

Ombudsman's Determination

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| Applicant | Mr N |
| Scheme | Marks and Spencer Pension Scheme (the Scheme) |
| Respondent | Marks and Spencer Pension Trust Limited (the Trustee) |

Outcome

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

Complaint summary

3. Mr N's complaint is about the Trustee's interpretation of the Scheme's Rules in relation to the calculation of pensionable salary increases.
4. He claims that he was entitled to, but did not receive, a pensionable salary increase review on 1 October 2015. Mr N says this has had a detrimental effect on his retirement benefits.

Background information, including submissions from the parties

Background

5. Mr N was employed by Marks and Spencer plc (**M&S**) and was an active member of the Scheme.
6. Mr N has said he took early retirement in November 2016.
7. The Scheme is governed by a trust deed and rules (**the Rules**). The relevant Rules became effective from 10 October 2013.
8. Under the Rules, retirement benefits are calculated with reference to 'final pensionable salary', this being the member's pensionable salary for the last 12 months before the member leaves service, or, in the case of death in service, before the member dies.
9. Increases to pensionable salary are subject to a maximum increase of 1% in each 12 month reference period.

10. The definition of 'maximum increase' is:-

"Maximum Increase in respect of any Reference Period means the Inflation Rate calculated on the Anniversary Date on or immediately before the start date of the Reference Period, multiplied by the Pensionable Salary immediately before the start date of the Reference Period."

11. The definition of 'reference period' is:-

"Reference Period' means a period of 12 months commencing on a 1 October and ending on the next 30 September."

12. Previously, M&S had a performance linked pay review date of 1 October, coincident with the beginning of the Scheme's reference period.
13. In May 2015, M&S decided to change the date it awarded some performance linked salary increases, so that this coincided with employee's annual performance reviews. This change only affected some groups of employees, but included Mr N. Literature, including a frequently asked question and answer document, was sent to affected members around the time of the change.
14. From 2015, Mr N's new performance linked pay review date was 1 July.
15. The Rules were not amended to reflect M&S's decision to alter the pay review date. Further, the Rules do not provide a power for the Trustee to act unilaterally, so it was not possible for the Trustee, without M&S consent, to align the annual pay increases awarded by M&S with the reference period as was previously the case.

Mr N's position

16. Mr N argues that the reference period is backward looking insofar as his, "understanding is that any review is of past events; common sense and the dictionary definition supports this".
17. Mr N considers that no pensionable salary increase was received for the reference period 1 October 2014 to 30 September 2015. He complains that the Trustee failed to appreciate that no review of pensionable salary took place.

The Trustee's position

18. Trustee argues that the reference period is forward looking on the premise that pay increases historically awarded on 1 October would be applied at the start of the review period opening on 1 October and ending 30 September the following year.
19. The Trustee considers that pension increases have been correctly applied in accordance with the Rules.

Adjudicator's Opinion

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

- On 1 October 2013, M&S awarded Mr N a salary increase of 1.87%. As this increase was greater than 1% of his salary, Mr N's pensionable salary increase was subject to the 1% cap for the reference period 1 October 2013 to 30 September 2014. His pensionable salary was thus increased to the maximum of 1%.
- On 1 October 2014, M&S awarded Mr N with a further salary increase of 1.89%. As with the previous year, because the pay increase was greater than 1%, Mr N's pensionable salary increase was capped at 1% for the 1 October 2014 to 30 September 2015 reference period.
- In May 2015, M&S changed its pay review date and, on 1 July 2015, Mr N was awarded a further salary increase. However this also fell within the 1 October 2014 to 30 September 2015 reference period. As Mr N had already received the maximum increase of 1% of salary, no further increase was made to his pensionable salary in respect of the July 2015 pay award.
- On 1 October 2015, the new pension reference period opened. However, as the last pay award, on 1 July 2015, fell within the previous reference period window, no increase was made to the pensionable salary at that time.
- On 1 July 2016, M&S awarded Mr N with a salary increase, greater than 1% of salary. This counted as the maximum permissible increase for the reference period 1 October 2015 to 30 September 2016.
- On 1 October 2016, the new pension reference period opened. But Mr N took early retirement in November 2016. As Mr N was not employed by M&S at the time of the next pay award, due in July 2017, no pensionable salary increase was applied in respect of the 1 October 2016 to 30 September 2017 reference period.
- On careful consideration of the information provided by the Trustee, the Adjudicator was satisfied that Mr N's pensionable salary had been correctly applied in accordance with the Rules.
- Mr N suggested that the Trustee should have challenged M&S's decision to amend the pay review date as this was, "detrimental to all management employees". However the Rules do not permit the Trustee to act without the consent of the employer and to override the decision made by M&S.
- The Trustee sought legal and actuarial advice in relation to the change made by M&S, which was shared with M&S. In the circumstances the Trustee was not

required to do anything more, and there is no evidence that an administrative error occurred.

21. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further 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 N for completeness.

Ombudsman's decision

22. Mr N has raised concern that the Respondent's submissions to this Office have been authored by an employee of M&S, rather than being signed off by the Trustee. However I am satisfied that the submissions have been made by an individual acting for and on behalf of the Trustee.
23. Further Mr N is concerned that the various responses have not been shared with the parties and that they have not been provided with the opportunity to comment. He also suggests that there are further questions the Adjudicator should have asked of the Trustee.
24. I am confident that, in this case, the relevant evidence has been appropriately disclosed. The fact that the Trustee has not commented on the evidence, which Mr N considers to be relevant, is not an indication that the Trustee has not been provided with the opportunity to comment, just that it has chosen not to. I find that I have sufficient information to be able to properly determine this dispute. It is also evident that the Trustee gave careful consideration to the change made to the pay review date and its impact on the Scheme at the time of the change. They sought legal advice and shared this with M&S.
25. Mr N considers that the Adjudicator's Opinion contains inaccuracies with regard to the dates of various pay reviews. However, as I shall go on to explain, I consider that the alleged discrepancies that Mr N has highlighted arise from his misunderstanding that the Trustee has not calculated pensionable salary increases in accordance with the Rules.
26. Prior to May 2015, M&S had a performance linked pay review date of 1 October, coincident with the Scheme's reference period. Consequently any adjustment to pensionable salary, resulting from a pay increase, would be implemented on 1 October, at the start of the review period ending 30 September the following year.
27. Following the change to M&S's pay review date, pensionable salary increases were applied part way through the reference period, at the time of the employer's pay review. As a consequence of this, some members, including Mr N, received two pay increases in the 2014/15 reference period, one on 1 October 2014, the other on 1 July 2015. But, because the first of these pay increases exceeded the 1% cap in pensionable salary, Mr N did not benefit from an increase to pensionable salary as a consequence of the second salary increase in the 2014/15 reference period.

28. My finding here is consistent with the 'Pay Review 2015 – Announcement Q&As' document, to which Mr N has referred. The relevant part, under the heading 'pensions', confirms:

"Does my pay increase count towards my pensionable pay?"

Yes it does, but if you are in the Defined Benefit Pension Scheme only pay increases up to the inflation rate to a maximum of 1% count towards pensionable pay each year. The increase in pensionable pay (if applicable) runs from October to September each year and this remains the same.

Therefore, if you have already received the 1% maximum increase in your pensionable pay during the 12 months to 30 June 2015, then the next increase to your pensionable pay will be assessed based on any changes in your pay (to a maximum of 1%) during the 12 month period from October 2015 to end of September 2016."

29. On 1 October 2015, the new pension reference period opened. But, unlike previous years the start of the reference period did not coincide with M&S's pay review. As such I agree with Mr N that no increase to pensionable pay was made at that time. However, Mr N was awarded with a salary increase, greater than 1% of salary, on 1 July 2016. This counted as the maximum permissible increase for the reference period 1 October 2015 to 30 September 2016.
30. Thus I am satisfied that Mr N was properly awarded with a pensionable pay increases for both the 2014/15 and 2015/16 reference periods, albeit the pensionable pay increase for the 1 October 2015 to 30 September 2016 reference period was applied part way through the reference period, at the time of the performance related pay review, rather than at the beginning.
31. I find that the Trustee has applied the pensionable pay increases correctly. I do not find that the Trustee has made any administrative errors, therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
2 March 2018