

Ombudsman's Determination

Applicant	Mr L
Scheme	Hewlett-Packard Limited Retirement Benefits Plan: Digital Section (the Plan)
Respondent	Hewlett Packard Enterprise (HPE)

Outcome

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

Complaint summary

2. Mr L's complaint concerns HPE's decision not to award annual discretionary increases to his pension in payment (**his Pension**), for several years, as his benefits in the Plan were accrued prior to 6 April 1997 (**Pre 97 Benefits**). He is also unhappy that HPE has not provided reasons for its decision not to do so.

Background information, including submissions from the parties

3. Mr L was employed by Digital Equipment Company Ltd (**DEC**) from 1978 to 1994, when he was made redundant at the age of 55. DEC was acquired by Compaq Computers (**Compaq**) in 1998 and in 2002, Compaq was acquired by HPE.
4. Section 51 of The Pensions Act 1995 (**the 1995 Act**) made it a statutory requirement for pensions in payment that relate to rights accrued on or after 6 April 1997 (**Post 97 Benefits**) in an occupational pension scheme to receive annual increases.¹ However, there is no requirement in the 1995 Act to increase pensions in payment, in excess of a member's guaranteed minimum pension (**GMP**), where the pension relates to rights accrued prior to 6 April 1997 (i.e. Pre 97 Benefits). However, pension schemes were able to provide more generous increases, beyond these statutory requirements, if they wanted to – which would be set out in the rules of the scheme.
5. Mr L is a pensioner member of the Plan.

¹ <https://www.legislation.gov.uk/ukpga/1995/26/section/51>

6. On 21 May 2021, HPE wrote to Mr L. This letter said:

“Following a review, the company has decided that no discretionary increase will be provided this year.”

7. Following this letter, there were exchanges between Mr L and HPE concerning HPE’s decision not to award increases to Pre 97 Benefits.

8. In April 2022, HPE wrote to pensioner members of the Plan and said:

“The company has decided a discretionary increase of 3% will be applied to the Non-Qualifying Portion of your Pre ‘97 pension provided this year...”

9. On 31 May 2022, Mr L made a complaint to HPE under the Plan’s Internal Dispute Resolution Procedure (**IDRP**). In summary he said:-

- He was complaining about the fact he had Pre 97 Benefits with DEC and that HPE had unfairly discriminated against him by not awarding increases to his Pension in line with increases awarded to members with Post 97 Benefits.
- HPE’s failure to apply increases to his Pension had resulted in a very considerable and declining standard of living which had reached a situation of deep concern regarding his financial wellbeing, and that of his wife, in his remaining years.
- Appeals to HPE for fair and equal treatment and a justification for HPE’s covert policy in this respect, appeared to have been ignored.
- HPE’s president had said that everybody should treat others equally, so this was what he was asking for.

10. On the same date, the Plan’s pension manager replied to Mr L and said:

“As the subject of your complaint is not an issue that concerns any actions taken by the Trustee, but rather one relating to an exercise of the company’s discretion, the IDRP is not the appropriate route to bring a complaint. As such, the Trustee will not be taking action under the IDRP.

The issue you raise has been addressed in correspondence between you and the company over some years, so I believe you are fully aware of the company’s position.”

11. On 13 June 2023, HPE sent an email to Mr L, in response to an email Mr L had sent to it on 5 June 2023. The email said in summary:-

- He had previously raised the issues on numerous occasions and it had previously responded to explain and clarify its position.² Its position remained that it did not

² HPE provided copies of numerous correspondence between Mr L and itself between March 2022 and July 2022.

accept the complaint had merit, and it rejected that it was acting in an unlawful, unethical and/or discriminatory manner.

- As confirmed by The Pensions Ombudsman (**TPO**) in previous determinations, it had fully complied with all applicable UK pension laws and the Plan Rules (**the Rules**). This included conducting appropriate and proper annual reviews in respect of discretionary increases, which included meeting with the Trustee of the Plan (**the Trustee**) to enable the Trustee to make representations on behalf of the pensioner members. This position was also confirmed by the Government in the UK Parliament in March 2017.
 - In respect of the factors it considered, it had previously stated those could not be shared with him due to the confidential nature of that information.
 - Its actions did not amount to age discrimination as he had alleged. This was confirmed by the Employment Tribunal when it dismissed his claim on 1 June 2023.
 - Where it determined it appropriate to grant and provide a discretionary increase it did so, as evidenced most recently by the discretionary increase that was applied from April 2022.
 - It would continue to act in good faith and to give this matter due and appropriate consideration as part of the annual review process.
12. Subsequently, there were further exchanges between Mr L and HPE concerning this matter and Mr L then referred his complaint to TPO.
13. Following Mr L's referral of his complaint to TPO, Mr L and HPE provided further comments to TPO. These comments have been summarised later in this Determination.
14. In 2024, HPE wrote to pensioner members of the Plan. The letter said in summary:-
- It had determined that no discretionary increases would be granted that year. This followed its usual annual review, including representations by the Trustee, where careful consideration was given to the matter and various factors were taken into account in reaching this decision.
 - The factors it considered could change over time as well as the weighting given to them. As is the legal requirement, it would continue to review whether to award a discretionary increase annually.

Summary of Mr L's position

15. Mr L provided a copy of an extract of the meeting minutes between Hewlett Packard Pension Association and the Trustee, dated 15 August 2024. He also provided a summary of requests from the Trustee to HPE, between November 2020 and October 2023, for HPE to award increases to Pre 97 Benefits. In addition, he provided a

financial costs and affordability summary, and also made some comments which have been summarised below:-

- The Rules permit increases at HPE's discretion. It was custom and practice by both DEC and Compaq to pay increases annually to all pensioners based on the Retail Prices Index.
- The 1995 Act did not include any guarantees regarding cost of living increases for pensioners with Pre 97 Benefits. HPE has exploited this loophole in the 1995 Act and the discretionary nature of the Rules, to decide that it would not pay increases for Pre 97 Benefits. However, it pays regular increases to pensioners with Post 97 Benefits.
- HPE had not awarded increases to pensioners with Pre 97 Benefits for 18 years. The annual recommendations from the Trustee and actuaries have been consistently ignored by HPE. The increase of 3% paid in 2022 was made by the Trustee and not HPE.
- HPE has declined to explain the reasons for no discretionary increases being applied to Pre 97 Benefits, or to justify its decision not to do so. HPE's finances are sound and there is no affordability problem.
- He has suffered a loss in the value of his pension by approximately £250 per annum. He would like HPE to provide discretionary increases to Pre 97 Benefits. HPE's covert policy of non-payment of increases has cost him over £112,000 plus interest, and caused him to continue working in his 80s.
- He suggests that HPE had acted and continues to act, in an appalling and disingenuous manner towards members with Pre 97 Benefits over many years. It has bent the rules to save substantial costs from increasingly impoverished former employees. It was clear that HPE had a covert and avaricious policy of non-payment and exploited the shortcoming of the 1995 Act.
- Based on the financial cost and affordability summary, there was no question of an affordability issue and an increase of 5%³ would hardly be material in the overall financial reports. An increase of 5% would be equal to just 3% of the remuneration of HPE's top six executives.
- If HPE was honest and open, it would publish minutes of its review meetings, and would set out and justify the reasons for rejecting the advice of the Trustee each year. HPE refuses to do so, and he suggest this is unacceptable from a prosperous international organisation that claims to be one of the world's most ethical companies. The annual review is a forgone conclusion and amounts to a cruel charade.

³ Mr L stated this was the percentage awarded to pensioners with Post 97 Benefits.

- HPE is guilty of targeted discrimination against a vulnerable group of pensioners, treating them unfairly compared to other groups of pensioners, solely because these pensioners do not have any protection under UK law and the Rules do not give any guarantee.

Summary of HPE's position

16. HPE provided copies of extracts from Trustee minutes from 2015 to 2020, along with copies of company documents from 2022 onwards referring to meetings where the matter of discretionary increases was discussed. It also made some additional comments and these have been summarised below, in paragraphs 17 to 31.
17. Prior to 2022, decisions regarding non-statutory increases were taken on HPE's behalf by relevant individuals; namely the Finance Director and HR Director, sometimes with input from the Head of Rewards. The Pensions Manager was present at those meetings and would provide information including input from the Trustee regarding increases and a summary of actuarial advice provided by both HPE and the Trustee's actuarial advisers.
18. The Pensions Manager was not part of the decision-making process but there to provide information to the decision makers. Minutes of those meetings were not taken. This was the approach taken for approximately 20 years prior to 2022, certainly at least back to 2015.
19. HPE's decisions, both prior to and effective from April 2022, were shared by the Pensions Manager at Trustee meetings. So, it provided relevant minutes of Trustee meetings to TPO, as they contained updates from the Pensions Manager regarding decisions on the discretionary increases. The minutes of those meetings reflected a contemporaneous record of the decisions taken on behalf of HPE.
20. The decision advised to the Trustee was then communicated to pensioners by either the Trustee or, latterly, HPE.
21. There are numerous different tranches of pension provided within the Plan, some of which receive annual increases under the Rules and/or statutory increases.
22. It is only obliged to review, rather than increase, Pre 97 Benefits annually. It had considered whether to increase Pre 97 Benefits, in accordance with the Rules. It did exercise its discretion to award increases to such benefits in 2022. Discretionary increases were also applied in 2004 and 2008.
23. The current Rules, in respect of Digital Section members, provide for annual increases to pensions in payment in respect of Post 97 Benefits,⁴ in excess of GMPs, which are increased as required by legislation. This is consistent with the legislative requirements. There is, in addition, a requirement under Rule 12.2.4 that:

⁴ Rule 12.2.2 as detailed in the Appendix.

“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.”

24. Under this rule, HPE had carried out its obligations but had often exercised its discretion not to award any increases to Pre 97 Benefits. In carrying out its review each year HPE considered representations from the Trustee, as those were considered a relevant factor. It also regularly engaged with the Trustee in relation to the Plan, providing opportunity for concerns to be raised by the Trustee on behalf of all members. It did not follow a rigid formula or set of metrics/criteria when carrying out its review. Its obligation is only to review pensions in payment, rather than to apply increases, and it is entitled to act in its own interests when doing so.
25. Its discretionary increase power was considered in previous Pensions Ombudsman’s Determinations.⁵ While those Determinations do not set a precedent that need necessarily be followed in future complaints, they acknowledged that the only restriction was that actuarial advice was taken, with no requirement that HPE acted in accordance with it and that HPE was entitled to consider other factors.
26. It was well established that in the exercise of a discretionary power the decision maker must consider all the relevant factors while excluding those that were not relevant, and provided it had done this and not exercised its discretion in a manner that was irrational or perverse, then any decision must stand unchanged. It was also well established that a decision maker did not need to give reasons for its decision.
27. While the establishment of common practice was not claimed by Mr L as part of his complaint, it was also noted in a previous Pensions Ombudsman decision⁶ that the exercise of a discretion, even if repeated consistently over a number of years, did not by itself create an obligation on the party to continue to exercise that discretion in a similar way going forward.
28. The exercise of discretion by a scheme employer was also considered in *Prudential Staff Pensions Limited v The Prudential Assurance Company Limited* [2011] EWHC 960 (Ch) (**Prudential**). In *Prudential*, the employer had decided to impose a cap on discretionary increases in respect of pensionable service prior to 6 April 1997, and it was argued that this decision was a breach of the employer's obligation of good faith.
29. It was decided in *Prudential* that:
 - the power to grant discretionary increases (in these circumstances) was not a fiduciary power;
 - the employer was entitled to have regard to its own interests in exercising its discretion to award increases, notwithstanding strong expectations that the previous practice of granting increases would continue;

⁵ PO-4065 and CAS-43873-Q5Q2

⁶ PO-4065

- the obligation of good faith is not to be taken as requiring an employer to arrive at a decision which is substantively “fair” when exercising a power given to him in apparently unfettered terms by pension scheme rules; and
 - it was not necessary for the employer to engage “in genuine negotiation” with the trustees of the scheme as the discretion was the employer’s alone.
30. So, it was clear from *Prudential* that where a sponsoring employer has an absolute discretion in relation to a pension scheme, and in particular in relation to awarding discretionary increases, it was free to consider its own interests, had no requirement to negotiate the exercise of its discretion and was not bound by previous exercises of that discretion.
31. HPE had always acted in accordance with the Rules.

Adjudicator’s Opinion

32. Mr L’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 in paragraphs 33 to 42:-
33. As part of his submissions to TPO, Mr L asserted that HPE had discriminated against him. At an earlier stage in TPO’s investigation process, Mr L was informed that TPO would not investigate his complaint concerning discrimination as this element of his complaint had been previously decided in an Employment Tribunal case.
34. Consequently, the Adjudicator only investigated Mr L’s complaint about HPE’s failure to add increases to his Pension.
35. The 1995 Act placed an obligation on occupational pension schemes to apply annual increases to pensioners’ Post 97 Benefits. The 1995 Act was silent on whether increases should be applied to Pre 97 Benefits. So, in most cases this meant that trustees/employers were not required to increase Pre 97 Benefits unless the scheme’s rules contained provision to do so.
36. The Rules only prescribe for annual increases to be applied to members with Post 97 Benefits. Rule 12.2.4 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.”
37. HPE has explained that it adhered to the Rules in this regard. It also said that it considered what the Trustee had said in relation to such benefits before deciding whether or not to apply discretionary increases.
38. In the Adjudicator’s view, HPE considered relevant matters before deciding whether or not to award discretionary increases to Pre 97 Benefits. Although the Trustee had

recommended to HPE that it awarded discretionary increases to Pre 97 Benefits, HPE was not obliged to follow the Trustee's recommendation.

39. The Adjudicator appreciated Mr L's disappointment that HPE had not consistently applied discretionary increases to his Pension for a number of years. However, HPE's decision not to do so did not amount to maladministration. This was because a discretionary benefit was not guaranteed, and neither the Rules nor legislation placed an obligation on HPE to award such increases to Pre 97 Benefits.
40. The Adjudicator accepted that it would have been helpful for Mr L's understanding if HPE had explained why it had made the decision not to award discretionary increases in its letters prior to 2024. However, HPE's failure to do so did not amount to maladministration as there was no legal requirement for it to do so.
41. The Adjudicator noted that HPE did explain, in 2024 why it had made the decision not to award any discretionary increases to Pre 1997 Benefits in the same year.
42. Consequently, it was the Adjudicator's view that this complaint should not be upheld.
43. Mr L did not accept the Adjudicator's Opinion and in response reiterated comments that he had made in earlier submissions to TPO.
44. As Mr L did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Mr L's further comments do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

45. Mr L's complaint concerns HPE's decision not to consistently award discretionary increases to his Pension.
46. However, a discretionary benefit is just that. It does not place an obligation on a trustee or a company to pay those benefits to members consistently. So, as long as the trustee or employer of a pension scheme applies their discretion in accordance with the scheme rules and follows a proper process, I will not be able to make a finding of maladministration.
47. In this case, Rule 12.2.4 of the Rules sets out what is required in relation to the award of discretionary increases, (see paragraph 23 above). HPE has stated that it has fulfilled its obligations in this regard and I have not been provided with evidence to the contrary.
48. Based on what HPE has said and in the absence of any contradictory evidence, I consider that HPE has adhered to the Rules and met its duties of good faith in relation to the award for discretionary increases.
49. I do not find there has been any maladministration in relation to HPE not consistently applying increases to Pre 97 Benefits.

CAS-74325-Z1Q4

50. I do not uphold Mr L's complaint.

Dominic Harris

Pensions Ombudsman
21 August 2025

Relevant extract of the Hewlett-Packard Limited Retirement Benefits Plan - Digital Section, dated 22 August 2019

"12 General rules about pensions

...

12.2 Dates of increases

...

12.2.2 Rates of increases

Any part of a pension in payment that is attributable to Pensionable Service on or after 1 July 2005 will increase in each year by the lower of:

- (i) 2.5% per annum; or
- (ii) the increase in the retail prices index over a 12-month period ending on 31 January.

However, any part of a pension in payment that is attributable to Pensionable Service between 6 April 1997 and 1 July 2005 will instead increase by the lower of:

- (a) 5% per annum; or
- (b) the increase in the retail prices index over a 12 month period ending on 31 January.

However, it may be that a Member has paid additional contributions under Rule 3.2.2 (additional contribution for a 5% LPI Member). If so, the above increase applying to Pensionable Service between 6 April 1997 and 1 July 2005 will also apply to a pension in payment attributable to such periods of Pensionable Service after 1 July 2005.

In the case of a member who joined the Plan before 6 April 1997, any Member's pension under Rule 4.4 (early retirement through Incapacity) and any pensions payable on a Member's death in Service will be treated as attributable to Pensionable Service on and after 6 April 1997, except to the extent that they are attributable to actual Pensionable Service before that date.

If an interval between increases is less than 12 months, the increase will be an appropriate proportion of the full increase described above.

..."