

Ombudsman's Determination

Applicant	Mr N
Scheme	Ladbrokes Pension Plan (the Plan)
Respondents	Ladbrokes Coral Group Pension Trustees Ltd (the Trustee) Lane Clark & Peacock LLP (LCP)

Outcome

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

Complaint summary

2. Mr N's complaint concerns changes the Trustee made to facilitate Rothesay Life (**Rothesay**) assuming liability for paying the Plan's benefits. He says that this paved the way for the closure of the Plan and a return of surplus funds to the Principal Employer.
3. In particular, he believes that he was treated unfairly when the Trustee changed the Plan's late retirement factors (**LRFs**) with effect from 14 June 2019. He would like the Trustee to honour the earlier retirement quotation.

Background information, including submissions from the parties

4. 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.
5. On 19 April 1988, Mr N started employment with Ladbroke Group plc.
6. On 1 May 1988, he joined the Ladbroke Group Executive Pension Scheme (**the Executive Scheme**).
7. On 30 September 1996, Mr N left pensionable service and became entitled to deferred benefits in the Executive Scheme.
8. On 1 January 1999, the Executive Scheme merged with the Ladbroke Group Pension Plan which later became the Plan.

9. The Trustee has explained that the rules that govern the Plan are split into the 'main edition rules' and the 'special edition rules' (**the Rules**). The latter, dated 14 January 2013, came into effect on 1 January 2013 and applied to Mr N as he is a legacy member of the Executive Scheme.
10. Rule 10.3 of the Rules states that:

“If the pension starts after Normal Retiring Date it will be increased for late payment on a basis decided by the Trustees.”
11. In May 2015, Mr N reached his normal retirement age (**NRA**) of 60.
12. In 2018, GVC Holdings plc (**GVC**), completed its acquisition of the Ladbrokes Coral Group.
13. On 30 March 2019, Mr N asked the Plan’s administrators, LCP, for a retirement illustration as at 14 May 2019, together with a full breakdown of the calculation.
14. On 17 April 2019, LCP sent Mr N the retirement illustration he had requested (**the 2019 Quotation**). This informed him that he could receive an annual pension of £25,245.89.
15. On 29 April 2019, Mr N raised some questions in relation to the 2019 Quotation and reminded LCP that he had requested a full breakdown of the calculation.
16. On 8 May 2019, the Trustee decided that, with effect from 14 June 2019, it would align the Plan’s LRFs with those used by Rothesay.
17. On 9 May 2019, LCP responded to Mr N’s communication of 29 April 2019. It advised that a LRF of 1.287 had been applied to his pension because his proposed retirement date was four years after his NRA. It also provided a copy of the table of LRFs that was in force at the time. It said:

“Please note that these factors are subject to review so cannot be guaranteed.”
18. On 14 June 2019, the Trustee entered into a bulk purchase annuity contract with Rothesay. The Plan’s LRFs were also adjusted on the same day.
19. On 30 September 2019, the Trustee wrote to members to announce that it had entered into an insurance contract with Rothesay through which all benefits due to members of the Plan had been secured (**the Buy In**). It stated that:

“Your benefits are covered in full by this policy, there will be no change to the amount of pension that you are entitled to receive from the Plan.”
20. A 'Questions and Answers' sheet (**the Q&A Sheet**) provided with the announcement stated that:

“If you delay the payment of your pension past your Plan normal retirement age, upon retirement it will be increased to reflect the shorter period of payment. This is also unchanged.”

21. On 17 January 2020, Mr N asked LCP for a retirement illustration as at 1 May 2020.
22. On 10 February 2020, LCP sent Mr N the retirement illustration he had requested (**the 2020 Quotation**). It said that he could receive an annual pension of £23,963.04.
23. On 11 February 2020, Mr N telephoned and emailed LCP to query the figures. He asked that LCP:-
 - Check the figures and clarify the reasons for the reduction as he was expecting his pension to have increased when compared to the 2019 Quotation.
 - Provide copies of the detailed calculations.
 - Provide details of the new LRFs and why they had changed.
24. On 24 February 2020, LCP told Mr N that the LRFs used in the 2019 and 2020 Quotations were 1.287 and 1.250, respectively. It said that the Plan’s factors were not guaranteed and were subject to periodic review and could change at any time.
25. On 26 February 2020, Mr N emailed LCP to advise that its response of 24 February 2020 had not provided all the information he had requested.
26. On 10 March 2020, Mr N emailed LCP to request a full response to his email of 11 February 2020. It responded the same day to say that his query had been passed to Rothesay who supplied the LRFs.
27. On 30 March 2020, LCP sent Mr N a copy of the 2020 Quotation and reiterated the LRFs that had been used in the 2019 and 2020 Quotations. It said that the factors changed monthly based on market conditions and mortality assumptions and were set by Rothesay.
28. On 31 March 2020, Mr N raised a formal complaint with the Trustee. He said that he required an adequate explanation for the difference in the figures detailed in the 2019 and 2020 Quotations. LCP had repeatedly failed to provide this; he first requested the information on 11 February 2020.
29. On 9 April 2020, LCP wrote to Mr N. It explained that the reason for the reduction in his pension was that a new set of LRFs had been introduced from 14 June 2019. The change had been reviewed by the Plan’s Actuary (**the Actuary**) and agreed by the Trustee ahead of the Buy In taking place. The factors now used by the Plan were those set by Rothesay. It confirmed that it would email him a further retirement illustration as at 14 May 2020.
30. On 20 April 2020, Mr N raised a complaint under stage one of the Plan’s two stage internal dispute resolution procedure (**IDRP**). The points he raised at the time are included in the section below, ‘Summary of Mr N’s position’.

31. On 11 June 2020, the Plan's Pensions Manager provided a response under stage one of the IDR. He made a number of points which are included in the section below, 'Summary of the Trustee's position'. He also advised that Mr N's complaint had been upheld in part in respect of incorrect information that LCP had given him. In particular:-
- The change in factors had contributed to the reduction in Mr N's retirement benefits when compared with the figures detailed in the 2019 Quotation. However, the primary reason for the difference was due to an inconsistency in how his guaranteed minimum pension (**GMP**) had been revalued over the period between his date of leaving the Plan and his NRA. The correct revaluation rate of 7% for each complete tax year had been used in the 2019 Quotation, but the 2020 Quotation used a lower rate. The error arose as a result of data changes during a project to reconcile the GMP figures held by the Plan with those held by HM Revenue & Customs. It acknowledged that the error should have been picked up earlier and apologised for this.
 - The LRF of 1.250 used in the 2020 Quotation was based on market conditions in February 2020. However, the pension increase due on 1 April 2020 had not been allowed for in the calculation of the LRF. LCP should have explained this more clearly. The correct LRF, allowing for the April 2020 increase, was 1.301.
 - Mr N's recalculated annual pension, based on a retirement date of 14 May 2020, was £25,491.10. A revised retirement illustration would be issued to him.
 - The Trustee was willing to offer Mr N an ex-gratia payment of £500, for the non-financial injustice he had suffered.
32. On 12 June 2020, LCP provided Mr N with retirement illustrations based on retirement dates of 1 and 14 May 2020. An annual pension of £25,462.55 and £25,491.10 respectively were quoted.
33. On 16 June 2020, Mr N returned the completed retirement paperwork to LCP and requested to draw his pension from 1 May 2020.
34. In June 2020, the Trustee issued an announcement confirming that individual policies were being secured for each member of the Plan in their own name.
35. On 30 June 2020, LCP emailed Mr N a retirement confirmation pack. It advised that he would receive his first instalment of pension on 31 July 2020, covering four months' arrears of pension payments. Mr N expressed his dismay that he would have to wait so long to receive his pension. So, LCP made the first payment on 7 July 2020.
36. On 7 August 2020, Mr N asked for his complaint to be considered under stage two of the IDR. The additional points he raised are included in the section below, 'Summary of Mr N's position'.

37. On 8 October 2020, the Trustee issued an announcement to members confirming that it had commenced the process of winding up the Plan. It advised that, once the 'buy-out' had been completed, all the liabilities would be secured in full using policies in the members' own names. The Trustee included the following statement in the announcement: "Please note there will be no change to your benefit entitlements".
38. On 15 October 2020, the Trustee provided its stage two IDRPs response but did not uphold Mr N's complaint. It made a number of points which are summarised in the section below, 'Summary of the Trustee's position'.
39. On 16 October 2020, LCP provided Mr N with a copy of the breakdown of the calculation of his pension. It confirmed that a LRF of 1.1593 had been used in the calculation.
40. On 19 February 2021, the Trustee sent an announcement to members concerning a proposal to return surplus assets in the Plan to the Principal Employer (**the Proposal**). It said that 18 representations had been received from members of the Plan and, having reviewed these, it had decided that it was still appropriate to proceed with the Proposal. It confirmed that the benefits due to members under the Rules had been secured in full.
41. On 17 January 2022, the Trustee wrote to Mr N concerning the Proposal. It said that the return of surplus assets would only be made after all liabilities under the Plan had been secured, as required under pension legislation. It confirmed that provision had been made to cover any additional liability should the complaint Mr N had subsequently made to The Pensions Ombudsman be upheld.

Summary of Mr N's position

42. There was a significant difference between the annual pension detailed in the 2019 Quotation when compared with the annual pension in the 2020 Quotation. While his pension was put into payment based on a retirement date of 1 May 2020, he would like the Trustee to honour the 2019 Quotation and pay those benefits backdated to his 64th birthday.
43. He considers the change to the LRFs to be 'inequitable'. It had taken place without any notice and the new LRFs had been applied retrospectively. In his view, it was evidence of a further step in a series of fundamental policy changes to the Plan resulting from the acquisition of the Ladbrokes Coral Group by GVC. These steps were leading towards the closure of the Plan and the refund of surplus funds to the Principal Employer. He did not consider this to be a normal event in the administration of a pension scheme. He also considered the argument that the Trustee had discretion in relation to changes to the Plan's LRFs as being inappropriate, given that the Plan was in surplus.
44. In making the decision to change the LRFs, the Trustee had not assessed the financial impact that this would have on individual members. Nor had it acknowledged the unique inability of late retirees to mitigate any financial impact.

45. Despite assurances from the Trustee in its announcement of 30 September 2019, there had been a material change to his benefits. He had suffered a significant reduction in the value of his pension. The Trustee could not use Rule 10.3 of the Rules to impose a material decrease in his pension.
46. Had he been aware at the time of the financial impact of not taking his benefits at age 64, he would have accepted the 2019 Quotation. LCP had explained to him the LRFs could change due to changes in market conditions and mortality rates. However, it did not mention the possible impact of the Plan closure on his benefits.
47. He considers that the Trustee's offer of £500 for the non-financial injustice he has suffered to be inadequate given that LCP made an error in the calculation of his pension and delayed providing him with the information he had requested.
48. He considers that the responses he received from LCP were inadequate. Furthermore:-
 - LCP unreasonably delayed providing him with a copy of the detailed calculations. He requested this information on 11 and 26 February and then on 10 and 30 March 2020.
 - As of 20 April 2020, he had not received the retirement illustration. LCP informed him on 9 April 2020, that it would be sent to him.
 - LCP's letters of 24 February and 30 March 2020, provided him with details of two LRFs. However, the letters provided no explanation of why there had been a decrease in the pension figures. The information it provided at the time was misleading as the LRFs were applicable at different ages. Based on the LRF at age 65, there had been an adjustment in the LRF from 1.375 to 1.25: a reduction of 9.1%.
 - The statement made by LCP at the time was misleading. It had indicated that the change to the LRFs was due to mortality assumptions and market conditions, also that the factors were now set by Rothesay.
 - An error was made in the calculation of his GMP, but this was not identified, or disclosed to him, until the stage one IDR response.
 - He had to raise a further complaint because LCP notified him on 30 June 2020 that he would not receive his first instalment of pension until 31 July 2020.
 - Furthermore, he was sent extracts of the main edition rules, but they were not applicable to his benefits in the Plan.

Summary of the Trustee's position

49. LCP sent Mr N the 2019 Quotation in April 2019 and followed this up with a letter on 9 May 2019. Mr N chose not to retire at the time. LCP stated that the LRFs were not guaranteed and were subject to review.

50. Both the 'main edition rules' and the 'special edition rules' give discretion to the Trustee when setting the LRFs. Mr N was supplied with a copy of the main edition rules and was offered a copy of the Rules.
51. There is no requirement under pension legislation or in the Rules to proactively inform members of any change in the LRFs.
52. At a board meeting on 8 May 2019, the Trustee, having taken advice from the Actuary, decided to amend the Plan's factors. The Trustee was satisfied with the Actuary's advice that the new factors were reasonable, and the change was made with effect from 14 June 2019; it was not applied retrospectively. In making the change, the Trustee acted in accordance with the Rules and followed due process.
53. The decision was taken alongside the decision to secure the Plan's liabilities with Rothesay. It considered it appropriate to change the LRFs to reflect those offered by Rothesay. It is common practice within the pension industry to make changes of this nature. The Trustee changed the LRFs to ensure that the benefits from the Plan matched the benefits insured with the insurer.
54. In making this decision, it took into account the fact that Rothesay's LRFs were similar to those the Trustee already had in place for the Plan at the time. For example, the LRF, based on a retirement date which is five years after NRA was 1.375 shortly before the Trustee adopted Rothesay's factors in June 2019. This factor allows for any missed pension increases. Immediately after June 2019, the factor was 1.338, a reduction of under 3%. Subsequent changes to the LRFs resulted in a factor of 1.301 being used at the time that Mr N retired.
55. Mr N referred to the communications the Trustee issued concerning the Buy In, in which the Trustee reassured him that it would have no impact on his benefits in the Plan. This statement is correct as his benefits were still defined by the Rules.
56. It accepted that there were some delays in LCP responding to Mr N's request for information. The Trustee acknowledges that as of October 2020, no explanation of the variance in the figures in the 2020 Quotation, when compared with the figures in the 2019 Quotation, had been provided by LCP. These issues were considered by the Trustee when making the offer of £500, which it considered to be appropriate in the circumstances.

Adjudicator's Opinion

57. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or LCP. The Adjudicator's findings are summarised below:-
 - The Plan is governed by pension legislation and the Rules. Rule 10.3, 'Late Pension', states:

“If the pension starts after Normal Retiring Date it will be increased for late payment on a basis decided by the Trustees.

The Trustees must be reasonably satisfied that the benefits (including death benefits) for a Member who chooses a late pension are at least equal in value to the benefits that would otherwise have been provided for the Member under the Plan.”

- The Rules do not specify the Plan’s LRFs; rather they are set on a basis determined by the “Trustees”. Furthermore, Mr N was told by LCP in May 2019 that they were subject to review and could not be guaranteed. The Adjudicator took the view that the Trustee was entitled under the Rules to review the Plan’s LRFs at any time, this included during its meeting on 8 May 2019.
- In the Adjudicator’s opinion, the Trustee’s decision to bring the factors in line with those used by Rothesay, with effect from June 2019, did not amount to maladministration. A change of this type was not uncommon where pension benefits were being insured with a third party. If the Trustee had not adopted the new factors, it was possible that the benefits payable under the Rules would have differed from those insured with the insurer. When changing the factors, the Trustee acted on advice from the Actuary that the new factors were reasonable.
- Mr N had referred to a reduction in the LRF at age 65 of 9.1% following the changes approved by the Trustee in May 2019. In the Adjudicator’s view this was not correct.
- Mr N was advised by LCP in February 2020, that the LRF used in the 2020 Quotation was 1.250. However, he was subsequently told in June 2020 that this factor did not allow for the April 2020 pension increase. The factor that should have been used for the 2020 Quotation was 1.301. Furthermore, when the Plan’s LRFs were brought into line with those used by Rothesay, the LRF at age 65 was adjusted to 1.338. It was then adjusted to 1.301 before the date Mr N retired. In the Adjudicator’s view, the reduction in the LRF at age 65 was less than 3% at the point that it was consolidated with those used by Rothesay.
- Mr N had indicated that had he known that the factors would change at a future date, it was likely that he would have accepted the 2019 Quotation. The Adjudicator did not consider that this changed the outcome of his complaint. There was no requirement under pension legislation or the Rules for the Trustee to have notified members of changes to the Plan’s factors.
- Mr N had referred to the Trustee’s communication in September 2019. This stated that there would be no change to the amount of benefits he was entitled to receive from the Plan following the transfer of liability to Rothesay. The Adjudicator did not take the view that subsequent events resulted in this promise being broken. At the date of this communication, the benefits that Mr N was entitled to were defined by the Rules. This continued to be the case when he chose to retire in May 2020.

The Trustee was entitled to regularly review the factors used by the Plan irrespective of whether or not liability for the benefits were being transferred to Rothesay.

- Mr N highlighted the terms of the Proposal, which he did not consider to be 'normal' administrative practice. In addition, he did not consider that the changes made to the LRFs by the Trustee were appropriate given that the Plan was in surplus. For the reasons already given, the Adjudicator's view was that the Trustee had the necessary authority under the Rules to change the LRFs regardless of whether the Plan was in surplus or not. Furthermore, the Trustee confirmed that member benefits, as defined by legislation and the Rules, had been secured with Rothesay. So, the Adjudicator did not take the view that the Proposal had an adverse impact on Mr N's benefits.
- The Adjudicator considered whether the Trustee or LCP caused Mr N a non-financial loss, such as distress and inconvenience. In his stage one IDR response, the Plan's Pensions Manager acknowledged that the 2020 Quotation provided by LCP was incorrect. This was because an incorrect revaluation rate had been applied to the GMP. Furthermore, there had been delays in LCP providing Mr N with the information he had requested. In addition, the explanation it provided in relation to the LRFs used in the 2019 and 2020 Quotations did not make the position sufficiently clear. In the Adjudicator's view, these errors and omissions on the part of LCP amounted to maladministration and would have caused Mr N significant distress and inconvenience.
- The Adjudicator noted that the Trustee had offered Mr N £500 for the distress and inconvenience he had experienced in connection with this matter. In the Adjudicator's view, this offer was in line with what I would award for non-financial injustice in similar cases. So, the Adjudicator did not believe that I would direct that the Trustee or LCP pay Mr N a higher award.

58. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

59. Mr N provided his further comments in response to the Opinion. In summary he said:-

- He had been misled by LCP's letter of 9 May 2019 which failed to mention that the previous day, the Trustee had decided to change the Plan's LRFs. Prior to this, the LRFs had remained unchanged for many years.
- From 2015 to 2020, he had requested a retirement quotation and details of the LRFs annually. He had also sought an explanation of factors that may result in a change to the LRFs. There was a difference between there being no requirement for changes in the LRFs to be communicated to Plan members, and the disclosure of pertinent information in response to specific questions.
- He had been misled by the Q&A Sheet as the underlying impact was a reduction in the value of his pension.

- Aligning the Plan's LRFs with those of Rothesay to achieve a bulk annuity purchase could not be properly undertaken without the adequate consideration of any negative impact on individuals. No evidence had been submitted of any legal advice received by the Trustee. It had a duty to meet the best interests of the members and no disclosure has been made of the consequences for late retirees or of any options to mitigate any adverse impact.
- The Adjudicator had implied that a reduction at age 65 in the LRFs of less than 3% was acceptable, but no reference was made to the implications of this. Furthermore, the May 2019 LRF at age 65 of 1.375 had reduced to 1.301 by May 2020, a reduction of 5.38%.
- He accepted that LRFs would change to accommodate normal eventualities, such as changes in market conditions and mortality rates.
- The existence of a substantial surplus in the Plan and an intention to wind it up with a refund of surplus to the Principal Employer were already in the Trustee's mind when it decided, in May 2019, to change the LRFs and initiate the Buy In.
- The reduction in the value of his benefits caused by the change in LRFs had increased the Plan's surplus and had benefitted the Principal Employer.

60. I have considered the additional points raised by Mr N, however they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

61. Mr N considers that he was treated unfairly as a direct consequence of Rothesay taking over responsibility for paying the Plan's benefits and as a result of the Proposal. In particular, he alleges he was disadvantaged by the change in the LRFs in June 2019.
62. Mr N has highlighted that, between 2015 and 2020, as part of his retirement planning, he regularly sought information in relation to the LRFs. He claims that he was misled by LCP's letter of 9 May 2019. In this letter LCP provided a copy of the current LRFs, but did not bring to his attention the fact that, the previous day, the Trustee had agreed a change to the LRFs.
63. I do not find that there was a legal requirement for LCP to notify Mr N of a change to the LRFs which was not due to come into effect until 14 June 2019, even though this was a topic of interest for him. In its response, LCP did make Mr N aware that the LRFs it had provided were subject to review and could not be guaranteed. Furthermore, from a practical perspective, the change had only been agreed the day before, on 8 May 2019.
64. Mr N refers to the Q&A Sheet that was issued with the Trustee's letter of 30 September 2019, which notified members of the Buy In. It referred to benefits for members who chose to delay payment beyond their NRA being increased to reflect

the shorter period of payment. The Q&A Sheet stated that this was unchanged. Mr N said that this was misleading as the value of his benefits had reduced due to a change in the LRFs. I do not find that this is the case. The Rules state that Mr N's benefits "will be increased for late payment on a basis decided by the Trustees". As stated in the Q&A Sheet, this position did not change as a result of the Buy In.

65. When considering a change to the LRFs, the Rules stipulate that the Trustee must be reasonably satisfied that the value of the benefits available to a member retiring after NRA is at least equal to the value of the benefits that would otherwise have been provided. During its meeting on 8 May 2019, the Trustee sought to align the LRFs with those used by Rothesay. Mr N has referred to consideration being given to any negative impact on individuals and the need for legal advice to be sought. I do not find that this is the case. The Trustee asked for the advice of the Actuary in respect of its responsibility under the Rules, and I find that it was correct in doing so.
66. Given that the Actuary's advice was provided when the Trustee approved the revision to the LRFs, the percentage by which they had reduced from those previously in use is, to some extent, of little relevance to Mr N's complaint. However, to clear up any uncertainty, when the factors changed on 14 June 2019, the decrease in the factor at age 65 was under 3%. However, a further review of the factors took place before Mr N's benefits were settled, and this resulted in the overall decrease to which Mr N has referred.
67. I have noted Mr N's comments in relation to the Plan's surplus and an intention to refund it to the Principal Employer. I have seen no evidence that the Trustee took into account any factors which it should not have done when it made its decision, on 8 May 2019, to change the Plan's factors.
68. The Trustee has acknowledged an error in the 2020 Quotation. Furthermore, there were some delays and a lack of clarity in the responses LCP provided to Mr N. I find that these amounted to maladministration. The Trustee offered Mr N £500 for any distress and inconvenience he has suffered. This is consistent with what I have awarded in respect of non-financial injustice for similar cases in the past.
69. Mr N is free to approach the Trustee to accept its offer if he has not done so already.
70. I do not uphold Mr N's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
31 August 2023