

## Ombudsman's Determination

Applicant	Mr O
Scheme	ICL Group Pension Plan (the <b>Plan</b> )
Respondent	The Trustees of the ICL Group Pension Plan (the <b>Trustee</b> )

## Outcome

1. I do not uphold Mr O's complaint and no further action is required by the Trustee.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr O's complaint against the Trustee is about its decision to backdate a change to the 'Late Retirement Factor' (**LRF**) that is applied to an element of his entitlement.

## Background information, including submissions from the parties

4. The current rules of the Plan are set out in the Trust Deed and Rules dated 25 September 2013 (the **Rules**). The relevant rules are rule 42.5 and 44.5 and these are set out in the Appendix.
5. Mr O joined Fujitsu and became a member of the Plan on 3 January 1979. His date of birth is 29 September 1953.
6. In 2004 the normal pension age (**NPA**) for the Plan was changed from 60 to 65. As a result of this change, members became entitled to that part of their pension (Part B benefit) accrued before the date of the change (the **Change Date**) to be calculated with reference to a NPA of 60. The part of their pension accrued after the Change Date (Part A benefit) was calculated by reference to the new NPA, i.e. age 65.
7. An email, dated 1 February 2005, from the Trustee to the members of the Scheme says:

"ICL Group Pension Plan – Change in Late Retirement Factor (LRF)

In law the Trustees must ensure that all members are treated fairly and equally. This responsibility means that one particular category of member should not benefit from the Plan at the expense of the rest. It is clear that the

continuation of Late Retirement Factors at their current level gives an unfair benefit to late retirees. Therefore, the Trustee, having taken professional advice, has decided to change the current rate.

This note is to inform members of a decision of the Trustee of the ICL Group Pension Plan, following an actuarial review based on prevailing economic and life expectancy factors, that the Late Retirement Factor will change from the current 1% to 0.75% per month with effect from 1st April 2005.

This will immediately affect:

Those whose 60th birthday has already passed and who are currently either non-contributing or, if affected by the recent Pension Review, are earning the 1% LRF on their Part B pension

Those whose 60th birthday falls in the year ahead and who are anticipating earning the 1% on their Part B

Plan members in these categories whose 60th birthday is before April 2006, have been written to individually.

Those with 60th birthdays further off will be advised of the initial rate applying at that time when they approach their 60th birthday

**Please note that the LRF change applies from April 2005. It does not apply retrospectively."**

8. In 2011 the Plan was closed to future accrual and as a result Mr O became a deferred member on 31 March 2011.
9. In April 2016 the Trustee announced to the members that the LRF was being changed from 9% to 5.25% p.a., and the change would have immediate effect in relation to future retirements. The members were also informed that the change would not affect any retirement benefits already in payment or where the retirement process was already underway and retirement was to occur before 1 October 2016.
10. Mr O made a complaint to the Trustee and his complaint was dealt with under the Plan's internal dispute resolution procedures, but it was not upheld. So he brought his complaint to us.
11. Mr O is still employed by Fujitsu.
12. Mr O comments are set out below.
  - One of the reasons why he remained in Fujitsu's employment was the value of the LRF.

- As he is over the age of 60, not knowing the LRF which will apply between age 60 and his current age means that the value of his pension becomes more and more uncertain the closer he gets to his NRA, i.e. age 65.
- He accepts that the change in the LRF can be applied retrospectively. His complaint is that the change in the LRF is being applied from age 60 rather than from the date the announcement was made of the change.
- His annual pension as at 29 September 2016 (his 63rd birthday) is £23,738. Had the reduction in the LRF been applied from 4 April 2016 rather than backdated to his 60th birthday, the pension would be approximately £25,482. Therefore, his net loss is £1,744 a year.

13. The Trustee's comments are set out below.

- Following the Plan's actuarial valuation as at 31 March 2015, it took actuarial advice from its advisers and the Plan actuary on various actuarial factors used by the Plan. The advice received was that under the current economic conditions, a 9% p.a. LRF was too generous and a 5.25% p.a. cost neutral factor was to apply. Therefore, a decision was made in 2016 to change from 9% to 5.25% for all retirements on and from the date of the decision.
- The Rules give it discretion to set the LRF from time to time. Its decision to change from 9% to 5.25% p.a. in March 2016 was a properly taken decision under the powers in the Rules.
- Rule 42 deals with the calculation of a deferred pension at NPA (65) and rule 44 deals with the early payment of a deferred pension before NPA. Those rules require a calculation to be made at the time the pension comes to be paid.
- The Rules enable it to consider whether the Plan is overpaying Part B benefits paid after age 60, potentially to the detriment of the wider membership, and, in that context, to consider the views of the employer – whose interests it ought properly to take into account.
- It considered whether a more gradual approach could be adopted when changing the LRF – for example phasing in the change or allowing members already aged over 60 to have some of their benefits calculated using the previous factors – noting that doing so would lead to an additional financial strain on the Plan. It sought the employer's view on this. However, after careful consideration it decided not to adopt a gradual approach because it would materially increase the Plan's deficit.
- The change to the LRF has not been applied retrospectively. The change was only applied after the decision to change had been made and was effective only in respect of retirements after the date of the change. The change was made after

taking advice from the Plan actuary and lawyer, and after having consulted with Fujitsu.

- It is entirely proper, should it so decide, to apply the new LRF after the date of change to all Part B benefits for new retirees in respect of any 'Post 60 Period'. Members do not have an accrued right to any particular LRF. It is not an entitlement. The member's accrued right is to their deferred pension with revaluation and, in relation to the Part B benefit and for any period of deferment after age 60, the application of the prevailing LRF at the time the benefit is to be put into payment.
- A revision to LRF was made in early 2005 and was communicated to active members on 1 February 2005. This changed the LRF from 12% to 9% with effect from 1 April 2005. The change in 2005 was very different to the position in 2016. The 2005 change was made at the time of the switch of NPA from age 60 to 65. Prior to this change, active members with a contractual retirement age of 65 who were working beyond age 60 had a choice of: (1) keep accruing benefits until they actually retired from service; or (2) stop accruing years of pensionable service and, instead, have their pension calculated at age 60 increased by an LRF. It was decided, after consultation with the employer, that for any employee who would be age 60 before 1 April 2006, or any employee already over the age of 60, the new 9% LRF would not be applied and the old 12% LRF would continue to be applied.
- Some members, like Mr O, are disappointed by its decision. It is also mindful of the effect of the decision on such member's retirement planning. However, in light of the circumstances - in particular the additional cost and risk that would have been placed on the Plan's finances if the change was not made, it took the decision to reduce the LRF.

### **Adjudicator's Opinion**

14. Mr O's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised briefly below.

- Under rule 42.5 of the Rules the Trustee has the power to apply a late retirement increase in whatever manner it decides subject to receiving appropriate advice from the actuary.
- Following the actuarial valuation, as at 31 March 2015, the Trustee took actuarial advice from its advisers, including the Plan actuary, on various actuarial factors used by the Plan. A change of the LRF from 9% to 5.25% was made in April 2016.
- There is no prescribed manner or method for calculating LRF under the Rules. In addition, the Rules do not say that notice has to be given to members; or that a

change in the method of calculating LRF; or that the factor can only be a future change.

- There is nothing to suggest that the new LRF in 2016 has to be applied from the date it was changed. A change in the LRF for someone who is yet to draw his pension is not a change to an accrued right. Just because a member was over the age of 60 in April 2016, it does not mean that he has a right to the LRF that was applied when he was 60.
- Mr O says one reason he remained in the employment of Fujitsu was the value of the LRF. There are numerous reasons why someone would work for a particular employer or would leave their employment. Therefore, it is not possible to say whether or not Mr O would have left the employment of Fujitsu had he known that the LRF would have reduced in 2016.
- When Mr O retires, his Part B benefit will be increased, from his 60<sup>th</sup> birthday to the date of his retirement, by the LRF applicable at that time - this is not an unreasonable approach.

15. Mr O did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr O has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr O for completeness.

### **Ombudsman's decision**

16. In response to the Adjudicator's Opinion, Mr O says that the documentation and communications imply that the LRF is accrued on an ongoing basis. He compares it to a bank account with a variable interest rate, rather than a factor applied at the time of retirement to the entire period from the member's 60<sup>th</sup> birthday. In addition, he says that the Trustee's past practice, i.e. the change to the LRF in 2005 was not backdated for members over age 60, led him to believe that the LRF was on an ongoing basis.
17. There is nothing in the Rules or the communications issued by the Trustee to suggest that the LRF is on an ongoing basis. The normal practice under an occupational pension scheme is for the LRF applicable at the time a member takes their benefits to be applied to the entire period from the member's NRA (in this case age 60). Therefore, I cannot agree that the LRF is ongoing as Mr O has claimed.
18. The Trustee has explained that the change in the LRF in 2005 was not backdated for members over 60 because this change came in around the same time as the NRA of the Scheme was changed from 60 to 65. In my view, given the circumstances, it was reasonable for the change in the LRF in 2005 not to be backdated for members over age 60. I therefore agree that the change in the LRF in 2016 can be distinguished from the change in 2005.

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19. Therefore, I do not uphold Mr O's complaint.

**Anthony Arter**

Pensions Ombudsman  
25 January 2017

## **Appendix**

Rule 42.5 (Pension at or after NPA) states:

“Where all or part of the Deferred Member’s Deferred Pension is to be calculated by reference to age 60 (see definitions of Normal Pension Age and Change Date), that part of the pension shall be increased over the “Post 60 Period” by not less than such amount as the Trustees may determine, on the advice of the Actuary, to take account of the payment of that part of the pension being made after age 60.

For the purpose of this Rule 42.5 the “Post 60 Period” is that part of the Revaluation Period referred to in Rule 42.2 during which the Deferred Member is aged over 60.”

Rule 44.5 (Early Payment of Pension) states:

“For these purposes...the Deferred Member’s pension is his Deferred Pension increased in accordance with Rule 42 but:

(i) For the purpose of Rule 42.3 and Rule 42.5, using as the Revaluation Period, a period which ends on the date on which the Deferred Member’s pension is to be put into payment rather than the date on which he reaches Normal Pension Age.”