

Ombudsman's Determination

Applicant	Mr T
Scheme	GE Pension Plan (the Plan)
Respondents	GE Corporate (GE) GE Pension Trustees Limited (the Trustees)

Outcome

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

Complaint summary

3. Mr T has complained that GE has not applied discretionary increases to the pre-April 1997 element of his pension since 2009.

Background information, including submissions from the parties

4. Mr T has raised a complaint on a yearly basis that some elements of his pension are subject to discretionary increases but he never receives these. This is because GE and the Trustees do not consider that increases can be paid, because the Plan is in deficit.
5. On 31 October 2016, GE provided the following response in relation to discretionary increases:

"Each year the company undertakes a review to understand the current financial market, health of the Plan and other factors so it can carefully consider if it should provide its discretion to the Trustee in the granting of an increase. As you know this is a joint discretion and an increase cannot take place without both partie[s] agreeing to that.

The Company and the Trustees have previously granted discretionary inflationary increases on the pension accrued prior to April 1997 that would otherwise not receive a guaranteed increase. No such discretionary pension increases have been granted since 2009.

The Company has given careful consideration as to whether discretionary pension increases should be applied in April 2016, and has decided not to agree to this.

The discretionary pension increases would be provided to a limited number of members (i.e. only to pensioners with pensions accrued before April 1997 that would otherwise not receive guaranteed increases). On this basis providing discretionary pension increase would allocate additional funding to this limited group of members in preference to other members of the GEPP, while the Plan remains in deficit. This is a key issue for both the Trustee and Company as one type of member will be favoured over another and this is certainly not within the fiduciary duties and responsibilities of the Trustee who have a duty to treat all members equally.

In arriving at its decision the Company have taken into consideration a number of factors, including the financial impact that awarding such increases would have on the Plan on different funding bases. As a result, the Company does not wish to create additional liabilities.

As you know the GEPP remains in deficit at the April 2015 valuation this was £164m (funding level of 96%) and since that date due to a number of factors one of which is the Brexit vote financially markets have been very volatile and the deficit has grown significantly. This is in spite of payment into the Plan following the exit and sale by GE of a number of its capital businesses.”

6. On 25 April 2017, GE sent a letter which set out details of the increases that would be applied to Mr T’s benefit with the effect of 1 May 2017:

Pensions element	Pre-increase amount	Increase applied	Post-increase amount
Pre-1988 GMP	£622.80	0%	£622.80
Post-1988 GMP	£1,791.10	0%	£1,791.10
Pre-1997 pension	£8,347.09	0%	£8,347.09
Post-1997 pension	£7,970.74	2.6%	£8,177.98
Post-2006 pension	£2,902.89	1.8%	£2,955.15
Post-2009 pension	£6,825.49	1.8%	£6,948.35
Rounding	£0.05	N/A	£0.01
Total	£28,460.16		£28,842.48

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7. On 27 April 2017, Mr T raised a formal complaint through the Plan's internal dispute resolution procedure. He said:

"I would like to raise a formal complaint and would like a full investigation regarding the decision, made by the trustees, for this year's pension increase.

Last year I complained and it was confirmed that the element of my pension

1. Pre-1988 GMP
2. Post 1988 GMP
3. Pre-1997 pension

Are subject to 'discretionary increases' and that in all the years that this has existed, you have never given any discretionary increase.

I would like to know if it was discussed and considered this year and why again, it was deemed not viable. "

8. GE responded on 8 May 2017, and provided its response. It said the decision to grant discretionary increases was dependent on the consent from GE. The Trustees of the Plan were unable to comment on GE's decision not to grant discretionary increases. GE had informed the Trustees verbally that no consent to discretionary increases would be given. The Trustees said the position relating to discretionary increases was clearly shown in the Trust Deed and Rules, it says they may only be paid with the consent of GE. As GE had not consented to this no payment would be made.
9. Mr T remained dissatisfied and brought his complaint to the Pensions Ombudsman to be independently reviewed.

Adjudicator's Opinion

10. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by GE and the Trustees of the Plan. The Adjudicator's findings are summarised briefly below:-
- It was clear in the letter of 31 October 2016, that GE considered the financial implication of paying the discretionary increases. It said the Plan was in deficit by £164 million. It explained that the Brexit vote had left the financial market volatile which is another reasonable consideration for the increases not to be paid. GE has provided valid reasons why it has declined to fund the increases, it is difficult to argue that the decision was irrational or perverse.
 - The Trustees' only obligation, in relation to discretionary increases, is to apply such increases if GE reached a decision that discretionary increases should be made.

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- GE and the Trustees of the Plan have not done anything wrong in not granting discretionary increases. The decision has been made in accordance with the Rules, valid reasons for not granting the increases have been provided and the Trustees have been informed of the decision.
11. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T provided the following comments which do not change the outcome:
- he believed the Opinion had very similar findings to a case that had already been determined (ref: PO-1203);
 - he does not consider that it is professional for GE to provide its response verbally to the Trustees of the Plan relating to discretionary increase; and
 - he believes that some members are being disadvantaged because they are entitled to discretionary increases and not compulsory ones.
12. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr T for completeness.

Ombudsman's decision

13. Mr T has complained that GE will not provide him with discretionary increases on part of his pension.
14. GE and the Trustees of the Plan say that they do not have to provide discretionary increases and that this is in accordance with the Trust Deed and Rules (an extract is provided in the appendix).
15. GE is required to review the funding of the Plan, taking to account the financial position of the Company, in order to reach a decision on whether discretionary increases should, or should not, be paid. This is what GE has done and it has informed the Trustees of its decision. Mr T has complained about the way GE communicated its decision to the Trustees. GE did this verbally and Mr T believes this is unprofessional. I can understand why Mr T has reached that conclusion, and I accept that it may be considered good business practice to ensure there is a proper record of the decision, however, I do not see that the outcome would have been different or that the lack of written evidence necessarily renders the decision void.
16. GE provided a detailed explanation to Mr T on 31 October 2016, which shows that GE took into account all relevant factors when making its decision not to grant discretionary increases and it has given its reasons for doing so.
17. Mr T contends that the findings of the Opinion, are similar to a previously determined case under reference PO-1203. I agree that the findings are similar, but that is because the topic, the respondent and the relevant rules are the same in both cases so by definition the conclusions will be similar. It remains that it is not a requirement for GE to agree to pay discretionary increases on all elements of Mr T's pension.

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18. Mr T believes he is being disadvantaged because some members of the Plan have guaranteed increases on elements of their pension. This is because there are different sections of the Plan, which means some members are entitled to compulsory increases, but Mr T does not fall into that category. Mr T is only entitled to discretionary increases for the pre-1997 element of the Plan. Therefore, they are not guaranteed and GE can decide in exercising its discretion whether to pay the increase.
19. Although, I appreciate why Mr T believes this to be unfair, GE are paying the Plan pensions without discretionary increases, because the Plan is in deficit and its first responsibility is to reduce the deficit in order to provide security for the payment of the members existing benefits.
20. GE has not erred in the exercise of its discretion and the Trustees of the Plan have done nothing wrong.
21. Therefore, I do not uphold Mr T's complaint.

Anthony Arter

Pensions Ombudsman
23 March 2018

Appendix

GE Pensions Plan

G2. Increases to Pensions in Payment

Rule G2(A) Regular Review

Subject to G2(C) [which deals with GMP] the amount of pension under the Scheme which are for the time being in the course of payment shall be received by the Principal Employer not less frequently than once a year (in addition to those referred to in Rule G2(E) [special increase for certain groups])

Rule G2(B) Discretionary Increases

If the Principal Employer so agrees, the Trustees may make increase to all or some of the pensions referred to in Rule G2(A).

Rule G2(F) Annual Increases

- (a) Sections 51-54 (Limited Price Indexation) of the Pensions Act 1995 shall apply to Pensions in payment under the Scheme of the type to which sections 51-54 apply to the extent that they are attributable to actual Pensionable Service after 5th April 1997;

Rule 19(A)

Where the agreement or consent of the Principal Employer is required in this Deed or where the Principal Employer exercises any power, the Principal Employer shall owe no duty to any Employer, Beneficiary or other person giving or withholding its agreement or consent or exercising any power.

GE Supplementary Pension Scheme

G2(A) Regular Review

Subject to G2(C) the amount of pension under the Scheme which are for the time being in the course of payment shall be reviewed by the Principal Employer not less frequently than once a year.

Rule G2(B) Discretionary Increases

If the Trustees so agree, the Principal Employer may make increases to all or some of the pensions referred to in Rule G2(A).

Rule G2(C) Annual Increases

- (i) Subject to (i) and (ii) below:

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(a) Sections 51-54 (Limited Price Indexation) of the Pension Act 1995 shall apply to Pension in payment under the Scheme of the type to which sections 51-54 apply to the extent that they are attributable to actual Pensionable Service after 5th April 1997.

Rule 18(A)

Where the agreement or consent of the Principal Employer is required in this Deed of where the Principal Employer exercises any power, the Principal Employer shall owe no duty to any Employer, Beneficiary of other person in giving or withholding its agreement or consent or exercising any power.