PO-11293

Ombudsman's Determination

Applicant	Mr N
Scheme	Railways Pension Scheme (the **Scheme**): Jarvis Facilities Section (**JFS**)
Respondent	Railways Pension Trustee Company Limited (the **Trustees**)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Trustees of the Scheme

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N disputes the actions taken by the Trustees between January and September 2013, and their decision not to transfer his pension benefits from the JFS of the Scheme to the Network Rail Section (**NRS**).

4. Mr N believes that transfer restrictions should have been lifted during these two dates because the Pensions Protection Fund (**PPF**) Assessment Period had ended.

5. As a result of his benefits entering the PPF, he says he has suffered a financial loss; specifically a 10% reduction to both his annual pension and tax free lump sum.

Background information, including submissions from the parties

6. Mr N was previously employed by Jarvis Rail Limited who went into administration on 31 March 2010. (This coincides with the date that the JFS of the Scheme entered the PPF Assessment Period).

7. Mr N was, I understand, made redundant from his role at this time. He recommenced employment with Network Rail on 16 September 2010 where he was able to re-join the NRS of the Scheme.

8. Mr N first contacted the administrators of the Scheme, Railway Pension Investments Limited (known as **RPMI**) on 17 January 2011, requesting a transfer value from the JFS to the NRS of the Scheme. RPMI wrote to him on 20 January 2011, stating that

whilst the JFS was in the PPF Assessment Period, transfers were not permitted and a transfer value figure could not be provided.

9. Between 10 February 2011 and 31 March 2011, Mr N requested a number of hypothetical transfer values. RPMI informed him that whilst the JFS was in the PPF Assessment Period, he could not be provided with hypothetical figures as the information could be inaccurate and misleading. RPMI said that:

> "Schemes in a PPF Assessment Period are not normally permitted to pay transfer values, so as long as the JFS was in the Assessment Period, benefits could only be paid in line with PPF regulations."

10. On this basis RPMI could not guarantee a hypothetical transfer value would be correct. RMPI also said the PPF had said the Trustees:

> "should proceed to action transfers on the basis that, transfers could be made in respect of members who had completed all necessary steps under the sections before, 31 March 2010 to enable a transfer to be made."

11. The Section 145 Notice, dated 28 March 2013, confirmed the PPF Board approved the Section 143 valuation on 25 January 2013, and that approval became binding on 28 March 2013, in accordance with Section 145 of the Pensions Act 2004.

12. However, the PPF Board did not take responsibility for the JFS at that time because the value of its assets was less than its liabilities. Therefore, the Trustees had six months from 28 March 2013, the date of the Section 145 Notice, to make an application for reconsideration, which they did on 24 September 2013, meaning the PPF Assessment Period had technically never ended.

Adjudicator's Opinion

13. Mr N's complaint was considered by one of our Adjudicators who concluded on 25 August 2016, that no further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:

- The Trustees owe fiduciary duties to all members of the Scheme and there was no evidence they had not acted prudently in that role.

- Pension benefits under the JFS had been administered correctly in accordance with the Regulations of the Scheme, and in line with PPF regulations since the JFS had entered the PPF Assessment Period on 31 March 2010.

- Despite the views of Mr N, it was clear from the Section 145 Notice that the PPF Assessment Period had not ended; therefore, the Trustees' decision not to permit his transfer value was not maladministration.

- It was evident from recent information supplied by RPMI, which was shared with Mr N, that the Trustees had taken their fiduciary duties seriously and had acted in the best interests of all the members. They had been in active communication with the PPF since the JFS had entered the PPF Assessment Period.

- The Trustees had sought PPF transfer value approval for a number of individuals who had all transferred by TUPE in December 2009 and January 2010, which was before the PPF Assessment Period had begun in 31 March 2010. The Trustees had also contacted the PPF in February 2014, requesting some discretion to make transfer values before the PPF assumed responsibility of the JFS. Unfortunately, the PPF Board would not validate that transfer request.
- Overall, there was no evidence that the Trustees had failed in their duties "to do their best" for Mr N, and the Adjudicator gave his view that the complaint was unlikely to succeed if it was referred to an Ombudsman for a final decision.

14. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N has provided no further information or comments on this matter except that he wanted the complaint passed to myself, although, I understand that he may now have a second complaint currently with RPMI which is related to this complaint. I agree with the Adjudicator's Opinion, summarised above, but I will, for completeness, add some of my own comments.

Ombudsman's decision

15. At the heart of Mr N's complaint was the Trustees' decision not to permit the transfer of his pension benefits in the JFS to the NRS of the Scheme between January and September 2013. Mr N firmly believes that between these two dates, any restriction on transfer values should have been lifted by the Trustees and his JFS pension benefits should have been transferred to the NRS of the Scheme.
16. Mr N made a number of transfer value requests (including hypothetical values) from 17 January 2011 onwards, which was after the PPF Assessment Period had begun.
17. In my view, Mr N's transfer request would have only been possible if he had made a request prior to 31 March 2010; that is before the JFS entered the PPF Assessment Period.
18. The PPF Board determined on 25 January 2013, that it was not required to assume responsibility for the JFS as the value of its assets were less than the amount of its protected liabilities at that time. Therefore, it was not unreasonable for the Trustees to make an application for reconsideration and they had six months in which to do so.
19. From the evidence I have seen, I am satisfied that the PPF Assessment Period had not ended between January and September 2013, and under normal PPF regulations, it was correct for the Trustees not to process Mr N's transfer request.

20. I can understand Mr N’s reluctance for his accrued JFS pension benefits to enter the PPF, because those benefits are now effectively tied up until his normal retirement age, and he has no ability to transfer them elsewhere. However, that is not the fault of the Trustees; that was a direct result of Jarvis Rail Limited going into administration.

21. The Trustees have, in my view, carried out their duties correctly, and at a very difficult and distressing time in which there is often great concern from scheme members whose benefits are entering the PPF.

22. Mr N said that, “against my request”, and because his pension benefits were now the responsibility of the PPF, he had suffered a financial loss and a 10% reduction in benefits over the next 20 years (equating to £29,219).

    Although, I do not agree Mr N has suffered a financial loss as a direct result of any actions the Trustees took in not permitting his transfer request, it is correct to state that Mr N will receive 90% of what his benefits were worth before the JF Sentered the PPF, and that the compensation level (subject to any cap) will be paid by the PPF at his normal retirement age, although he has the option of postponing his retirement to a later date and receiving a higher level of compensation.

23. It is also worth mentioning that Mr N’s compensation entitlement will rise in line with inflation each year from the date his benefits entered the PPF, until his normal retirement age, or a later date if he postpones taking his compensation. His compensation will also receive annual increases once it is brought into payment.

24. Therefore, I do not uphold Mr N’s complaint.

Anthony Arter

Pensions Ombudsman
13 September 2016