

Ombudsman's Determination

Applicant	Mr H
Scheme	P&G Scheme (the Scheme)
Respondents	The trustees of the Scheme (the Trustees) and P&G

Outcome

1. I do not uphold Mr H's complaint and no further action is required by the Trustees or P&G.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr H's complaint is about: (1) the annual increases applied to his pension since April 2015; (2) the delay in providing the calculations he requested in June 2015; and (3) the handling of his complaint by the Trustees and P&G.

Background information, including submissions from the parties

4. Mr H was employed by P&G in July 1977 and he joined the appropriate pension scheme. During the time he was employed by P&G, a number of acquisitions were made and the pension scheme of which he was a member was eventually merged into the Scheme.
5. Under the rules of the Scheme (the **Rules**), it is up to P&G to review from time to time increases to post-retirement pensions and direct the Trustees to make any increases. The Rules were not amended when the Pensions Act 1995 came into force to differentiate between increases that applied to pensions accrued prior to 5 April 1997 (**Pre-1997**) and from 6 April 1997 onwards (**Post-1997**).
6. Mr H retired in 2003 and started to receive his pension from the Scheme. At the time he retired, the annual increases to his pension, which were effective from 1 August each year, were:
 - in respect of Pre-1997 pensions, increases at the discretion of P&G, which were at the same rate as those applied to Post-1997 pensions; and

- in respect of Post-1997 pensions, increases calculated according to the increase in the Retail Prices Index (**RPI**) capped at 5%, i.e. in accordance with the prescribed statutory minimum for the relevant period.
7. In 2011, the Government changed the index, from RPI to the Consumer Prices Index (**CPI**), to be used in relation to the prescribed statutory minimum for increases applicable to Post-1997 pensions.
 8. A leaflet was sent in April 2015 (the **2015 Leaflet**) to Mr H (and all other pensioners with pensionable service prior to 6 April 1997) explaining the change to the level of increase applicable to Pre-1997 pensions with effect from 1 April 2015. The change was that these pensions would increase by 50% of the increase to the CPI, capped at 2.5%. The 2015 Leaflet also said that increases to the Post-1997 pension would be as specified in the Rules.
 9. There was an exchange of emails between Mr H and P&G/the Trustees in April and May 2015. He objected to increases being based on CPI rather than RPI.
 10. On 4 June 2015, Mr H informed the Trustees by email that he wished to make a complaint through the Scheme's internal dispute resolution procedures (**IDRP**). He also raised queries about his pension. Initially he was informed that it would take 5-7 working days to provide the information he had requested.
 11. Throughout July and August 2015, Mr H chased the Trustees for the information he had requested. The Trustees responded saying that the calculations were complex and apologised for the delay.
 12. On 29 August 2015, Mr H submitted his stage one IDRP application.
 13. On 25 September 2015, the Trustees provided Mr H with a breakdown of the calculations he had requested.
 14. On 28 October 2015, he was given a stage one IDRP decision. The decision was not to uphold his complaint. When giving this decision, his employment start date was incorrectly stated but he was given an apology for this.
 15. Mr H immediately submitted an application for his complaint to be considered under stage two IDRP. He was given a decision on 5 January 2016. The decision, once again, was not to uphold his complaint.
 16. Mr H says:
 - He does not consider that the Rules should be changed without the members being involved.
 - The Government changed the index from RPI to CPI in 2011. P&G followed this change but decided to an even bigger cut by awarding half of the CPI increase.

- He was initially informed that his request would be answered in between 5 to 7 days, but it took 3 months. So why can't he charge P&G for the dozens of hours he spent composing, sending and reading emails?
- Why was the Pensions Act 1995 put into practice in 2015 and implemented at 0.1%?
- The fact that the Rules can be changed at the discretion of P&G is disgusting and deceiving.

17. The solicitors acting for the Trustees and P&G say:

- The Trustees have no power under the Rules to intervene in respect of increases to Pre-1997 pensions in relation to Pure PG Section Members. The discretion to provide any increases (at whatever level) resides solely with P&G. Furthermore, Mr H has not established a legal right to increases that would compel the Trustees granting him increases over and above those specified in the Rules.
- P&G considers that the Rules are clear in providing that the discretion as to whether to grant increases in relation to Mr H's Pre-1997 pensions resides solely with them.
- In the period prior to the late 1980s, P&G would regularly, but not necessarily annually, consider and determine to exercise its discretion under the Rules to award increases on Pre-1997 pensions earned by members. Since the late 1980s, P&G has awarded increases annually on Pre-1997 pensions earned by members.
- At each review, P&G considers a variety of factors. These include the prevailing levels of inflation, general market trends, the cost of providing discretionary increases (taking into account their obligations to contribute to the Scheme for future service and to address funding deficits), and what other companies of a similar size and ranking in the UK were doing in relation to Pre-1997 pension increases.
- Taking into account all factors, P&G's determination in each of the years from 1997 to 2014 was to grant a discretionary increase on the whole of a member's pension at the same rate as that which was applied to Post-1997 pensions.
- In considering what (if any) discretionary increase would be applied in 2015, P&G considered the same factors they had considered in previous years. In doing so, they obtained advice from external advisers. The advice was that very few of these companies were by 2015 awarding any level of discretionary increase on Pre-1997 pensions. If they had followed the example set by these companies, they would have reduced the Pre-1997 pension increases to 0%. Instead, they awarded a discretionary increase, but at a reduced level compared to previous years – which was 50% of CPI.

- Mr H first raised the Pre-1997 pension issue in an email on 30 April 2015. Further emails were sent by him in May 2015 (4th, 5th, 6th and 11th), in which he made reference to the fact that his spouse's pension would, in his view, be 45% of his pension rather than 50% in the event of his death. He was sent a response to the Pre-1997 pension issue on 6 May, stating the Trustees position and confirming that the spouse's pension issue would be investigated.
- Mr H sent an email to P&G on 11 May 2015, complaining about both the Pre-1997 pension issue and the spouse's pension issue. P&G took the primary role to respond to these issues. There was a regular exchange of correspondence with Mr H, updating him as to the progress in providing calculations in respect of his own and the spouse's pension over the period to 25 September 2015, when ultimately this information was provided.
- The reason it took until 25 September 2015 to provide the calculations were: (1) the calculations were very complicated and there was a desire to ensure that the details provided to him were absolutely correct; (2) Capita, as administrators to the Scheme, hold only the "end result" of the calculations and not the underlying calculations, which were first carried out by IBM, the previous administrators to the Scheme; (3) a significant amount of work was needed over the summer holiday period for Capita to replicate the calculations originally carried out by IBM, and to work with the relevant personnel at P&G to verify those calculations; (4) in addition to calculations of his own and his spouse's pension, Mr H had also asked for calculations of his pension had he used some of his PGVPS benefits to purchase additional pension in the Scheme and this was not a straightforward question to answer; and (5) assistance was also sought from the legal advisers to the Trustees and Aon Hewitt, the actuarial advisers.

Adjudicator's Opinion

18. Mr H's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees or P&G. The Adjudicator's findings are summarised briefly below:
- The complaint about the annual increase to his pension since April 2015 cannot be upheld against either the Trustees or P&G because: (1) the rules of the Scheme do not state that a particular index is used in respect of post retirement increases; and (2) even though the same level of increase (i.e. RPI capped at 5%) was applied to both Pre and Post-1997 pensions prior to April 2015, there is no legal requirement to continue doing so.
 - The complaint about the delay in providing the calculations he requested in June 2015 cannot be upheld against the Trustees or P&G. Even though a delay of three months was not reasonable, apart from non-financial injustice, he has suffered no

loss as a result of this. In addition, the non-financial injustice he has suffered is not significant.

- The complaint about the Trustees and P&G not properly handling of his complaint cannot be upheld. Even though he was given incorrect information in October 2015, he was given an apology and, apart from non-financial injustice, he has suffered no loss. The non-financial injustice he has suffered is not significant.

Ombudsman's decision

19. The Pensions Act 1995 made it compulsory for occupational pension schemes to provide at least Limited Price Indexation (**LPI**) on Post-1997 pensions. There is no legal requirement for an occupational pension scheme to provide increases on Pre-1997 pensions. The minimum annual increase required is the lower of RPI and 5%. The Scheme was already providing the minimum increases before April 1997 on the whole of a member's pension and not just the Post-1997 pensions.
20. Therefore, the Scheme has provided increases in excess of the provisions as set out in the Pensions Act 1995. The change made in 2015 was to apply a different rate of increase to Pre-1997 pensions as opposed to Post-1997 pensions.
21. The increases in respect of both Pre and Post-1997 pensions are at the discretion of P&G. P&G have also continued to apply RPI increases, capped at 5%, in respect of Mr H's Post-1997 pension, rather than taking the step that many other schemes have taken of changing to CPI where the scheme rules permit. Therefore, I am unable to find that there has been maladministration on the part of either the Trustees or P&G in respect of the increases paid to Mr H.
22. There was no change to the Rules in 2015 to implement the change in the post retirement pension. However, rule 52 of the Rules says that the Trustees may at their discretion, and with the approval of P&G, alter or add to the Rules. There is nothing in the Rules which says that changes can only be made with the member's involvement or consent.
23. A delay of three months to provide Mr H with the information he requested in June 2015 may be considered to be unreasonable. However, I am unable to find that he has suffered a loss or significant non-financial injustice as a consequence and he did receive an apology for the delay.
24. Mr H's complaint was promptly dealt with by both the Trustees and P&G. However, he was given incorrect information. I am satisfied that he received an apology for the incorrect information he was given and he has not suffered significant non-financial injustice.

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25. Therefore, I do not uphold Mr H's complaint.

Anthony Arter
Pensions Ombudsman

22 June 2016