

Ombudsman's Determination

Applicant	Mr Y
Scheme	National Grid UK Pension Scheme (the Scheme)
Respondent	National Grid UK Pension Scheme Trustee Limited (the Trustee)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y says he was allocated to a section of the Scheme unrelated to the business area he was working in when he retired. The allocation methodology used by the Trustee, when sectioning the Scheme, seems illogical, random and completely flawed. His pension benefits could potentially be less secure in future.

Background information, including submissions from the parties

4. Section 67 of the Pensions Act 1995 (as amended) contains restrictions on powers to alter occupational pension schemes. Broadly, it applies where a power to modify a scheme is exercised to make a change which would, or may, adversely affect the rights the member has under the Scheme, that is, their 'subsisting rights'.
5. Section 67 defines subsisting rights as any right which the member has earned under the scheme, will accrue in future, or any entitlement to the 'present payment of benefits'. And, in the case of survivors, any entitlement or right to future benefits.
6. The UK Gas Transmission and Distribution network was formerly operated by Transco. In 2002 National Grid merged with Transco's parent company (the **2002 Merger**). National Grid acquired a large number of employees whose pension rights were governed by different rules to those of its then existing employees. As the electricity supply pension scheme was closed to new members, employees working in the 'Gas' section of National Grid's business, who moved across to the 'Electricity' arm, continued to accrue pension rights in the gas pension schemes they were in prior to the 2002 Merger.

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7. In 2005 Mr Y's employment was moved to the 'central support' division of Transco's gas distribution business. He left National Grid's employ in 2013, after over 30 years' service with the company and its predecessor Transco. Immediately prior to his redundancy, Mr Y worked in Electricity Transmission, the 'construction directorate'. He moved address shortly after leaving.
8. Mr Y is a pensioner member of the Scheme. The Scheme has over 100,000 members.
9. In November 2015 National Grid announced its intention to sell a majority stake in its gas distribution business.
10. On 29 June 2016, the Trustee sent a further announcement saying that it had agreed with National Grid to create three separate and independent sections within the Scheme, in order to protect members' benefits whilst facilitating the proposed sale. The Trustee said that each section would be ring-fenced and hold separate assets and liabilities, and have a separate funding plan agreed.
11. A question and answer sheet enclosed with the letter confirmed that:

"There will be no change to your pension benefits. The benefits that you built up whilst working for National Grid (or one of its predecessor companies) are protected by legislation. The Trustee Board will remain responsible for the Scheme as a whole, all the same terms apply, and your pension will continue to be administered by the same team..."
12. On 1 October 2016, National Grid's gas distribution business was transferred to a new subsidiary company: National Grid Gas Distribution Ltd (**NGGD**). National Grid announced on 8 December 2016, an agreement to sell its majority stake in NGGD to a Macquarie, a consortium of investors.
13. On 16 December 2016, the Trustee issued a 'section allocation guide' (the **Guide**) to provide members with more details about the allocation process. It stated that the allocation was based on member data available to the Trustee and the Company as at September 2015. The Trustee explained that specialist pension advisers had been used and that the methodology was carefully tested and independently verified by a third party.
14. The Guide also explained that, where possible, deferred and pensioner members had been allocated to the part of the business they last worked, using the information held. Where those details did not clearly indicate an allocation to one section, based on employment at the date of leaving, members were impartially allocated to one of the three sections. But where 'objective data' held provided some relevant information, then, where possible, that business was used to decide the allocation. The Guide stated that some parts of methodology used a random element to ensure that it was consistent with Ofgem's agreement on the amount of costs which may be recoverable from energy customers.

15. On 19 December 2016, the Trustee informed members that their allocation to any one of the three sections would not change their benefits, the Scheme ‘remained safe, secure and well supported’. The letter confirmed that NGGD was regulated by Ofgem, which protected NGGD’s financial assets; that additional security would be provided for Section C on sectionalisation; and that extra financial support would be triggered if NGGD’s debt levels went above certain thresholds.
16. A deed of amendment was made on 21 December 2016, which divided the Scheme into three sections: Section A, Section B and Section C. The deed provided that each section would have separate assets and liabilities, with a separate “lead section employer”: National Grid UK Limited for Section A, National Grid Gas plc for Section B and NGGD for Section C. The deed states that:

“The changes to be made by this deed are not “regulated modifications” [that is, a protected or detrimental modification] for the purposes of section 67 (the subsisting rights provisions) of the Pensions Act 1995.”
17. In April 2017, the Trustee notified members that the sectionalisation had been completed. Around the same time, members were sent a newsletter explaining how any deficit identified in the Scheme’s 2015 valuation would be allocated across the sections and funded by the sponsoring employer(s) of each section.
18. Mr Y appealed his allocation to Section C, without success.
19. Mr Y’s concern about his allocation is that he started his career in the gas area of the business but finished his career in the electricity arm. He says the Trustee should either admit that it made a mistake in his case, or provide a clear and logical explanation as to why it had to resort to using his postcode to allocate him to a particular section. The Guide did not mention the use of post codes ‘only that the Trustee was satisfied that the method used was fit for purpose and appropriate, and that the method had been independently verified’.
20. Mr Y contends that the Trustee is struggling with the allocation of members who built up their pension in the gas business and retired under the electricity section. Section C is not appropriate in his case because he did not retire from the Gas Distribution business. The use of his current post code was wrong, if he had not moved address, he would have been allocated to a different section.
21. Mr Y says [prior to the allocation], the Trustee should have liaised and exchanged data with the Company. A proper review of the data should have revealed that he was employed in a ‘regulated area of the business’. One of the trustees on the panel that dealt with his appeal knows him personally, and worked in the construction area of the business when he was working in gas transmission. The Trustee seems reluctant to admit that it made a mistake and set a precedent. It should acknowledge the error and create appropriate sections, including a section for pensioners who retire from Electricity Transmission. The issue has wider implications because

existing employees, with similar career paths, will face the same problem when they come to retire.

22. Mr Y explains that throughout the internal dispute resolution procedure (the **IDRP**) he was met with 'brick walls of rejection'. Initially, he was told to wait a few days for a response, and then to allow four months. Although the Trustee replied in less than four months, the time it took to deal with his complaint was excessive in the circumstances.
23. The Trustee does not accept that a mistake has been made. The allocation method was developed after considering specialist advice and is designed to treat members fairly and impartially, taking into account the limitations of historical data issues. Member benefits are just as well protected following sectionalisation, regardless of which section they were allocated to.
24. The Trustee has clarified that most pensioner and deferred members worked in business areas that cannot be directly related to a section. The members concerned were allocated to Section C, where their postcode, held on the pension database, corresponded with one of National Grid's current distribution networks.
25. Mr Y considers the creation of a fourth section, or his re-allocation to the section for Gas Transmission, would be reasonable compensation.

Adjudicator's Opinion

26. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Trustee. The Adjudicator's findings are summarised briefly below:-
 - Benefits under the Scheme are governed by the Scheme rules, and pension legislation. These do not prohibit the sectionalisation of the Scheme, nor Mr Y's allocation to Section C.
 - It is essentially a matter for the Trustee, within the constraints of the Scheme rules and any legislative restrictions, rather than a Pensions Ombudsman, to decide the allocation method to use.
 - National Grid, rather than the Trustee, would have been responsible for the HR data provided to the Trustee.
 - Given the size of the Scheme membership, it was not unreasonable for the Trustee to have taken a proportionate approach where information was not readily available to the Scheme, rather than make detailed enquiries.
27. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y has provided his further comments but these 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 Y for completeness.

Ombudsman's decision

28. Mr Y says, in their IDRPs stage two response, the Trustee failed to address his complaint and merely expressed a view, which he strongly disagrees with. The internal dispute resolution committee (the **Committee**) that considered his case said that it was 'satisfied that the Trustee did not have a duty to require a separate section for current and former Electricity employees, who had started their career in the Gas business areas'. His argument is that the Trustee breached its duty of care to scheme members and beneficiaries as a result of its failure to create appropriate sections. Due to its 'erroneous belief that all Gas pensioners worked for either Gas Transmission, Gas Distribution or other non-regulated business areas', he has been allocated to a section that bears no correlation to the work he was engaged in when he was made redundant.
29. By using relatively limited basic sources of information, and failing to properly investigate the data held by the Company, Mr Y contends that the Trustee breached its duty of care to correctly allocate those members 'who did not and will not end their careers working for the Gas business areas'. In his case, a member of the trustee board is aware that he has been incorrectly allocated.
30. Mr Y says he finds it astonishing that the Committee continues to maintain that his allocation to Section C is fair. He has never received a sympathetic response or an apology from the Trustee, his enquiries were rather met with resistance.
31. Mr Y's complaint is that the Trustee's allocation of those members who worked in the 'Gas' business areas, who either retired or will retire in a different part of the business, was arbitrary and based on flawed data. Inherent in his complaint is the suggestion that the Trustee mismanaged his enquiries concerning his allocation.
32. The key duties of pension scheme trustees includes the requirement to act within the framework of the trust deed and rules and pension legislation. Having considered the evidence, I am satisfied that there has been no breach of law or maladministration resulting from the methodology used to allocate members to the three sections following the sectionalisation of the Scheme, or Mr Y's allocation to Section C.
33. Neither the Scheme rules nor pension legislation prevent the Trustee from segmenting the Scheme.
34. Mr Y's benefits are governed by the Scheme rules, and pension legislation. His entitlement, and any attaching contingent benefits under the Scheme, were not altered as a consequence of his allocation to Section C.
35. While I accept that the Trustee did not provide the level of response Mr Y would otherwise had liked, I am not persuaded that this amounts to maladministration.

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36. Therefore, I do not uphold Mr Y's complaint.

Karen Johnston

Deputy Pensions Ombudsman
21 February 2018