The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr N
Scheme	TSW Group Pension Scheme (**the Scheme**)
Respondents	TSW Pension Trustee Limited (**the Trustees**)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Trustees.

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

Complaint summary

3. Mr N has complained that as a result of the Scheme winding up, the Trustees have reduced his entitlement to a spouse's pension.

Background information, including submissions from the parties

4. The Scheme went in to wind up on 14 April 2016. The Scheme had no sponsoring employer as it was dissolved in May 2007, so it was not eligible to enter Pension Protection Fund (**PPF**).

5. The Trustees wrote to all members on 14 May 2016 to inform them that the Scheme had commenced winding up and what this would mean for their benefits. The letter set out that the Trustees would be reducing the benefits to PPF levels. As Mr N was in receipt of his pension the PPF level was 100% of his pension in payment on 14 April 2016. However, on actuarial advice the Trustees had reduced all members' benefits by 10% to reflect the underfunding of the Scheme and to ensure fairness across all members.

6. The Scheme Rules set out that a spouse's pension would be 50% of the pension in payment, or if higher, 50% of the value of the pension before it was commutated for a lump sum. The letter of 14 May 2016, however, said that the spouse's pension would be just 50% of the pension in payment, in line with the PPF levels of compensation.

7. Mr N complained through the Internal Dispute Resolution Procedure regarding the level of his spouses' pension. In their response the Trustees set out the relevant legislation under which they had reduced benefits.

8. Section 73(3) of the Pensions Act 1995, sets out that the assets of the scheme must be applied towards satisfying liabilities in the order set out under subsection (4). Where the scheme could not meet the full liability (due to underfunding), it must be satisfied in the same proportions. Section 73(4) sets out that the first liability to meet is benefits in line with the corresponding PPF liabilities. The PPF liabilities are set out in Schedule 7 of the Pensions Act 2004, which prescribes that the spouse's pension is half of the pension in payment, at the time the pensioner dies.

9. The Trustees have said, therefore, that they are following the relevant legislation in setting Mr N's benefits entitlement. They have also said they hope the 10% reduction to be temporary, and if there are sufficient funds they would look secure additional spouse's pension if possible. However, this would be at their discretion and as deferred members, who were not yet in receipt of their pension would only receive 90% of their benefits, they may well look to address this first.

Adjudicator's Opinion

10. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:

    - The Trustees must follow the relevant legislation when paying member benefits whilst the Scheme is being wound up. Under the Pensions Act 1995, in the first instance, they must secure benefits in line with corresponding PPF liabilities before any other liabilities. As the PPF would only pay a pension to a spouse of 50% of the pension in payment at the pensioner's death, and not 50% of the pension before commutation, the Trustees are bound to reduce Mr N's entitlement to this level.

11. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

12. The Trustees must follow the relevant legislation when winding up the Scheme. In this instance the law is very clear in that the Trustees must secure benefits for its members in line with the corresponding PPF liabilities, before meeting any other liabilities. If there were additional funds, then the Trustees could look to secure the additional benefits for its members, as set out in the Scheme Rules.

13. So in Mr N's case as the Pensions Act 2004 sets out that the PPF would pay a spouse's pension that is 50% of the pension in payment at the date of death, the Trustees can only secure this level of benefit for Mr N at this time. This is to ensure that the Trustees can initially meet other member's fair entitlement to benefits.

14. Mr N has responded to the initial opinion and explained that he believes the Trustees were not entitled to reduce his benefits in payment by 10% during the wind up period. As the PPF would pay 100% of a pension already in payment at the time of entering the PPF, he believes he too should be receiving 100%.

15. The legislation is drafted in such a way as to ensure, as far as possible, that members are treated fairly and they receive the same level benefits as they would if their scheme was eligible for the PPF. However, unfortunately, as the Scheme isn't eligible for the PPF it can only pay benefits from the funds available. So if the Scheme is underfunded, it may not be able to pay benefits that equal the PPF levels of compensation. The legislation is not a requirement to meet the PPF levels regardless of funding, it is to ensure the available funds are distributed fairly.

16. Although unfortunate, it is permitted for the Trustees to reduce all benefits by 10% during the winding up period due to Scheme underfunding. The legislation sets out that if funds are not sufficient to meet all PPF liabilities, then benefits must be secured in the same proportions. Providing the reduction is applicable to all member benefits there is no maladministration. However, the Trustees have indicated that they believe this reduction may only be temporary and that they should be able to secure at least the PPF levels of compensation.

17. Mr N has citied various sources which, he believes, indicate that the Trustees cannot reduce his benefits after the crystallisation date when the Scheme commenced wind up (14 April 2016). However, the information that Mr N has supplied indicating that the Scheme cannot be amended, is in reference to the Scheme Rules; in this case the Scheme Rules have not been amended.

18. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
7 February 2017