The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr H
Scheme	The Growth Plan (**the Plan**)
Respondent	TPT Retirement Solutions (**TPT**)

Outcome

1. I do not uphold Mr H's complaint and no further action is required by TPT.

Complaint summary

2. Mr H complained that TPT has not awarded any discretionary bonuses since 2015 on Series 1 of the Plan.

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. On 1 January 1976, Mr H became a member of the Plan.

5. On 1 October 1989, Mr H's Plan Benefit Statement was issued. The notes section of this document said:

   "In addition to the guaranteed returns, bonuses may be declared by the Committee of Management annually which will increase all earned benefits. Once declared, bonuses cannot be taken away and become themselves guaranteed."

6. On 31 October 1990, Mr H became a deferred member of the Plan. This meant that all of his pension contributions were invested into Series 1 of the Plan.

7. On 6 February 1991, TPT wrote to Mr H outlining his options regarding his deferred pension. It said the deferred pension at his date of leaving was £6,264.99 per year. It confirmed his deferred pension would:

   "…increase by bonuses declared each September up to retirement age and in payment or until you decide to transfer. The estimated pension at age 65 (assuming 6% pa increases) is £13,362.77 a year."

8. On 6 April 1997, the Pensions Act 1995 came into force. This required that pensions in payment accrued from 6 April 1997 had to be increased by the Limited Price Indexation (**LPI**).

9. From 2002 onwards, no discretionary increases were added to the Growth Plan Series 1.

10. The 2003 Trust Deed said:-

> "6.3 **Pension increases**
>
> The Table of Rates (Series 1 and 2) or pension conversion factors (Series 3) may include provision for pensions which will increase (subject to Common Rule 4.8 and Revenue Limits) by one or a combination of the following methods: …
>
> 6.3.2 **Annual Bonus**
>
> an annual bonus of such amount (if any) as determined at the discretion of the Trustee after obtaining Actuarial Advice.
>
> 6.3.2 **Limited Price Indexation (LPI)**
>
> as defined in Clause 1, in line with the increase in the Index up to a maximum of 5% per annum compound, unless otherwise prescribed. (The Index shall be measured over the 12 month period ending with the April preceding the increase in October each year unless otherwise agreed by the Administrator). This requirement will be the minimum requirement for all pensions under these Rules in respect of (a) Pensionable Service from 1st April 1997 and (b) that part of any transfer payment received attributable to employment from 1st April 1997.
>
> 6.4 **Discretionary increases**
>
> If the Trustee considers it appropriate having regard to the increase in the cost of living, the Trustee may, after obtaining Actuarial Advice, increase the amount of any pension or deferred pension by such amount as the Trustee shall consider appropriate but no such increase shall cause any pension to exceed Revenue Limits."

11. In August 2003, the 'Growth Plan Member Guide' was published. On page 14 it said:-

> "**Will my pension increase?**
>
> When you have retired, your pension (and any pensions payable after your death) will be reviewed each year. Pensions in respect of all contributions paid before October 2001 (see page 16) may be increased by a discretionary bonus if the funds held are adequate. These pension amounts are already higher because they include an agreed basic investment return."

12. On page 16, it said:-

> "**Pre-October 2001 Contributions**
>
> **If you contributed before 1 October 2001**
>
> The following additional conditions apply to all contributions paid by you or on your behalf before 1 October 2001…
>
> - **Pension:** each contribution before October 2001 was converted on receipt into an amount of pension which will be paid to you from your normal pension age. These conversion rates include agreed investment returns before and after retirement.
> - **Bonus:** a discretionary bonus (where agreed) may be added to the pension amounts secured for contributions before October 2001. This annual bonus would be smaller than the investment credit for later contributions because here 5% has already been included in the pension conversion rates (above)."

13. On 15 September 2004, Mr H started receiving pension payments from the Plan.

14. In September 2004, TPT wrote to Mr H. It said there would be no discretionary increases to his benefits payable from the Plan and explained the reasons for this decision.

15. On 2 August 2017, TPT wrote to Mr H and provided a 'Summary Funding Statement for the Growth Plan' as of 30 September 2016.

16. On 21 February 2018, TPT wrote to Mr H stating his pension would only be increased by discretionary bonuses. TPT outlined the Plan funding level.

17. On 6 March 2018, Mr H wrote to TPT saying the fund information gave the impression he would receive a 5% increase even if bonuses were not granted.

18. On 1 May 2018, TPT wrote to Mr H explaining the pension contributions received were converted into a pension using factors which assumed a return rate of 5%.

19. On 6 September 2018, TPT wrote to Mr H regarding the increases applied to the Plan. It explained that these were discretionary and why increases were not being paid.

20. On 5 April 2019, Mr H wrote to TPT regarding increases, the different treatment of the Plan's series and the technical deficit.

21. On 15 April 2019, TPT issued a letter to Mr H. This explained changes between the Series 1 and 2 Plans with respect to bonuses and increases to pensions in payment.

22. On 4 May 2019, Mr H wrote to TPT and requested further information regarding the Plan.

23. On 20 May 2019, TPT issued a letter to Mr H addressing his enquiry about the Trust assets and the increases applied.

24. On 7 June 2019, Mr H submitted his first formal complaint letter under the Plan's two stage Internal Dispute Resolution Procedure (**IDRP**) to TPT.

25. On 25 July 2019, TPT sent a 'Summary Funding Statement' document for the Plan to Mr H.

26. On 30 July 2019, TPT responded to Mr H's complaint under stage one of the IDRP. It explained:

- the factors used to calculate the guaranteed pension;
- the differences between the Series in the Plan; and
- since 2002 the Series 1 had not been able to afford to award any discretionary increases due to a number of factors.

27. On 18 November 2019, Mr H challenged the complaint outcome and requested that it be reconsidered under stage two of the IDRP.

28. On 14 January 2020, the Appeals and Discretions Committee of TPT issued its stage two IDRP response. It said:-

- The assumed rate of return used to determine Series 1 of the Plan, was not the same as pension increases made while in payment.
- There was no requirement for such increases to be made. However, the Trustee can apply a discretionary bonus, but it had not done so since 2002.
- Each of the different Series of the Plan have different rules.
- Series 1 of the Plan was in deficit and was reliant on the sponsoring employer to make additional contributions to fund the deficit. If discretionary increases were applied, this would need to be funded by the employer. Such additional funding was not mandatory under the rules of the Plan.

Adjudicator's Opinion

29. Mr H's complaint was considered by one of our Adjudicators who concluded that no further action was required by TPT. The Adjudicator's findings are summarised below:-

- The Plan documentation, such as the Trust Deed and the Growth Plan Member Guide, showed that the Trustee was able to use its discretion in applying bonuses. None of the literature said increases in bonuses were guaranteed for Series 1.

- A bonus declaration was a statement of what, if any, bonuses were being added. It was not a guarantee that the declaration would be positive, as it was possible to declare a nil bonus, which had been the case since 2002.

- The 2003 Trust Deed said any annual bonuses would be applied at the discretion of the Trustee after taking actuarial advice. The 2003 Growth Plan Member Guide explained discretionary bonuses might be applied if the funds held were adequate. So, if the funds held were not adequate, it would be unlikely that discretionary bonuses would be added.

- The Plan was in deficit on a technical provisions basis. So, there was insufficient funding to meet the on-going liabilities of the Plan. The Trustee was required to manage the Plan for the benefit of all members. If discretionary increases were awarded, this would be likely to increase the Plan's deficit. This in turn could adversely impact the other members of the Plan.

- The Trustee is required to have regard for the employer's on-going financial viability. The employer was making deficit reduction contributions to fund the existing liabilities. Increasing the costs on the employer when there was an existing funding deficit, was likely to adversely affect the employer's financial viability.

- There was no obligation on the employer to fund annual bonuses, only to ensure the Plan was fully funded to meet the expected liabilities. So, there was no basis for asking for the employer to make further payments.

30. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H provided his further comments which do not change the outcome. In summary, he said:-

    - When legislation was made to add the cost-of-living increases to pensions, TPT recognised a loophole to avoid paying increases to Series 1 Growth Plan members. There was no valid reason for not paying the cost-of-living increases. This had caused a considerable loss of income over a prolonged period of time, particularly when compared to the predicted estimate based on a final salary when joining the Plan.

    - TPT subsequently introduced Series 2 and therefore avoided a responsibility of care to its members as defined by the original Trust Deed.

    - He had previously received increases to his pension as well as healthy bonus forecasts.

    - The Trustee had agreed to pay increases.

    - Series 2 was able to receive increases, but Series 1 was being left to carry the deficit of the whole Plan

31. TPT agreed with the Adjudicator's Opinion.

Ombudsman’s decision

32. Mr H complained that the cost-of-living increases were not applied to Series 1 of the Growth Plan but were applied to Series 2 (and subsequent Series). He considers that this caused him a financial loss and did not match his expectations when he joined the Plan.

33. Mr H became a deferred member of the Plan in October 1990. He did not start taking his pension benefits until September 2004. The cost-of-living increases Mr H referred to relate to the LPI increases which were required by the Pensions Act 1995. These applied to pensions in payment at that time.

34. Series 2 of the Plan was introduced to take account the requirements of the Pensions Act 1995 to provide LPI increases. Mr H was not a member of Series 2 of the Plan. Section 6.3.2 of the 2003 Trust Deed is clear that LPI increases would only apply to pensionable service from 1st April 1997 onwards. Mr H was not an active member after this date. So, I find that Mr H had no entitlement to any LPI increases to his pension. Further, I do not consider that this is a ‘loophole’ that TPT has exploited, as TPT was required to administer the Growth Plan in accordance with the relevant legislation.

35. I acknowledge that Mr H considers that the lack of application of LPI increases to his pension will result in a loss of income over time. I find that there was no provision for these increases to be applied retrospectively. Such provision did not form part of the Trust Deed applicable to Series 1.

36. Mr H said he had previously received increases to his pension as well as healthy bonus forecasts. The forecasts Mr H was provided were not guarantees that these amounts would be paid. Whilst there was an intention for bonuses to be added to Series 1, these were dependant on the investment performance of Series 1. The returns will have been assessed by an Actuary who would have advised the Trustee whether it was possible for bonuses to be paid.

37. As Series 1 has been in deficit on a technical provisions basis, there is insufficient funding to pay the pension benefits to members as they fall due. The Trustee must consider the impact that paying bonuses would have on the ongoing solvency of Series 1. The Trustee’s main responsibility is to meet the funding requirement of its contractual liabilities, such as paying the pensions, not to award discretionary bonuses which are ordinarily paid out of a surplus.

38. Mr H said that Series 1 is being left to carry the deficit of the other Series in the Plan. However, Mr H has not provided any evidence to substantiate this assertion. Each Series of the Plan has different rules, so it is unlikely that Series 1 is being used to fund or cross-subsidise any of the other Series of the Plan.

39. I do not uphold Mr H’s complaint.

Anthony Arter

Pensions Ombudsman
28 September 2022