

Ombudsman's Determination

Applicant	Mr S
Scheme	Draka UK Pension Plan (the Plan)
Respondents	Mercer Limited (Mercer) Prysmian Pension Scheme Trustee Limited (the Trustee)

Outcome

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

Complaint summary

2. Mr S considers that his pension in payment should increase by at least 3% on 1 April each year. He has complained that the Trustee refused to honour this in his first year of retirement, on the basis that the pension had been in payment for less than a year.

Background information, including submissions from the parties

3. Mr S was a member of the Draka UK (Ex DCC) Scheme (**the Ex DCC Scheme**). In April 2010 the Ex DCC Scheme merged with the Plan and Mr S continued accruing benefits under the merged plan. The current trustee of the merged plan is Prysmian Pension Scheme Trustee Limited.
4. The 'Definitive Deed and Rules relating to the Draka UK Pension Plan' provides that:

"3. Increases of Pensions in Payment

The maximum amount of a pension ascertained in accordance with Part 1 and Part 4 of this model Rule less any pension which has been commuted for a lump sum or the pension equivalent of any benefits in lump sum form and any pension surrendered to provide a Dependent's pension may be increased by 3% for each complete year, or if greater, in proportion to any increase in the Index since the pension commenced or since the last increase took place."

5. Rule 15.5 of the 1 March 2000 Definitive Deed relating to the Ex DCC Scheme, stipulates that:-

“If on 6 April the Pension has been in payment for less than one year, a proportionate increase will be paid for the number of complete months in the year the Pension has been in payment for.”

6. The question and answer section of the ‘Draka UK (Ex DCC) Pension Plan Member Booklet’ dated January 2000 (**the 2000 Plan Booklet**) states:

“Introduction

...The Plan will operate in accordance with [the Plan Rules]...In the event of any conflict the terms of the [Plan Rules] will override the contents of this booklet...

Will my pension increase in payment?

Yes; your pension will increase...each year in line with price inflation to a maximum of 5%...”

7. In April 2010, when the Schemes merged, the Trustee wrote to Mr S stating:

“This will not affect your benefits in any way, you will retain identical benefits to those currently provided. Following the merger the assets and liabilities of both [the Plan] and the ex DCC Plan will be held together”.

8. On 28 May 2019, Mercer, the Plan’s administrators, sent Mr S a retirement pack (**the 2019 Retirement Pack**), setting out his options. The accompanying letter (**the Cover Letter**) said:

“Important Note

In preparing this pack, care has been taken to reflect the most accurate and up to date information available at the time of preparation. The final benefits payable will always be subject to the [Plan Rules]...

Pension Increases

Your pension will be increased on 1 April each year. Please refer to the Plan literature for details of the increases”.

9. On 14 October 2019, Mr S emailed Mercer and said that he would like to claim his retirement benefits from the Plan.
10. On 23 October 2019, Mercer wrote to Mr S and explained that his pension would increase annually on 1 April in line with the Retail Price Index (**RPI**) up to a maximum of 5% and a minimum of 3%.

11. On 25 November 2019, Mercer wrote to Mr S and confirmed that if he retired on 16 December 2019, his annual pension would be £33,750.36, and would be paid in monthly instalments from 1 January 2020.
12. In the section of the letter headed 'Will my pension increase in payment?', Mercer said:

“Your pension will increase on 1 April in line with the [RPI] up to a maximum of 5% and a minimum of 3%”.
13. On 30 March 2020, Mercer wrote to Mr S and confirmed that his pension would increase from £33,750.36 per annum to £34,189.68 per annum on 1 April 2020. Mercer explained that the increase had been calculated in accordance with the Plan Rules and that as he had retired after 6 April 2019, the increase would be applied proportionately.
14. On 1 July 2020, Mr S emailed Mercer and complained that the Plan Rules provide for annual pension increases of at least 3%. He said he had not previously been informed that a pension increase could be applied proportionately if the benefits were taken part way through a year, or after 6 April. Mr S said had he known that such a Plan Rule existed, he would have retired on 6 April 2019 to ensure that he received an increase of at least 3% on 1 April 2020.
15. On 31 July 2020, Mercer wrote to Mr S and confirmed that increases to pensions in payment could only be paid in accordance with the Plan Rules. So, it would not be possible to apply a full year's increase to his pension on 1 April 2020.
16. On 6 August 2020, Mr S complained under stage one of the Plan's Internal Dispute Resolution Procedure (**IDRP**). He reiterated the points he had made in his email of 1 July 2020, adding that he had previously received several documents confirming that his pension would increase by a minimum of 3% and a maximum of 5% a year on 1 April each year. He said the information did not say that he would receive a proportionate increase if he retired part way through the year. So, the Trustee should honour the full increase.
17. On 26 August 2020, Mercer wrote to Mr S in response. It said, in summary:-
 - The Trustee could only pay benefits in accordance with the Plan Rules, specifically Rule 15.5. This meant that if a pension had been in payment for less than a year on 6 April, a proportionate increase would be applied for the number of complete months the pension had been in payment.
 - The 2019 Retirement Pack confirmed that pension increases would be applied in accordance with the Plan Rules. The Cover Letter also referred Mr S to the Plan literature, including the 2000 Plan Booklet, as it was impossible to explain the pension increases in detail in a retirement pack.
 - Pension plan booklets were not intended to cover all the rules of a pension scheme. The 2000 Plan Booklet explained that “The Plan will operate in

accordance with [the Plan Rules]...In the event of any conflict the terms of the Trust Deed and Rules will override the contents of this booklet.”

- Mr S’ complaint had not been upheld.

Mr S’ position

18. Prior to receiving Mercer’s letter of 30 March 2020, he was not aware that a full annual increase would not be applied to his pension on 1 April 2020. Mercer had previously misled him by failing to disclose that the increase could be proportionately reduced if he retired part way through the year.
19. It is unreasonable for Mercer to say that the Plan Rules override the 2000 Plan Booklet since he was never provided with a copy of the Plan Rules or informed of the ‘proportionate increase rule’.
20. Had he known about Rule 15.5 at the time of his retirement, he would have delayed claiming the benefits until 1 April 2020 to obtain a full 3% pension increase on 1 April 2021.
21. The reduced annual increase applied in April 2020, has caused him a financial loss of £573.10. He will suffer an additional financial loss equivalent to 3% of this amount in each subsequent year.

Mercer’s position

22. Pension increases are processed automatically, in line with Mercer’s administration procedures; no manual calculations are completed. The increases are applied in accordance with the Plan Rules. The Trustee has no discretion in the matter.
23. Benefit calculations are reviewed before any payments are made to a member. The Trustee does not normally have any involvement in this process.
24. The Plan Rules are not normally sent to members because of the size and complexity of the document. However, a copy would be provided on request, should a member require detailed information on their benefit entitlement. On that basis, no information was deliberately withheld from Mr S.

Adjudicator’s Opinion

25. Mr S’ complaint was considered by one of our Adjudicators who concluded that no further action was required by Mercer or the Trustee. The Adjudicator’s findings are set out below:-
 - Mercer and the Trustee are required to act in accordance with the Plan Rules. The specific rule in this case is Rule 15.5, which provides that if a pension has been in payment for less than a year on 6 April, a proportionate increase will be applied for the number of complete months the pension has been in payment.

- There were several instances where Mr S received correspondence from Mercer confirming that his pension would increase annually by between 3% and 5%, including the letters of 23 October 2019 and 25 November 2019. However, in the Adjudicator's view there was no requirement for Mercer to confirm the implications of Mr S retiring part way through the year, unless he had raised a specific enquiry on this point. Mr S had provided no evidence that he made any enquiries at the time of his retirement concerning the pension increases that would be applied to his pension in payment.
- The 2000 Plan Booklet confirmed that pension increases would be applied each year in line with inflation up to a maximum of 5%. However, Mr S had not provided any evidence that he would have materially changed his retirement plans, or delayed claiming his benefits until 1 April 2020, had he known about Rule 15.5. Even if Mr S were able to provide this, he would also need to provide evidence that he was misinformed by Mercer at the time of his retirement, which he was not.
- In the Adjudicator's opinion, the 2019 Retirement Pack made it sufficiently clear that the final benefits payable would be subject to the Plan Rules. In the event of any conflict, the Plan Rules would override the contents of the 2000 Plan Booklet. This information was provided to Mr S in the booklet before he claimed his retirement benefits.
- Plan booklets are not intended to cover every aspect of the rules governing a pension plan. In the Adjudicator's view, Mercer and the Trustee could not be held responsible for the fact that Mr S had not requested further information regarding his annual pension increases, or a copy of the Plan Rules.
- Mercer and the Trustee were required to act in accordance with the rules governing the Plan. They had correctly concluded that under Rule 15.5 a proportionate pension increase was due on 1 April 2020. As there had been no maladministration by either Mercer or the Trustee in this case, there was no need to consider Mr S' claim for financial loss.

26. Mercer and the Trustee accepted the Adjudicator's Opinion, Mr S did not, and the complaint 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.

Mr S' additional comments

27. Mr S says he complained to Mercer immediately after establishing that his pension had not increased by 3% a year. No information had previously been provided by either Mercer or the Trustee which informed him that a proportional increase would be applied to the pension increase in accordance with Rule 15.5. Had he been aware of this rule he would have delayed claiming his pension to obtain a full 3% annual increase.

Ombudsman's decision

28. Mr S says he was unaware that his pension in payment would be proportionately increased on 1 April 2020. He says neither Mercer nor the Trustee had previously informed him that this would be the case if his pension had not been in payment for a full year by 6 April 2020 in accordance with Rule 15.5. He says had he been aware of this rule he would have delayed claiming his pension to obtain a full 3% annual increase.
29. But Mr S did not specifically ask either Mercer or the Trustee before he decided to retire whether he would receive a full increase to his pension in payment on 1 April 2020 if he retired during the year. So, there was no requirement for Mercer or the Trustee to set out the implications of Rule 15.5 when he retired.
30. There was also no requirement for the implications of Rule 15.5 to be set out in the 2000 Plan Booklet since it was only required to provide basic Plan information. It also stated that the Plan would operate in accordance with the Definitive Trust Deed and Plan Rules.
31. Further, a note in the 2019 Retirement Pack stated, "In preparing this pack, care has been taken to reflect the most accurate and up to date information available at the time of preparation. The final benefits payable will always be subject to the Plan Rules".
32. I am satisfied that both Mercer and the Trustee have correctly applied Rule 15.5 and so, only a proportionate increase applied to Mr S' pension in payment on 1 April 2020. Consequently, Mr S has not suffered a financial loss.
33. I do not uphold Mr S' complaint.

Anthony Arter CBE
Pensions Ombudsman
4 May 2023