

Ombudsman's Determination

Applicant	Mr Y
Scheme	THUS Group plc Pension Scheme (the Scheme)
Respondents	AON Hewitt (Aon) Trustees of THUS Group plc Pension Scheme (the Trustees)

Outcome

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

Complaint summary

3. Mr Y was an associated case linked to the case of PO-6444, which has been determined. Mr Y's complaint differed slightly because Mr Y left service early due to being made redundant. However the overall theme of his complaint is no different from PO-6444 and as such my overall findings will not differ from PO-6444.
4. Mr Y complained that the Trustees and Aon have not calculated the final pensionable salary correctly, resulting in a lower than expected pension. Mr Y says that the Trustees have not treated him, as a protected person under the Electricity Act of 1988 and have not applied the pensionable salary dynamisation.

Background information, including submissions from the parties

5. Mr Y says that the Trustees have failed to provide him with a pension that is "broadly comparable" to the pension that he was previously entitled to under the Scottish Power Pension Scheme (**SPPS**). In 2002, Scottish Power employees were transferred to THUS group. Mr Y had two options regarding the pension with SPPS, one to transfer the SPPS pension to the Scheme and the other to keep his SPPS pension preserved within SPPS. Mr N decided to transfer from SPPS to the Scheme.
6. Mr Y was made redundant in June 2010. While Mr Y was made redundant in June 2010, he did not draw his pension until April 2011. Mr Y complained that the pensionable salary had not been dynamised. He also questioned why the comparison done in his case applied an early retirement factor to the SPPS position but not to the Scheme position.

7. Mr Y similar to the lead applicant in PO-6444 alleges that he was told during the presentations he attended that when he transferred from SPPS to the Scheme, that the Scheme's pension would be "broadly comparable" to those provided by SPPS. The Trustees do not dispute that the pension is broadly comparable compared to a SPPS pension.
8. However, the Trustees disagree that members were told that the Scheme pension would be identical to those provided by SPPS. The Trustees say that the Regulations (see appendix) state that accrued benefits must be of equal value and future benefits within the Scheme must leave the member in a no worse off position. The Trustees says that Mr Y has received a pension from the Scheme that left him in a no worse off position.
9. The Trustees have said that they made no promises that pensionable salary dynamisation would be adopted by the Scheme. The literature that was sent to members when they transferred from SPPS to the Scheme, stated clearly that the pensionable salary was, the best one year average from the final five years or the best three year average from the final ten years, whichever produced the highest figure.
10. Mr Y has said that he together with the other applicants did not receive any information regarding how the pensionable salary would be calculated. Mr Y says that as protected persons, the Scheme needs to replicate like for like pension within the Scheme that Mr Y would have received from SPPS.
11. The Trustees' position is that the pension they provided Mr Y was no worse than the pension provided by SPPS. The Trustees say Mr Y has received a pension greater than that which he would have received had he remained within SPPS. The Trustees based this on the comparison they completed. The Trustees say that as Mr Y retired, the Scheme pension was £33,699.65 whereas from SPPS it would have been £29,461.25 – this figure includes the dynamisation.

Adjudicator's Opinion

12. The lead complaint was considered by one of our Adjudicators who concluded that no further was required by Aon and the Trustees. The Adjudicator's findings are summarised briefly below:
 - The lead applicant was a protected person as defined within the Regulations. In accordance with the Regulations, the Trustees had to ensure that the pension they calculated was of equivalent value and future pension rights would be no worse compared with SPPS.
 - The Regulations make no specific reference to pensionable salary dynamisation and that it needs to apply to protected persons.

- The Trustees have provided a pension that is broadly comparable with the pension the lead applicant could have received from SPPS.
13. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the issue of whether redundancy in Mr Y should have been treated differently by the Trustees when they completed the comparison for Mr Y.

Ombudsman's decision

14. Under the Electricity Regulations and the Scheme rules the Trustees had to provide transfer benefits within the Scheme that were equivalent in value to those accrued in the SPPS. They also had to provide future benefits which were 'no worse' than those offered by SPPS.
15. The Trustees have produced a comparison that shows that the pension that they paid Mr Y was greater than the pension he would have received from SPPS had he stayed in that scheme until he retired at the same age. This takes account of the fact that under the SPPS rules he would have had final salary dynamisation but under the Scheme he had no reduction for retiring early. On the basis of this comparison I am satisfied that he has received the protection required by the Regulations.
16. Mr Y wants the Trustee to agree to calculate his Scheme pension using a pensionable salary dynamisation. The pensionable salary dynamisation was a particular feature of the SPPS. There is no reason for the Trustees to mirror this within the Scheme. The Trustees have to calculate pensionable salary as defined within the Scheme rules. The Scheme rules make no provision for dynamisation. There was no specific representation made that the salary dynamisation feature would be carried over into the design of the Scheme. Broadly comparable does not mean identical or like for like. It is not possible in my view to construe that statement as importing that very specific feature into the Scheme.
17. Mr Y questioned why the comparison showed the SPPS benefit reduced for early retirement but showed the Scheme benefit unreduced. I am satisfied that this is due to a difference in the rules and is not evidence of an error in the calculation basis. Under the Scheme rules 2.2 Part 5 (see appendix) the Scheme pays a pension without reduction if a member retires before the normal retirement age. Whereas under SPPS' scheme rules, rule 4B (see appendix) the Trustee of SPPS can reduce a pension if paid before normal retirement age and if due to being made redundant. There is no evidence that the SPPS pension would have been paid on an unreduced basis if paid early. By contrast, under the Scheme it had to be paid unreduced.

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18. I therefore do not uphold the complaint.

Karen Johnston

Deputy Pensions Ombudsman

18 August 2016

Appendix

The Electricity (Protected Persons) (Scotland) Pension Regulations 1990 (**the Regulations**)

Accrued Pension Rights

6 (4) If a protected person shall transfer or be transferred to a relevant scheme, an a transfer payment shall be made in respect of his accrued pension rights to that scheme, the employer providing that scheme shall procure that the rules of that scheme will secure accrued pension rights which, on the basis of good actuarial practice, are at least equivalent in value to his accrued pension rights so transferred from the former scheme.

Future Pension Rights

7 (2) (d) in the event of a change of employer to an employer who participates in an alternative scheme, to accrue pension rights on the same basis as that applicable to protected employees in that scheme...

(5) Where the pension rights of protected employees in a relevant scheme are worse than the transfer date rights, any reference in these Regulations, in relation to a protected employee joining that scheme, to the pension rights of protected employees in that scheme shall be construed as a reference to the transfer date rights.

Provision of relevant scheme

15 (4) The future pension rights to be provided by any scheme required under this regulation shall be no worse than the transfer date rights of the Scheme in which the majority of the employees of any company in the same company group as the new employer participate or have participated.

THUS Group plc Pension Scheme rules

Rule 2 Retirement before Normal Retirement Age

2.2 A member who reached the age 50 (where this Rule is being applied prior to 6 April 2010) or age 55 (where this Rule is being applied on or after 6 April 2010) and has completed 5 years of Deemed Pensionable Service may, if he wishes and his Employer so requests, retire from Service and be paid a pension for life from the date of retirement of an annual amount...

Scottish Power Pension Scheme rules

4B Pension and cash on retirement before attaining normal pension age

(1) This Sub rule applies to a Contributing Member who retires from the Service before attaining Normal Pension Age-

...

(b) because of redundancy or reorganisation, or with the consent of the Participating Employer for any other reason , on or after attainment of age fifty years and having completed not less than five years' Pensionable Service...

(3)...

(b) in the case of a Contributing Member to whom paragraph (b) of section (1) of this Sub-rule applies, the pension that would have been payable to the Member under the Scheme on attaining Normal Pension Age had rule 5A [Termination of Service] applied to him but excluding any increase thereon provided under rule 10A [Automatic Benefit Increases] reduced, if the Committee so decides, by a percentage calculated on a basis certified as reasonable by the Actuary having regard to the period between the date the first instalment of the pension falls due and Normal Pension Age...