PO-11832

Ombudsman's Determination

Applicant	Mr D
Scheme	KPSS (UK) Limited Pension Scheme (the **Scheme**)
Respondent	Trustees of the KPSS (UK) Limited Pension Scheme (the **Trustees**)

Outcome

1. I do not uphold Mr D's complaint against the Trustees. The Trustees have offered to pay £750 to Mr D in recognition for the distress and inconvenience caused to him by its maladministration.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr D's complaint against the Trustees of the Scheme is that his pension is not subject to the annual increases that he expected it would be. He says that he was told that there would be annual increases to his pension, of at least 5%, from his leaving date until 2029, the date of his normal retirement.

Background information, including submissions from the parties

4. Mr D was a member of the Scheme from April 1988 to August 1998.

5. On 28 January 2009, Norwich Union, the former administrators, sent Mr D a deferred benefit statement showing that he would receive a pension of £23,224.32 a year from September 2029 when he would be age 65. The statement said that £18,884.92 of the anticipated pension would increase by 5% each year until he reached age 65, his normal retirement date. After age 65, the pension would increase by 5% each year.

6. In February 2012, Premier Pensions Management Ltd (**Premier**) took over as the Scheme administrator from Norwich Union.

7. On 17 November 2015, Premier wrote to Mr D. It said that a legal update of the Scheme's documentation had revealed that some benefits had been calculated incorrectly. Premier included a reissued leaving statement, showing changes in respect of pension increases applying between his leaving date and normal

retirement. The statement said that Mr D's pension in excess of Guaranteed Minimum Pension (**GMP**) would increase by "5% compound each year (based on the total period from your leaving date to your retirement date), but limited to the percentage rise in prices [based on annual changes in the Consumer Prices Index] over the period, if less".

8. On 21 November 2015, Mr D complained to Premier. Premier replied saying that the previous practice for revaluing deferred pensions was not in accordance with the Scheme's Rules. It said that when he left the Scheme, in August 1998, the applicable Rules were those adopted on 16 April 1997 (the **1997 Rules**). The 1997 Rules say that, for leavers after 6 April 1995, pensions in excess of GMP were to be increased by 5% per annum or, if less, by the percentage rise in the cost of living. Premier said that this had been agreed by the Trustees and Sponsor to be linked to increases based on annual changes in the Consumer Prices Index (**CPI**).

9. Premier said that Norwich Union had used fixed 5% per annum increases, but Premier had been instructed to change this in line with the 1997 Rules. Premier recognised that there were conflicting historical documents relating to the Scheme, including scheme booklets. It said it could not identify how the conflict arose, however, the booklets referred to the terms and conditions in the Trust Deed and Rules of the Scheme. It said that the Rules governing the Scheme took precedence over other conflicting documentation and it can only pay benefits in accordance with those Rules.

10. Mr D says that he does not accept the change in revaluation of his pension, which will result in a significant reduction in his retirement income. He rejected the offer of £750 made to him by the Trustees.

Adjudicator's Opinion

11. Mr D's complaint was considered by one of our Adjudicators, who recommended that Mr D should accept the offer made by the Trustees. The Adjudicator's findings are summarised briefly below:-

    - The Rules applicable to when Mr D left the Scheme are the 1997 Rules. These state that "the amount of deferred pension…in excess of GMP will increase by 5% (or a percentage rise in the cost of living, if less) for every complete year from the date the member ceased to be in Pensionable Service until Normal Pension Age…"

    - The member guide booklet says that "deferred pension in excess of GMP will increase by 5% for every complete year from the date you leave employment until normal retirement date". This is contrary to the 1997 Rules and, when there is such a discrepancy, the Scheme Rules (in this case the 1997 Rules) have precedence.

- The Scheme Trustees have an obligation to act in accordance with the 1997 Rules. Benefits can only be paid in accordance with the rules of the Scheme. Mr D will now receive benefits calculated in accordance with the 1997 Rules of the Scheme, he has not suffered a financial loss. In any event, it is not possible to determine what his eventual pension benefit will be when he retires.

- There is no evidence of detrimental reliance on the incorrect information provided by the Scheme so it cannot be demonstrated that Mr D would have acted differently had he not been misinformed. Mr D left the Scheme almost 20 years ago and still has about 12 years remaining before reaching his normal retirement age. He has time to mitigate the effects of the misinformation should he wish to do so.

- The Trustees have offered Mr D £750 in recognition of his distress and inconvenience. The Adjudicator considered that amount to be reasonable and in line with the sum the Ombudsman would award.

12. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D has provided brief comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr D for completeness.

Ombudsman's decision

13. Mr D says that he is concerned about the stewardship of the Scheme and future pay-outs to members such as himself.

14. The Trustees can only pay benefits in accordance with the Rules of the Scheme. Trustees have acted fairly in correcting the error, which they are duty bound to do, and by offering £750 to Mr D for the distress and inconvenience to which he has been put.

15. I appreciate that Mr D is unhappy with the outcome of the Trustees' decision, but they have to calculate and pay his benefits in accordance with the 1997 Rules. Mr D is only entitled to receive the correct benefits from the Scheme, although I do understand his frustration on being misinformed regarding the annual increases that would be applied.

16. The complaint is not about the general role of the Trustees and their stewardship of the Scheme; accordingly, I cannot comment on those issues. The future of the Scheme is also outside of the scope of this complaint. As a member of the Scheme, those are matters that Mr D can take up directly with the Trustees.

17. Having carefully considered Mr D's complaint, I find that the error in the benefit statements issued to him amount to maladministration. However, I am satisfied that the offer to pay £750 to Mr D is reasonable compensation for the loss of expectation suffered by him. Therefore, I do not uphold Mr D's complaint.

18. If Mr D wishes to take up the Trustees' offer he should arrange its payment with them.

Anthony Arter

Pensions Ombudsman
27 September 2017

Appendix

The 1997 Rules

9. Early Leavers

…Where the Member leaves at least one year before Normal Pension Age, the pension will increase in accordance with the Revaluation Basis.

Introduction and meaning of words used

Revaluation Basis means the amount of deferred pension…in excess of the GMP will increase by 5% (or a percentage rise in the cost of living, if less) for every complete year from the date the Member ceases to be in Pensionable Service until Normal Pension Age…