

## Ombudsman's Determination

<b>Applicant</b>	Mr Ian Loasby
<b>Scheme</b>	Mineworkers' Pension Scheme ( <b>the Scheme</b> )
<b>Respondent</b>	Trustees of the Mineworkers Pension Scheme ( <b>the Trustees</b> )

### Complaint summary

Mr Loasby has complained that the Trustees provided him with an incorrect quotation of his benefits from the Scheme and reduced his pension when the error was discovered.

### Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against the Trustees because Mr Loasby is not entitled to the incorrect pension he was receiving. The Trustees have written off the overpayment and this amounts to sufficient compensation for the loss caused to Mr Loasby.

## Detailed Determination

### Material facts

1. Mr Loasby's date of birth is 28 February 1964.
2. In the Scheme newsletter of August 2012, members of the Scheme were informed that those in receipt of their pension would not receive any pension increases until at least 2015. After 2015, the ability to pay new bonuses would depend on investment returns.
3. Shortly after his 50th birthday, Mr Loasby applied for his benefits from 3 March 2014. The Trustees told him that he was entitled to a pension of £202.73 a week or a reduced pension of £116.46 a week, plus a lump sum of £40,373.46. Mr Loasby chose the option of a pension and lump sum.
4. The Trustees say that members of the Scheme receive a pension which is guaranteed to increase annually, broadly in line with inflation. Members could also receive a "bonus pension" if the actuarial valuation shows that there is a surplus. This bonus pension is not guaranteed and is not subject to increases. If a subsequent actuarial valuation shows a deficit, the bonus pension can be converted into reducing bonuses. Once this happens, the total pension payable will only increase if there is a new surplus, or after all the reducing bonuses have reduced to nil.
5. After Mr Loasby retired, and contrary to what members were led to expect, the Trustees awarded a pension increase of 4% to members in 2014.
6. In January 2015, the Trustees discovered that a programming error had resulted in overpayments in the bonus pensions of members since September 2012. After taking legal advice, the Trustees decided to correct all future pension payments but not seek repayment of past overpayments.
7. The Trustees wrote to Mr Loasby on 16 March 2015, to inform him that his pension would be reduced from 2 April 2015. By this time, Mr Loasby's pension had increased to £119.81 a week. He was told the new amount would be £112.12 a week – a difference of £7.69 a week. The Trustees said that they were not seeking recovery of the overpayment of £422.47.
8. Mr Loasby complained on 16 March 2015, about the reduction in his pension. He said that he decided to retire at 50 based on the pension he expected to receive. He was unhappy with the response from the Scheme and commenced the Scheme's Internal Dispute Resolution Procedure (**IDRP**). The first stage of the IDRP decision was dated 7 April 2015. The Trustees said that they could only pay his correct benefits and not the incorrect higher benefits. Mr Loasby appealed and the second stage decision was issued on 27 May 2015. The Trustees upheld the decision reached at the first stage of IDRP and Mr Loasby brought his complaint to this service.

### **Summary of Mr Loasby's position**

9. Mr Loasby says that the pension figures quoted to him encouraged him to take his benefits when he reached 50.
10. He says that the decision by the Trustees to reduce his pension after the discovery of the overpayment is totally unjust and unfair. He does not see why he should lose out as a result of the Scheme making an error in calculating his pension.
11. He believes that the Scheme should continue paying his pension at the incorrect amount as he made his decision to retire, based on it, in good faith.
12. He says that he will have to increase the contributions into his defined contribution scheme, to make up for the shortfall in his benefits. The shortfall of £7.69 a week may appear small but will add up to over £9,900 if he receives his benefits for another 25 years.

### **Summary of the Trustees' position**

13. The Trustees say that Mr Loasby's pension is just £4.34 per week less than what he received at retirement. They say that he may also receive other non-guaranteed bonuses in the future which would increase his pension closer to the original amount. Besides, the overpayment arose from a bonus pension which is not guaranteed. Mr Loasby should not rely on payment of the bonus pension.
14. They say that Mr Loasby was not "encouraged" to take his pension when he reached 50.
15. The Scheme rules do not allow for the reinstatement of Mr Loasby's original (incorrect) pension. The Trustees say that they have a duty to safeguard the Scheme's assets and reinstating Mr Loasby's original pension would conflict with this duty. A decision to pay benefits above their entitlement to any member would result in such costs being met by the whole membership of the Scheme.
16. They say that they took legal advice when the error was discovered and considered all reasonable courses of action. They gave reasonable notice to members affected by the error and advised them that their benefits would be reduced going forward.
17. In their opinion, Mr Loasby has not provided sufficient evidence to qualify for compensation.

### **Conclusions**

18. Where wrong information has been given, our aim is to, as far as possible, put the applicant into the position in which they would have been, if the error had not occurred.

19. The fact that Mr Loasby received the pension benefits in error does not in itself entitle him to those sums. Members can only receive the benefits that they are entitled to receive under the rules of the Scheme. Generally, the Trustees would have a legal right to reclaim money which has been overpaid.
20. The Trustees have decided not to seek recovery of the amounts already overpaid so I do not have to consider this point. However, Mr Loasby claims that, as a defence to receiving the correct pension going forward, he has taken a decision that he otherwise would not have taken, in reliance on the overpayment.
21. Where a mis-statement has occurred, as happened when the Trustees told Mr Loasby that his pension amounted to £116.46 a week, the complaint may be upheld where the person has made financial commitments, or decisions that he would not otherwise have made had he been given the correct information.
22. The question to consider is whether it is reasonable to hold that Mr Loasby would have retired when he did, if he had been informed that his pension was actually £112.12 a week.
23. It is rarely straightforward to determine what someone might have done if presented with different information, at the time of significant personal change. This is especially so when the decision relates to leaving employment by taking early retirement.
24. Mr Loasby suggests that he would have postponed his retirement on the basis of a reduction of £4.24 per week in his pension. I say £4.24 a week (and not £7.69) because he could not have known that his pension would increase to £119.81 as a result of a new pension bonus shortly after his retirement.
25. I understand Mr Loasby's view that what appears to be such a small amount (he referred to £7.69 a week instead of £4.24 a week), can amount to a significant sum over 25 years. However, Mr Loasby fails to take into account that he may, receive bonuses which will erode this amount (as happened when his pension was increased from £116.46 to £119.81 following his retirement).
26. In any event, there is no evidence that Mr Loasby would have retired later than he did for the sake of £4.24 a week, which is the equivalent of about £16.96 a month. While it may be the case that such a decision is largely financial, the relatively minor amounts in question here are not what we would envisage as making a difference. Taking into consideration that Mr Loasby has benefitted from an overpayment of £422.47, which he does not have to pay back, this further diminishes his loss.
27. Clearly, no blame is attached to Mr Loasby. He could not have realised that his benefits had been calculated incorrectly. Nonetheless, that does not entitle him to benefit from the error.
28. I am not persuaded that Mr Loasby would have put off his early retirement for such a small weekly amount.

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29. I have considered what, if any, compensation should be paid to Mr Loasby for the loss of expectation he has experienced.
30. Usually, the Trustees would be entitled to a refund of the overpaid benefits. The Trustees have decided not to seek recovery of the overpayments and it is my view that this is sufficient and proportionate compensation for the error.
31. For the reasons given above, I do not uphold Mr Loasby's complaint.

**Anthony Arter**

Pensions Ombudsman  
23 September 2015