

Ombudsman's Determination

Applicant	Mr R
Scheme	Halma Group Pension Plan (the Plan)
Respondent	The Trustees of the Halma Group Pension Plan (the Trustees)

Outcome

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

Complaint summary

3. Mr R, a former finance director of Apollo Fire Detectors Limited (**Apollo**), complains that the Trustees have used an incorrect Final Pensionable Salary (**FPS**) of £81,750 in the calculation of the retirement benefits available to him from the Plan. In his view, the correct FPS should be £95,012 which includes an additional allowance that he received whilst he was also a director of Texecom Limited (**Texecom**).

Background information, including submissions from the parties

4. Both Apollo and Texecom are wholly owned subsidiaries of Halma plc (**Halma**).
5. Mr R became a deferred member of the Plan when he left Apollo on 31 August 2007 after 10 years' service.
6. In its letter dated 28 July 2017 to Mr R, Xafinity, the Plan's administrator, said that:
 - it originally calculated his retirement benefits based on a FPS of £95,012;
 - after reviewing the calculations, the Trustees had noticed that this FPS was higher than the corresponding figure held on Halma's records of £81,750;
 - it therefore appeared that temporary supplements (of £2,000 per month) paid to him were not pensionable, and had been incorrectly included in the salary data supplied to Xafinity to calculate his FPS;
 - it had consequently recalculated his deferred benefits based on a FPS of £81,750 and sent him a revised "Preserved Pension Certificate"; and

- in accordance with the Plan's Trust Deed and Rules (**the Rules**), the Trustees are obliged to pay his correct benefit entitlement in the Plan

7. The Trustees say that:

- bonuses and fluctuating emoluments were removed from the definition of Pensionable Salary in the Rules for Senior Executives (Mr R's category) from 1 December 2003;

- the relevant definition of Pensionable Salary in the Rules is:

"Earnings for any tax year means a Member's gross earnings...and excluding benefits in kind, payments made in lieu of company cars, fuel allowances and any gains from share options.

Prior to 1 December 2003 in the case of a Senior Executive Member, gross earnings shall include the annualised average of any bonus received during that fiscal year and the immediately preceding two fiscal years. From 1 December 2003, gross earnings will no longer include bonuses for Senior Executive Members."

- the definition of Fluctuating Emoluments in the Rules is:

"Fluctuating Emoluments are any part of an employee's earnings which are not paid on a fixed basis and are additional to the basic wage or salary. They include overtime, commission, bonuses or benefits in kind...and profit related pay. Directors' fees may rank as fluctuating emoluments according to the basis on which they are voted."

- from 1 December 2003, the definition of Pensionable Salary for Senior Executives had therefore been amended to exclude any supplements to basic salary such as bonuses in its calculation;
- neither Mr R nor Halma/Apollo have been able to provide any concrete evidence that the temporary additional £2,000 monthly payments supported the view of a basic salary greater than £81,750 for 2006/07 that was used to calculate the FPS;
- Mr Q, a Divisional Chief Executive (now retired), has confirmed that he had approved the supplemental payments to Mr R for his temporary extra work on the acquisition of Texecom by Halma which was in addition to his duties as Finance Director of Apollo;
- they have found a letter which Mr Q sent in July 2006 to another employee who had received a bonus of £10,000 for his work on the Texecom acquisition (prior to becoming Finance Director at Texecom), which was reported as non-pensionable to the Plan's administrator;

- it is Halma's policy that annual bonuses, share awards and pensionable salaries for directors of Halma and its subsidiaries are calculated using basic salary;
- Mr R did not complain that his annual bonus and share award were based on his actual salary of £81,750;
- as a former Finance Director of Apollo, Mr R should have known about the policy and it had been his responsibility to provide the Plan's administrator with correct pensionable salary data (including his own) annually;
- as chair of Apollo's own defined benefit pension plan, Mr R should have been conversant with pensions terminology and aware of the need to ensure that the pensionable salary data submitted accurately reflected the Rules;
- it can understand why an incorrect pensionable salary for Mr R was reported by Apollo to the Plan's administrator though;
- the Apollo pension plan had a different Pensionable Salary definition and Mr R had most likely delegated the task of submitting annual returns to his deputy because he was preoccupied with working on the Texecom acquisition;
- they have now taken steps to ensure that this mistake cannot occur again; and
- as Mr R had paid some pension contributions based on the incorrect Pensionable Salary, they have increased his deferred pension calculated at date of leaving from £18,166.67 pa to £18,302.01 pa at their discretion.

8. Mr R says that:

"The fact remains that, for more than a year, I was paid a monthly salary for undertaking the duties of a director of one of the Halma Group of companies – it is difficult to see how it can be argued that this was fluctuating emoluments. Clearly in my view, it was salary and, according to the rules, pensionable."

Adjudicator's Opinion

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

- The definition of Fluctuating Emoluments in the Rules reinforced the sound reasons given by the Trustees, as summarised in paragraph 7 above, that the fees paid to Mr R for his Texecom directorship were not pensionable.
- Mr R should have been given the correct pension figures though and the failure to do so was maladministration on the part of the Trustees. However, that does not mean he has suffered an injustice.

- Although Mr R received incorrect details of the benefits available to him from the Plan, it did not confer on him a right to the benefits erroneously quoted.
 - There is normally no requirement for the Trustees to pay Mr R benefits from the Plan higher than the correct entitlement. The fact that an earlier pension has been reduced is a loss of expectation, not an actual financial loss.
 - The Trustees may, of course, choose to honour overstated figures (or offer some compromise, as in Mr R's case) by making use of the Plan's augmentation provisions.
 - Having paid some additional contributions, based on the incorrect pensionable salary, and rather than returning these to Mr R the Trustees decided to make a discretionary increase to his deferred pension to reflect this.
 - Furthermore, a party normally cannot be permitted to deny that which, knowingly or unknowingly, they have encouraged another to assume to his/her detriment. It is incumbent upon any member of a pension scheme to ensure that, if fundamentally flawed data is displayed in benefit statements, the relevant person or department be notified so that corrections can be made.
 - Although Mr R has not incurred any actual financial loss as a result of the maladministration identified, he has suffered some distress and inconvenience.
 - The non-financial injustice which Mr R had suffered was, however, in the Adjudicator's opinion, not significant enough to warrant the Pensions Ombudsman directing the Trustees to award Mr R the minimum £500 payment which he could award in such circumstances.
10. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R essentially made the same points as before as summarised in paragraph 8 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 R for completeness.

Ombudsman's decision

11. Mr R considers that the temporary monthly fees which he was paid for undertaking the directorship duties at Texecom were not fluctuating emoluments, but additional basic salary. He has not however been able to provide any concrete evidence corroborating his view despite having been given the opportunity to do so. The contemporary documentary evidence which exists shows his salary as the lower figure without the additional Texecom allowance.
12. I can only reach an opinion based on the evidence available, which I consider falls short of establishing any injustice in the form of an actual financial loss was suffered by Mr R. I accept that Mr R has suffered some distress and inconvenience as a result of the initial incorrect deferred pension statement which was issued to him. However,

awards for distress and inconvenience are usually modest and not intended to punish the respondent. In this case the Company have already made a discretionary increase his deferred pension and I consider that is sufficient compensation for any injustice which has occurred.

13. I therefore do not uphold Mr R's complaint and no further action is required on the part of the Trustees.

Karen Johnston

Deputy Pensions Ombudsman
8 August 2018