

Ombudsman's Determination

Applicant	Mr T
Scheme	Hewlett-Packard Limited Retirement Benefits Plan – The Digital Section (the Plan)
Respondent	Hewlett Packard Enterprise (HPE)

Outcome

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

Complaint summary

2. Mr T complained that in 2017, 2018 and 2019, the sponsoring employer of the Plan, HPE, wrongly decided not to award annual increases to his pension in payment.
3. Mr T is seeking a one-off lump sum payment to compensate for the nil increases.

Background information, including submissions from the parties

4. Mr T became a member of the Philips Pension Fund (**the Philips Fund**), a defined benefit pension scheme, on 27 February 1989.
5. On 29 February 1992, the Philips Fund's sponsoring employer was purchased by Digital. The Philips Fund was closed to future accrual and Mr T became entitled to deferred benefits. A new defined benefit pension scheme, the Digital Pension Plan (**the Digital Plan**), was created to provide benefits for future service.
6. Mr T was offered three options for his deferred benefits: remain as a deferred member of the Philips Fund; transfer to the Digital Plan; or transfer out and purchase a deferred annuity contract, also known as a Section 32 policy (**S32**).
7. Mr T received documentation from his employer explaining the differences between the three options. A steer was given towards transferring to the Digital Plan, being the best option for most members. The documentation confirmed that the Digital Plan and the Philips Fund were broadly similar, with some key differences being set out in the document.

8. The documentation set out how increases to pensions in payment were different between the two schemes. The Philips Fund was guaranteed to rise with the Retail Price Index (**RPI**) up to 5% per annum, while the Digital Plan was subject to discretionary increases agreed by the sponsoring employer.
9. Mr T elected to transfer his deferred benefits to the Digital Plan.
10. The Digital Plan subsequently merged with the Hewlett-Packard Limited Retirement Benefits Plan to become the Plan.
11. Mr T became a deferred member of the Plan on 31 January 1993 when he left his employment. He became a pensioner member in January 2016 when he began receiving a pension of £8,976.36 per annum. Since his retirement there have been no discretionary increases made to his pension.
12. After three years of receiving no pension increases, Mr T complained to the Trustee of the Plan (**the Trustee**) on 22 July 2019 and to HPE on 8 August 2019.
13. The Trustee informed Mr T that discretionary pension increases were awarded at the sole discretion of the principal employer, not the Trustee. The Trustee wrote to HPE annually to put forward a case for a discretionary increase, but HPE had ultimate discretion on when and if any increases could be awarded. The Trustee did not uphold his complaint.
14. HPE explained that Mr T's benefits were in respect of pensionable service before 6 April 1997. This meant automatic increases to pensions in payment, as set out in section 51 of the Pensions Act 1995, did not apply to his pension.
15. HPE also confirmed that the relevant Plan Rule for Mr T's pension increases was Rule 12.2.4 in the Trust Deed 2008, which states that:

“Pensions will be reviewed by the principal employer at least annually and may be further increased by such amount and at such times as the principal employer decides, acting on actuarial advice”.
16. HPE did not uphold Mr T's complaint. In support of its position, HPE also cited a previous complaint case from 2014. In that case The Pensions Ombudsman (**TPO**) received a similar complaint regarding discretionary pension increases against the Trustee of the Plan and Hewlett-Packard Limited, the sponsoring employer. In that case the Deputy Pensions Ombudsman (**the DPO**) reviewed discretionary pension increases in 2011, 2012 and 2013. The DPO did not uphold that complaint.
17. HPE has said that it received actuarial advice before deciding on whether to apply pension increases to the Plan in 2017, 2018 and 2019. Each year the advice considered typical market practice for comparable schemes, and the cost implication of applying an increase. Senior managers at HPE, including the Pensions Manager and Directors of Human Resources and Finance, discussed the actuarial advice, and after taking this and other factors into account, decided not to apply increases in 2017, 2018 and 2019.

Adjudicator's Opinion

18. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by HPE. The Adjudicator's findings are summarised below:-
- The Plan Rules set out the process for awarding pension increases. As Mr T's benefits were accrued prior to 6 April 1997 there were no automatic increases payable and any discretionary increases were at the sole discretion of the principal employer, after acting on actuarial advice. This means that the Trustee has no formal input into the decision, although it is to be noted that the Trustee does write to HPE annually to request an increase on behalf of members.
 - The only requirement regarding the decision to award discretionary increases stipulated by the Plan Rules is that the decision maker seeks actuarial advice before making any decision. The Plan Rules do not define actuarial advice, nor do they bind the decision maker to following that advice. Senior managers at HPE did receive actuarial advice and they discussed whether to award discretionary increases in 2017, 2018 and 2019. Based on the actuarial advice and internal discussions they decided not to award pension increases.
19. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T provided further comments, which are, in summary:-
- Part of his original complaint had not been fully considered. In February 1992, he had been guided by pension documentation to accept the transfer to the Digital Plan on the basis that it would be at least as financially beneficial as the Philips Fund, which has been proven not to be the case.
20. HPE did not submit any further comments for consideration.
21. I note the additional point raised by Mr T, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

22. Mr T has commented about part of his original complaint not having been fully considered in the Adjudicator's Opinion. This was in respect of him having been guided by pension documentation in 1992 to accept the transfer to the Digital Plan on the basis that it would be at least as financially beneficial as the Philips Fund. Mr T stated that this been proven not to be the case.
23. However, TPO set out the extent of the complaint that it agreed to investigate in a jurisdiction letter emailed to Mr T on 9 July 2021. This letter set out that the complaint accepted was in relation to the lack of annual pension increases from 2017. This was acknowledged and agreed by Mr T the same day. This letter did not include the part of Mr T's complaint about being guided to the Digital Plan in 1992.

24. The reason for this is that this part of Mr T's complaint is not within my jurisdiction. My jurisdiction is set out in Part X of the Pension Schemes Act 1993 and the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (**the Regulations**). Regulation 5(1) of the Regulations specifies that I can only investigate a complaint if it is submitted within three years of the original act or omission that the complaint arises from. Mr N stated that the original act occurred in 1992 when he claims he was guided to the Digital Plan. This complaint is outside of my jurisdiction under Regulation 5(1).
25. Regulation 5(2) sets out that I can consider a complaint outside of the 3 years of the act or omission if it is brought to me within three years of the earliest date that the applicant knew or ought reasonably to have known of its occurrence. Mr T was given information about the difference between the Phillips Plan and the Digital Plan in 1992, including the difference in the increases. So, it could be argued that in 1992, Mr T knew or ought to have known about the difference in the increases and possibility there would not always be an annual increase. However, I acknowledge that Mr T has said that the impact of this did not become apparent until after he retired. Mr T received his first pension increase letter from the Trustee in March 2016. This informed him that he would not be awarded a discretionary pension increase with effect from 6 April 2016. This is more than three years before he submitted his complaint to TPO in March 2020, so his complaint, in respect of the first pension increase letter, is also outside of my jurisdiction under Regulation 5(2).
26. Regulation 5(3) of the Regulations allows some discretion where a complaint is brought within a further reasonable period outside of the three-year time limit. This discretion is only used in limited circumstances where the delay is outside of the applicant's control, or they are prevented from bringing it sooner due, for example, to severe ill health. I have seen no evidence that Mr T meets these requirements. His complaint about the events that occurred in 1992 is out of time for the purposes of my jurisdiction and I cannot consider it.
27. I am able to consider Mr Ts complaint against HPE that it has not awarded increases to his pension in payment in 2017, 2018 and 2019, as these events fall within three years of it being submitted to TPO.
28. As Mr T's benefits were accrued prior to 6 April 1997 there were no automatic increases payable, and the Plan Rules set out that any discretionary increases were at the sole discretion of the principal employer.
29. The only requirement regarding the decision to award discretionary increases stipulated by the Plan Rules is that the decision maker seeks actuarial advice before making any decision. Senior managers at HPE did receive actuarial advice and they discussed whether to award discretionary increases in 2017, 2018 and 2019. Based on the actuarial advice and internal discussions they decided not to award pension increases. I find that HPE acted within the Plan Rules in respect of awarding pension increases.

30. While I sympathise with Mr T's position, particularly in light of the current financial crisis, I am unable to consider the part of Mr T's complaint in relation to the events that occurred in 1992 and there are no grounds upon which I can uphold the complaint about the lack of increases applied to his pension in 2017, 2018 and 2019 for the reasons set out in paragraphs 28 and 29 above.

I do not uphold Mr T's complaint.

Anthony Arter

Pensions Ombudsman
3 November 2022