

Ombudsman's Determination

Applicant	Mr N
Scheme	Volkswagen Group Pension Scheme (the Scheme)
Respondent	Volkswagen Group Pension Scheme Trustee Limited (the Trustee)

Outcome

1. Mr N's complaint against the Trustee is partly upheld. To put matters right, the Trustee shall pay Mr N £500 for the significant distress and inconvenience its maladministration has caused him

Complaint summary

2. Mr N has complained that the Trustee does not have a plan to issue revised Guaranteed Minimum Pension (**GMP**) equalisation calculations to members and has not maintained historical member pension records. He says the proposed timeframe issued to complete the GMP equalisation exercise is excessive.

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. GMP is the minimum guaranteed level of pension which a pension scheme had to provide to members if they were contracted out of the State Earnings Related Pension Scheme between 6 April 1978 and 5 April 1997.
5. Legislation required GMPs to be calculated on a different basis for men and women to reflect differences in the state pension age at the time. This led to inequalities in the rate at which benefits built up in contracted out schemes and the age at which they could be drawn.
6. Following decisions of the European Court of Justice¹, it became clear that the requirement for equal pay for men and women also applied to occupational pension

¹ Notably *Barber v Guardian Royal Exchange Assurance Group C-262/88 [1990] ECR I-1889*, 17 May 1990

benefits, and pension schemes took steps to equalise benefits accruing from 17 May 1990.

7. However, debate about how these legal requirements applied to GMPs (as, for example, GMPs reflect the historically unequal state pension ages for men and women) continued until the High Court held in *Lloyds Banking Group Pensions Trustees Limited v Lloyds Bank plc and others [2018] EWHC 2839 (Ch)* that schemes were “under a duty to amend the Schemes in order to equalise benefits for men and women so as to alter the result which is at present produced in relation to GMPs.”
8. This case became known as the ‘Lloyds No.1’ case. The judgment (**the No.1 judgment**) was handed down on 26 October 2018, and while it helpfully provided trustees with a number of potential approaches for achieving GMP equalisation, the No.1 judgment left some key questions unanswered.
9. In March 2019, the Trustee published a leaflet entitled ‘In Focus – GMP equalisation and you’ (**In Focus**). This explained the background to the No.1 judgment and that the Trustee had to carry out a review (**the review**) of the implications this would have for the Scheme membership. It said that anyone who was an active member of the Scheme between 17 May 1990 and 5 April 1997 would be included in the review.
10. Under the heading ‘How will my benefits be impacted?’ In Focus said:

“We just don’t know who will be impacted or by how much at this point in time. We will write to you again when we have more information.”
11. Under the heading ‘When will this change happen?’ In Focus said:

“Whilst the judgment has been given by the High Court, there are still a number of issues where clarification is needed. The Trustee, and the rest of the pension industry, is awaiting further guidance from the Department of Work and Pensions (DWP) following the ruling before finalising their next steps. There may also be further court proceedings which have to be taken into account in due course.

We’ll keep you up to date with any developments but we don’t expect to receive further guidance until the second half of 2019 at the earliest.”
12. And under the heading ‘What happens next ?’ In Focus said:

“As the work needed to carry out equalisation calculations is so complex, the Trustee doesn’t expect to be able to contact affected members for some time. It’s worth bearing in mind there could still be challenges to the ruling or developments within the industry concerning implementation of the [No.1] judgment, which could delay work further.

You do not need to take any action at this time, and your ability to access your benefits or take a transfer value from the Scheme is not changed by these developments.”

13. During 2020, the Trustee published a newsletter entitled 'F.Y.I' (**the newsletter**). The newsletter included a section giving details about GMP equalisation which was largely an abridged version of In Focus (and pointed to that document if the reader required more information).

14. Under the heading "What has been done to address this inequality?" the newsletter said:

"Following the Lloyds ruling last year, the Trustees will be under a legal duty to remove any inequality between males and females that exists in the payment of GMPs.

In order to determine whether any inequality exists in a member's GMP, a complex calculation needs to be carried out to test whether the member would have received a higher level of benefit from the Scheme, had they been of the opposite sex. There are several factors that will impact on the calculation and it is difficult to say whether any one gender is likely to receive any uplifts to their pension."

15. And under the heading "Will I be affected?" the newsletter said:

"The relatively complex nature of this work means that affected members will probably not hear from the Trustees until later in 2020. There is always a chance there could be challenges to the ruling which may delay the opportunity for the Trustee to review benefits. If delays are experienced or there is a significant event in the meantime which impacts the timing of the work, the Trustee will provide you with an update.

When the Trustee is in a position to complete the review of benefits, you will be notified (if you are affected) with details of the changes.

Without conducting complex calculations, it is difficult to say exactly how your benefit will be affected. However, there will be no reduction to your benefit as a result of any work carried out to equalise GMPs."

16. A further judgment was handed down by the High Court on 20 November 2020. This became known as the 'Lloyds No. 3' case and the judgment (**the No.3 judgment**) clarified certain aspects relating to past transfers out.

17. On 21 December 2020, Mr N emailed a letter to Kristy Coogan, Pensions Manager for the Scheme. In the letter he said he understood there had been a court ruling which had been extended to apply to people who transferred out of final salary schemes in the 1990s. He asked for details of the GMP calculation at the time he had transferred out of the Scheme and the calculation based on the revised ruling.

18. Having not received a reply, he chased his request up on 25 January 2021, and again on 2 February 2021. Barnett Waddingham, in its capacity as administrator of

the Scheme, responded on 3 February 2021, to say his letter was not attached to his email. Mr N replied on the same day with a copy of his letter.

19. Barnett Waddingham responded on 16 February 2021. It said the Trustee would be considering the court ruling but this would be done across the Scheme membership as a whole, rather than on an individual member basis. Consequently, this process could take many months. Barnett Waddingham would contact Mr N at the appropriate time to inform him if a top up payment was to be made to his personal pension policy.
20. Barnett Waddingham asked Mr N to send a copy of the leaver statement issued to him when he left the Scheme on 5 April 1991 and details of the policy he had transferred to as it did not hold any of this information due to the time elapsed and change of administration providers.
21. Mr N replied on 18 February 2021, to say that he was disappointed that the answer was, in his view, vague and that the Trustee was only at the stage of considering the court ruling. He asked for a timescale for when he could expect to see his revised GMP calculation.
22. Further email exchanges between Mr N and Barnett Waddingham took place during March and April 2021. The responses did not satisfy Mr N and on 15 April 2021, Barnett Waddingham said that it had arranged for details of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) to be issued to Mr N.
23. On 18 May 2021, Mr N wrote to the Trustee under stage 1 of the IDRP. He said that he wished to complain about:
 - the failure to respond to his initial emails to the Scheme's Pensions Manager and correspondence to the employer's Human Resources department;
 - the lack of meaningful information and a credible plan on how the Trustee intended to deal with the well signposted legislation relating to GMP calculation; and
 - 'lost' historical pension records which apparently included his.
24. On 11 June 2021, the Trustee responded to Mr N's IDRP stage 1 complaint. It concluded that the actions being taken and the timescales involved for the GMP equalisation project were reasonable and appropriate in the circumstances. It said:-
 - Appropriate actions were being taken in response to the developments concerning the GMP equalisation issue and that the anticipated timescales were entirely reasonable in this regard.
 - The Trustee would, as part of its project, determine action to be taken in respect of previous transfers. Where appropriate, this may include contacting former

members, such as Mr N, in due course to the extent that there was a need to obtain information from them in respect of the review.

- If it were subsequently determined that an additional payment was due in connection with a past transfer-out, the Trustee would contact the relevant individual to advise them of this and to obtain details of the pension scheme to which such amount should be paid.
- As with the rest of the pension industry, the Trustee had been taking steps to determine how both the No.1 and No.3 judgments applied to the Scheme and what approach should be taken to implement the changes which were required in light of these.
- Although Mr N had referred to the Trustee dealing with “well signposted legislation relating to GMP calculation”, there was no piece of legislation which dealt with or set out how the issue of GMP equalisation was to be addressed by schemes.
- The Trustee had established a GMP Joint Working Group (**JWG**) following the judgments. The JWG was supported by the professional advisers to both the Trustee and the Company. The JWG’s focus was on determining the most appropriate methodology in light of the judgments. This was a complex issue and it was therefore important that the Trustee take all appropriate steps to ensure the actions taken are appropriate. Accordingly, this was a project which would take time to be completed in full.
- To date, the Trustee had provided general updates to the Scheme members on the issue of GMP equalisation via the newsletter and In Focus, although it appreciated that as a former member of the Scheme, Mr N would not have received such communications.
- Where a member had transferred their benefits out of the Scheme, it was common for the records held to be more limited in detail. This was particularly so where the transfer-out occurred some 30 years ago. Beyond keeping a record of the transfer being made, it was entirely consistent with data protection legislation that less information regarding former members was retained.

25. On 20 June 2021, Mr N appealed against the Trustee’s decision under stage 2 of the IDR. He made the following points:-

- The passage of time and data protection were not acceptable excuses for the loss of data. The term ‘pension record’ implied and required longevity.
- He was only seeking a calculation of the GMP for before and after the No.1 judgment but still had no idea of when that would be forthcoming. In his view a professional organisation should have a project plan supported by timescales.

- In Focus and the newsletter set out the issue and the GMP section of the newsletter said 'affected members will probably not hear from the Trustees until later in 2020'.
26. On 4 October 2021, the Trustee issued its response to Mr N's IDRPs stage 2 appeal. It said that it supported the conclusions reached at stage 1. In particular, it considered that an appropriate plan was in place to undertake the actions required to address the GMP equalisation obligations which applied to the Scheme. It said:-
- Information concerning the GMP equalisation project had been provided to Mr N as part of the stage 1 IDRPs response.
 - This was a complex issue being faced by the UK pension industry.
 - The Trustee considered, having taken professional actuarial and legal advice, that it had a credible plan in place in order to progress the GMP equalisation project. The actions being taken by the Trustee were in line with those of the vast majority of pension schemes.
 - Although it was not possible to confirm the timescales for completing the project, the Trustee would continue to keep members updated with steps which were taken. As Mr N was a former member of the Scheme, although he would not receive such updates, he would be contacted by the Trustee at the relevant time.
 - As noted in the stage 1 response, only limited scheme records were typically kept for an individual who had transferred-out to simply confirm that the individual had left the scheme. The Trustee did not consider the current position regarding legacy records to be unreasonable.

The Trustee's position (as at 2023)

27. The Trustee formed the JWG which has reviewed the methodologies and options available to implement a solution to the GMP equalisation issues. As a key aspect of this, a detailed data review had taken place since the IDRPs stage 2 response was issued to Mr N.
28. It was anticipated that, with the data exercise having been finalised, the JWG would be able to further progress the decision regarding the methodology to be used.
29. In practice, it anticipated member records being reviewed and updated during the second half of 2023. As part of this process, it would be possible to undertake a review of past transfers which have been made from the Scheme where a member had accrued a GMP entitlement, such as in Mr N's case.

30. In Mr N's particular case, this would necessarily involve an analysis of the data which is available on the Scheme's administration records as well as the basis on which the transfer value was paid, noting that his transfer-out took place over 30 years ago.
31. Given the need to complete the data reviews and analysis which had been undertaken, there had not been any further specific update which could be given to Mr N since the explanation which was provided in the Stage 2 IDRPs response. The Trustee would update Mr N on progress as soon as it is able to do so and has further information to report in relation to his particular case. For the reasons noted above, it would expect this to be during the third and fourth quarters of 2023 when all other affected members are contacted and updated with the outcome of the process.
32. It has a credible plan to address GMP equalisation and implement changes to benefits which are required as a result. In particular, it is working closely with the Principal Employer and professional advisers through the JWG.
33. Based on input from the professional advisers who are supporting the JWG, it is considered that the Scheme is currently in a similar place to the majority of UK pension schemes which are having to address GMP equalisation – with revised calculations and updates to member benefits to be undertaken and applied during the course of 2023.
34. As regards Mr N's records in relation to his previous Scheme membership, where a former member has transferred their benefits out of the Scheme it is not uncommon for the records which are held for such member to be more limited in detail.
35. In Mr N's case, it may be necessary for the Trustee to engage further with Mr N as part of its review of legacy data held by the Scheme in relation to his former membership. This would be expected to be part of the process to be undertaken later in 2023.
36. The Trustee does not consider that the Scheme is in any different position in this respect to that of the majority of other schemes which are currently taking action in relation to GMP equalisation. This is consistent with industrywide practice and guidance, in particular the Pensions Administration Standards Association (**PASA**) GMP Equalisation Working Group Supplemental Guidance on Transfer Payments which was published in August 2021.
37. Mr N has referred to "GMP equalisation legislation" being "enacted in 2018", and that it would be five years before the Scheme would be in a position to calculate the impact on members' benefits. The No.1 judgment in October 2018 concluded there is an obligation on schemes to take action in respect of GMP equalisation. But how this is achieved is a matter for schemes to consider in light of the case-law rather than there being GMP equalisation legislation which prescribes the specific actions to be taken.

38. The Scheme, like other such schemes which were previously contracted-out before April 1997, has had to complete a full data review in conjunction with separate GMP reconciliation projects which were already in progress. It has also had to review and analyse, on a scheme-specific basis, how to implement GMP equalisation in practice, given the complexities associated with GMP and its interaction with non-GMP scheme benefits. This also needs to be assessed in the context of the ongoing development of regulatory and industry-wide guidance and practice since the No.1 judgment.
39. Further, in terms of Mr N's specific situation, it was not until November 2020 that the No.3 judgment confirmed the legal position in respect of past transfer activity.
40. Mr N had referred to previous communications issued by the Trustee and stated that these indicate that GMP equalisation would be dealt with in 2020. This is not the case. The Trustee had provided members with updates through In Focus, in which it explained to members when they were likely to hear again about GMP equalisation given the issues having to be considered as well as ongoing developments in regulatory guidance.
41. The Trustee would continue to update Mr N with the progress of the GMP equalisation project during the course of 2023 and will then engage directly with him in relation to his former membership of the Scheme in order to assess any level of top-up payment that may be due.

Mr N's position

42. The GMP equalisation 'legislation' was enacted in 2018, therefore it would be at least five years before the Scheme is in a position to calculate the impact on an individual's pension.
43. Previously the Trustee had indicated in a communication to pension members that this would be dealt with in 2020. Given the continued protracted timeframe on this issue there must be some scepticism as to its commitment for a timely resolution.
44. The Trustee had previously indicated that his pension record had been destroyed but had provided no indication on how it intended to deal with this.

Adjudicator's Opinion

45. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee. The Adjudicator's findings are summarised in paragraphs 46 to 69 below.
46. It was not in dispute that Mr N was to be included in the review as he had been an active member of the Scheme between 17 May 1990 and when he left pensionable service on 5 April 1991.

GMP equalisation plan and timescale

47. The No.1 judgment confirmed that GMP equalisation was required. While the judgment had removed some of the legal uncertainty and helpfully approved certain methods for achieving equalisation, it left a number of practical issues for employers and trustees to consider, for example:-
- The data used for GMP equalisation purposes is different from the data used for day-to-day administration and therefore might not be readily available.
 - GMP equalisation could not be completed until an earlier GMP rectification exercise had been finalised.
 - Trustees needed to make policy decisions regarding the method of equalisation and how this would be implemented.
48. Moreover, the legislation did not specify the approach schemes should take to GMP equalisation. There was no one single solution to GMP equalisation and there were a number of variables.
49. Following the No.1 and No.3 judgments, where GMP conversion was being considered, the Government said it would make changes to the existing GMP conversion legislation to address pensions industry concerns that the existing legislation was unclear in some areas.
50. The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022 (**the Act**) amended the existing legislation to:
- clarify that the legislation applied to survivors as well as earners;
 - allow the government to set out in regulations the conditions that must be met in relation to survivors' benefits and set out in regulations detail about who must consent to the conversion; and
 - remove a requirement for schemes to notify HM Revenue & Customs (**HMRC**) when trustees carried out a conversion exercise.
51. Following the Act, in April 2022 HMRC issued further guidance for schemes on GMP equalisation, particularly in relation to tax implications of different methods that schemes use for GMP equalisation.
52. Further guidance was issued in June 2022 by HMRC about how to deal with pension scheme arrears and interest when equalising for GMP.
53. As a result, while the No.1 judgment was issued in 2018, the picture remained unclear for some time after. There was no timescale prescribed for carrying out the GMP equalisation exercises and no deadline for when they had to be finished. Furthermore, bearing in mind the number of schemes going through GMP

equalisation, there was likely to be significant demand on the pension industry with only finite resources to meet that demand.

54. In the Adjudicator's opinion, this part of Mr N's complaint should not be upheld. There was no requirement on the Trustee to complete the review within a certain timescale and in forming the JWG, working closely with the Principal Employer and involving professional advisers to develop and adopt an appropriate methodology, the Trustee had taken appropriate action to address the issue.

Communication

55. Given the complicated nature of GMP equalisation, and that the exercise would directly impact member benefits, member communication was crucial. It was important that all members likely to be affected were given the key information that directly impacted them.
56. While there was no absolute obligation to communicate with members until benefits were being altered, the Adjudicator's view was that many other trustee bodies had chosen to keep members informed of developments.
57. The Adjudicator noted that as Mr N was a former member of the Scheme, he had not received a copy of In Focus or the newsletter at the time they were published. These were provided to him as part of the Trustee's response to his stage 1 IDRPs complaint on 11 June 2021, by which time the early indication of later in 2020 being when 'affected members' would probably hear from the Trustee had already passed.
58. Prior to the Trustee's response to the stage 1 IDRPs complaint, Barnett Waddingham had said, in its email to Mr N on 16 February 2021, that it would contact Mr N 'at the appropriate time' to inform him if a top up payment was to be made to his personal pension policy.
59. In its response to Mr N's stage 2 IDRPs appeal dated 4 October 2021, the Trustee had said that while it was not possible to confirm the timescales for completing the project, it would continue to keep members updated with steps which were being taken. Recognising that Mr N, as a former member of the Scheme, would not receive such updates, the Trustee had said it would contact him 'at the relevant time'.
60. In its response to The Pensions Ombudsman (**TPO**) on 9 November 2022, the Trustee had said that it anticipated member records, including past transfers which had been made from the Scheme, being reviewed and updated during the second half of 2023. It also said there had not been any further specific update which could be given to Mr N since the stage 2 IDRPs response, but that it would update him on progress as soon as it was able to do so.
61. In a second response to TPO dated 4 January 2023, under the heading 'Next steps', the Trustee had said it would continue to update Mr N with the progress of the GMP

equalisation project during the course of 2023 and then engage directly with him in relation to any level of top-up payment due.

62. The Adjudicator acknowledged that it would be difficult for the Trustee to easily establish communication with all members impacted by the review, in particular those who, like Mr N, had left the Scheme many years before, but he considered that it nonetheless had a responsibility to attempt to do so.
63. It was unclear why, when Mr N was clearly concerned about the impact the GMP equalisation exercise would have on his benefits and had complained about how the review was being conducted, the Trustee then failed to communicate and update him on progress.
64. In its responses to TPO, the Trustee had specifically committed to continuing to update Mr N with progress during the course of 2023 before engaging directly with him in relation to any level of top-up payment due.
65. Mr N had said that he received no such update.
66. The Adjudicator's view was that the failure to communicate with Mr N amounted to maladministration. The failure to keep Mr N informed on progress, even if there was not a great deal to report, would have continued to cause him unnecessary distress and inconvenience.

Member records

67. The Pensions Regulator requires that a pension trustee should keep the following data relating to the transfer of members out of the scheme:
 - member's name;
 - transfer terms;
 - name of the scheme into which the member has been transferred;
 - transfer date;
 - date of payment of money or assets.
68. From the evidence it appeared that the Scheme records were incomplete. However, in the Adjudicator's opinion this had not caused Mr N a loss and did not amount to maladministration.
69. The Adjudicator believed Mr N's complaint should be upheld in part because the Trustee had failed to keep Mr N informed of progress with its GMP equalisation review, thereby causing him significant distress and inconvenience. The Adjudicator recommended the Trustee should pay Mr N compensation of £500.

70. The Trustee accepted the Adjudicator's Opinion and recommendation. However, Mr N did not accept the award of £500 and the complaint was passed to me to consider. Mr N 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 N.

Mr N's additional comments

71. He welcomes the recommended compensation in recognition of the ongoing distress and inconvenience he has suffered.

72. However, historical scheme records had disappeared with apparently little or no regard to the regulations. He believes this to be maladministration. A simple check of the number of records before and after the Administration transfer would have highlighted there was an issue.

73. He does not understand the Adjudicator's reluctance to comment regarding the lack of a timeframe for the settlement of the GMP equalisation payment he believes he is due.

74. He is prepared to settle the matter with a sensible offer embracing the following:

- £500 as recommended for the ongoing distress and inconvenience suffered; plus
- £500 in lieu of the GMP equalisation payment (Mr N says he now has some insight into the payment calculation although not the Trustee's methodology); and
- a suitable sum for discarding his pension record.

Ombudsman's decision

75. Whether Mr N is entitled to any additional top-up payment in respect of his previous transfer value will only become apparent once the Scheme's GMP equalisation and rectification project is complete. This is a difficult and complicated project, and it is important to ensure it is carried out correctly. Therefore, although it should not be unnecessarily delayed, it is understandable that it will take a reasonable period of time to implement. I do not find that the project has, at this point, been unreasonably delayed. Once those calculations are known, the Trustee will be required to determine what amount (if any) is due to Mr N. I do not consider an award for financial injustice, or 'in lieu' of any GMP equalisation payment, would be appropriate simply to overcome the fact that at this stage Mr N cannot establish what sum (if any) he might be due from the Scheme.

76. While I acknowledge Mr N's concern that the Trustee records appear to be incomplete, on the other side of the coin I also acknowledge that he transferred out of the Scheme some considerable time ago and that, in any event, the amount of data

kept in respect of past transfers is limited. Furthermore, I find that he has failed to show that he has incurred any loss as a result of the perceived maladministration.

77. Mr N originally contacted the Trustee to ask how the No.1 and No.3 judgments affected him. Having started that line of communication with the Trustee, and provided contact details, the Trustee agreed to keep him updated on the progress of the project. However, it did not do so. Therefore, I agree that the Trustee's failure to keep Mr N informed of progress, as it undertook both to Mr N and to TPO to do, will have caused him unnecessary distress and inconvenience.

78. I uphold Mr N's complaint in part.

Directions

79. Within 28 days of the date of this Determination, the Trustee shall pay Mr N £500 for the significant distress and inconvenience its maladministration has caused him.

Dominic Harris

Pensions Ombudsman
6 January 2025