

Ombudsman's Determination

Applicant	Mr H
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 H'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 H says he was randomly allocated to 'Section C', the gas distribution business, when the Scheme was sectionalised. It does not relate to the part of the business that he last worked in. His pension benefits could be adversely affected in future as they are now less secure.
4. He should have been allocated to 'Section B', the section sponsored by the gas transmission business, the area he last worked in.

Background information, including submissions from the parties

5. Section 67 of the Pensions Act 1995 (**PA95**) (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'.
6. 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.
7. The Pensions Regulator's (**tPR**) code of practice 10: 'Modification of subsisting rights' (the **Code of Practice**) applies to any person seeking to modify an occupational pension scheme.
8. Mr H was employed by National Grid between June 1978 and August 1996. He is now receiving a pension from the Scheme.

9. The Scheme has over 100,000 members.
10. In November 2015, National Grid announced that it would be selling a majority stake in its UK gas distribution business to investors.
11. On 29 June 2016, the Trustee sent an announcement to the Scheme members informing them 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.
12. 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...”
13. 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 planned to sell 51% of its stake in NGGD.
14. In November 2016, Mr H was notified that he had been allocated to Section C, the section sponsored by NGGD.
15. Mr H questions the reasoning for his allocation to Section C, as he did not work in the gas distribution business. When he asked why he had been allocated to Section C, he was told that it was based on his current postcode, but this has no relevance to his last employment based in Solihull. When he asked National Grid for details it holds on him, he was told that it did not hold any information, even though he was employed for some 18 years.
16. The Trustee has explained that the method it used to allocate members to the different sections has been independently reviewed and assessed as being robust and fair. Active members were allocated to a section based on where they work in the business. Where data, as at September 2015, showed that a member last worked for a part of the business that directly related to one of the three sections, they were allocated to that section. 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.
17. On 8 December 2016, National Grid announced an agreement to sell 61% of NGGD to a consortium of investors: Macquarie.

18. On 19 December 2016, the Trustee informed members that their allocation to a section would not change their benefits. The Trustee said that 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.
19. 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."
20. Mr H has explained that there have been several reports of a 'black hole' in Thames Water's pension scheme since a consortium led by Macquarie acquired Thames Water. His worry is that NGGD may fail to make up the funding shortfall. His concerns have since been highlighted by National Grid's decision to sell a majority interest in NGGD to a consortium led by Macquarie.
21. In April 2017, all members of the Scheme were sent a 'valuation update' which provided additional information about the funding and safeguards in place for Section C.
22. Mr H says he has not been provided with details of the steps taken by the Trustee to protect the security of member benefits in Section C. While he accepts that he was provided with some information on the funding of Section C, it is not possible to predict how the gas distribution business will respond when it is asked to put money in the Scheme in future. His pension rights may be adversely affected, so the Code of Practice is relevant in his case.
23. The Trustee has explained that the allocation method used was applied consistently across the Scheme membership. It is confident that it was fit for the purpose for which it was used. Section 67 of the PA 95 does not apply to the sale of the gas distribution business, as this was a corporate activity involving a scheme sponsor and not a modification of a pension scheme. Although the Scheme was amended for the purpose of sectioning it, this does not alter member benefits under the Scheme. Consequently, the Trustee does not accept that a problem has occurred.
24. Mr H says the Trustee has an obligation to be fair to individual members. The allocation in his case is unfair and perverse, he is being disadvantaged by the lack of information the Company and the Scheme hold on him. It would be financially advantageous if he were to be moved a section based on his role while he was employed, as that section would offer him greater protection.

25. Mr H considers the right outcome would be for him to be given the right to prove that he last worked for the gas transmission business and to be re-allocated to that section.

Adjudicator's Opinion

26. Mr H'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:-
- The Code of Practice deals with modifications that affect accrued rights (or entitlement) to benefits. Mr H's pension benefits have not altered so there is no subsisting rights issue.
 - Mr H's benefits immediately before and immediately after sectionalisation are the same, no event has occurred which has caused him to lose money. Consequently, any alleged loss would be hypothetical rather than actual.
 - Given the size of the Scheme membership, the allocation method adopted by the Trustee is reasonable.
 - With regard to the funding of Section C, although Mr H was not provided with the level of detail that he would otherwise have liked, it does not mean that something has gone wrong.
 - While trustees of pension schemes are legally required to have a formal complaint process in place, the fact that Mr H was not given the opportunity to challenge his allocation to Section C, does not mean that his complaint was not properly considered by the Trustee.
27. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H 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 H for completeness.

Ombudsman's decision

28. Mr T says the Code of Practice applies if a modification would or might adversely affect the subsisting rights of a member. While he accepts that he has suffered no financial loss, it seems to him that the modification easily passes the 'might' criteria. If the new employer fails to make up the shortfall in the Scheme's funding over the foreseeable future, then he will or might be financial disadvantaged, in which case his loss will be real rather than hypothetical.
29. Mr T explains that another aspect of his complaint is that the Trustee adopted an allocation process that individual members cannot challenge. It seems to him that the absence of a 'meaningful' appeals process is contrary to the Pensions Act, which

requires trustees to have effective dispute resolution arrangements in place. He would like this point addressed.

30. Mr H's main issue is that he has been randomly allocated to a section unrelated to the area of National Grid's business he last worked in, with no right of appeal. His underlying concern is about the security of funding of the scheme rather than the administration of his pension.
31. Mr H benefits are governed by the Scheme rules, and any applicable pension legislation. I am satisfied that neither the rules nor pension legislation prohibit the sectionalisation of the Scheme, nor Mr H's allocation to Section C. I can see no evidence of breach of law or maladministration arising out the allocation of members to sections following the sectionalisation of the scheme.
32. Turning now to the Code of Practice. I am satisfied that the code does not apply in this case. Neither Mr H's rights, entitlement, nor any attaching contingent benefits under the Scheme, were altered as a consequence of his allocation to Section C.
33. Therefore, I do not uphold Mr H's complaint.

Karen Johnston

Deputy Pensions Ombudsman
20 December 2017