b) states: “any increases under paragraph 28 (annual increases in periodic compensation).”

<sup>10</sup> Pensions in payment.