PO-18939

Ombudsman's Determination

Applicant	Mr T
Scheme	The Robert Horne Group Pension Scheme (the **Scheme**)
Respondents	HR Trustees Ltd (the **Trustee**)
	Barnett Waddingham LLP (**Barnett Waddingham**)

Outcome

1. I do not uphold Mr T's complaint and no further action is required by the Trustee or Barnett Waddingham.

Complaint summary

2. Mr T has complained that he was not paid his Scheme benefits early on the grounds of ill health, despite having applied for them on this basis. He has complained that, as a result, his pension was reduced when the Scheme entered the Pension Protection Fund (**PPF**) Assessment Period. Mr T has also complained that his pension has not been increased for two years.

Background information, including submissions from the parties

Background

3. Mr T requested early retirement on the grounds of ill health in 2014. At the time, he was absent from work with a number of medical conditions, including gout, osteoarthritis and chronic kidney disease.

4. At the time of Mr T's retirement, the relevant Scheme document was the Trust Deed and Rules dated 26 March 2004. Rule 3.2 said:

"If the Principal Employer and the Trustees agree, a Member may take an immediate pension before Normal Retirement Date if his Pensionable Service and Service end:

3.2.1 after reaching age 50 or

3.2.2 in the Trustees' opinion, due to physical or mental deterioration which stops him following his normal employment or seriously impairs his earning capacity."

5. Rule 3.3 set out how an early retirement pension should be calculated. It said:

"The Member's pension under Rule 3.2 will be the greater of:

3.3.1 1/720th of Final Pensionable Salary for each complete month of Pensionable Service subject to a maximum of 480 months, reduced … for early payment:

…

3.3.1.2 in the case of a Member aged under age 60 on 1st April 2003 by an amount which the Trustees, acting on the advice of the Actuary, decide is appropriate having regard to the period between the date of the Member's retirement and his Normal Retirement Date …"

6. Rule 8.4 said:

"On each 1st January a Member's pension under rule 3 … will be increased by the Escalation Percentage. Where on any 1st January a pension has been paid for less than 12 months, the increase will be proportioned …"

7. "Escalation Percentage" is defined as:

"(1) in the case of a pension attributable to Pensionable Service completed before 6th April 1997, 3% per annum compound, and

(2) in the case of a pension attributable to Pensionable Service completed after 5th April 1997 and before 6th April 2003, the lesser of:

(A) 5% per annum compound, or

(B) the percentage increase in the Government's retail prices index, subject to a minimum increase of 3% per annum compound, over the 12 months ending on the previous 30 September, or

(3) in the case of a pension attributable to Pensionable Service completed after 5th April 2003, the lesser of:

(A) 5% per annum compound, or

(B) the percentage increase in the Government's retail prices index over the 12 months ending on the previous 30 September

EXCEPT that if the change in the Government's retail prices index over that period is a negative percentage, the Escalation Percentage will be zero."

8. At the time of Mr T's retirement, the Scheme was not administered by Barnett Waddingham. The previous administrator wrote to Mr T, on 24 June 2014, confirming that his pension (£4,208.40 per year) would be paid with effect from 22 May 2014. It explained that the first payment would be made on 1 August 2014 and would include back payments. Mr T was also paid a tax free cash sum of £28,055.66.

9. At the beginning of 2015, Robert Horne Group Ltd (the **Company**) wrote to Mr T offering him a pension increase exchange option. Mr T was asked if he wished to receive a higher pension in exchange for lower annual increases in the future. Mr T did not take up this option.

10. The Company went into administration on 1 April 2015. It went into liquidation on 1 April 2016. The Scheme entered the PPF Assessment Period on 1 April 2015. The Trustee was appointed on 15 June 2015. Barnett Waddingham took over administration of the Scheme on 14 July 2015.

11. On 27 November 2015, Barnett Waddingham wrote to Mr T explaining that, whilst the Scheme was in the Assessment Period, benefits had to be paid at the same level as PPF compensation. It said members who had reached their normal pension age and those who had retired on the grounds of ill health would receive 100% of their pension. Barnett Waddingham also explained that compensation paid for service before 6 April 1997 did not receive any annual increase. It said Mr T's pension had to be adjusted with effect from 1 April 2015.

12. Mr T contacted Barnett Waddingham to explain that he had retired on the grounds of ill health. In response, Barnett Waddingham said the Scheme Rules did not provide for members to retire on the grounds of ill health; it would be treated as early retirement. On 24 December 2015, Barnett Waddingham wrote to Mr T saying the records it had showed that he had retired early but not on the grounds of ill health. It said an ill health pension would only have been payable if the trustees had been provided with medical evidence showing that he had serious ill health affecting his life expectancy. Barnett Waddingham asked Mr T to provide any documents which confirmed he had been granted ill health retirement.

13. Following further correspondence, the Trustee asked Mr T to provide copies of any correspondence between himself and the previous administrator in 2013 and 2014 regarding his retirement. Mr T provided copies of letters from his doctors and a page from a 2006 booklet "Understanding 6 April 2006 changes". Under the heading "What about ill health early retirement?", the booklet said:

> "Ill health early retirement can be taken from any age but the Government has tightened up the requirements for supporting medical evidence."

14. In May 2017, the Trustee asked the PPF to review Mr T's case. It wrote to Mr T, on 22 June 2017, saying that the PPF had said he should be classed as an early retirement, rather than an ill health retirement. This was because no medical evidence had been obtained or provided at the time of his retirement. The Trustee

explained that, if he was not satisfied with this response, he could pursue the matter under the internal dispute resolution (**IDR**) procedure.

15. Mr T submitted a complaint under the IDR procedure and the Trustee issued a decision on 8 September 2017. Its decision is summarised as follows:-

- It had reviewed all the documentation provided by Mr T and the previous administrator. It acknowledged that Mr T had enquired about ill health retirement.
- The previous administrator had reviewed the Scheme Rules and concluded that ill health retirement benefits could be taken at any time but would be reduced for early payment.
- Because the Scheme Rules provided for Mr T's pension to be calculated on the same basis whether he retired on ill health grounds or not, he was treated as a normal early retirement.
- It was only the subsequent entry of the Scheme into the PPF Assessment Period which made a distinction between ill health early retirement and normal early retirement.
- The 2006 Scheme booklet was designed to explain the impact of the Finance Act 2004 and tax changes from 6 April 2006. The Finance Act 2004 changed the requirement to obtain medical evidence for ill health retirement.
- It had submitted Mr T's case to the PPF for review and the PPF had confirmed that he should be classed as a normal early retirement. The reduction to Mr T's pension was a legislative requirement and it had no discretion in this.
- From 1 April 2015, it was required to pay benefits in line with the PPF compensation levels. This meant that annual pension increases could only be paid on part of Mr T's pension.
- The reduction in Mr T's pension had resulted in an overpayment for the period 1 April 2015 to 31 December 2016. This amounted to £320.94.
- It had decided that overpayments would not be recovered at that stage. However, it had only applied the 2016 and 2017 pension increases where members' benefits were not expected to change. This was to avoid compounding any overpayments.

16. In January 2019, the Trustee asked the PPF to review Mr T's case again. This followed a change in the PPF's approach to schemes which did not differentiate between ill health and early retirement. On 15 March 2019, Barnett Waddingham wrote to Mr T notifying him that the PPF had reviewed the ill health retirement process and had agreed that he should be classed as an ill health retirement. It said, as a result, Mr T's pension need not be reduced and there was no overpayment. Barnett Waddingham said Mr T's annual pension would be £4,403.16 with effect from

1 April 2019 and he would be paid £1,500.99 back payment for the period 1 January 2016 to 31 March 2019. The Trustee has also confirmed that Mr T has now received increases to his pension in line with the PPF compensation provisions.

17. Extracts from the relevant legislation are provided in the Appendix.

18. On 11 November 2019, Barnett Waddingham wrote to Mr T notifying him of the outcome of a review of the benefits provided by the Scheme. In particular, the review had looked at the way in which benefits had been equalised between male and female members and the application of increases to pensions in payment. Barnett Waddingham said that, as a result of the review, Mr T's annual pension had increased from £4,279.44 to £4,465.52. Mr T submits that this is further evidence that his pension has not been administered correctly.

Adjudicator's Opinion

19. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or Barnett Waddingham. The Adjudicator's findings are summarised below:-

- Mr T had complained that his request for early retirement on the grounds of ill health had not been acted on in 2014. He had explained that he had notified the previous administrator that he wished to take early retirement on the grounds of ill health.

- At the time Mr T retired, it had made no difference to the amount of pension he would receive whether he took ordinary early retirement or ill health early retirement. Rule 3.2 (see paragraph 4 above) said the pension would be reduced regardless of the reason for early retirement. The only difference between ordinary early retirement and ill health early retirement was that a member could retire at any age on the grounds of ill health. If the member wanted to take ordinary early retirement, s/he would have to wait until at least age 50. Since Mr T was over the age of 50, it made no difference in his case whether he retired through ill health or not; his pension would be the same amount either way. His benefits were, therefore, paid without any formal ill health retirement process.

- Mr T had referred to a Scheme booklet produced in 2006, which referred to ill health retirement. This booklet had been provided in order to make Scheme members aware of changes in pensions law introduced by the Finance Act 2004. Amongst other things, it had referred to a requirement, under the Finance Act 2004, for trustees to obtain medical evidence before agreeing to pay ill health retirement benefits. It had not introduced any new provisions into the Scheme Rules.

- The reason for Mr T's retirement only became an issue when the Scheme entered the PPF Assessment Period in 2015. In order for him to continue to receive his pension in full, he had to be classed as having retired on the grounds of ill health.

- Under Section 138 of the Pensions Act 2004 (see Appendix), the Trustee was required to reduce pensions in payment to: “the extent necessary to ensure that they do not exceed the compensation which would be payable to or in respect of the member” by the PPF.

- The amount of compensation which would be payable if the Scheme were to be accepted into the PPF was set out in Schedule 7 to the Pensions Act 2004 (see Appendix). This said that, “where the pensioner has not attained normal pension age … before the assessment date and his entitlement to the pension … did not arise by virtue of any provision of the … rules of the scheme … as to early payment of pension on grounds of ill health”, the compensation would be 90% of a member’s annual pension plus any increases.

- The assessment date for the Scheme was 1 April 2015. Mr T had not reached his normal pension age by that date. Because his early retirement had not been specifically recorded as an ill health retirement, the Trustee had been required to reduce his pension to 90%. The Trustee had no discretion in this; it had been required to comply with the Pensions Act 2004.

- Having been contacted by Mr T and informed that he had retired on the grounds of ill health, the Trustee took steps to verify this and to persuade the PPF that he should be classed as an ill health retirement. In the Adjudicator’s view, this was an appropriate response in the circumstances. The decision to pay Mr T’s benefits had been taken prior to the Trustee being appointed. It had to comply with its legal duty to reduce Mr T’s pension but, equally, it had a duty to investigate his case. It had taken steps to gather evidence from Mr T and the previous administrator, and it had put this forward to the PPF on his behalf. The Adjudicator was of the opinion that the Trustee had acted appropriately in the circumstances.

- Although Mr T’s pension had been reduced and he had not received pension increases for two years, the PPF had since agreed that he should be classed as an ill health retirement. Mr T’s pension had been restored to its previous level and he had been paid pension increases. He had also received back-payments for the period 1 January 2016 to 31 March 2019. Mr T was, therefore, back in the position he would have been in had his pension not been reduced in the first place.

- The Trustee was unable to pay Mr T the same pension increases as were provided for in the Scheme Rules because these exceed the PPF compensation provisions.

- The decision to pay Mr T’s pension without going through a formal ill health retirement process had been taken before the Trustee or Barnett Waddingham were appointed. Given that the Company went into administration so soon afterwards, it might be argued that it could have been foreseen that this would cause problems for any members in Mr T's position if the Scheme went into the PPF Assessment Period. However, this was not something the Trustee or Barnett Waddingham had any hand in. In any event, the PPF had now accepted Mr T as an ill health retiree and his pension had been restored. Any injustice to him had been redressed.

20. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T 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 main points made by Mr T for completeness.

Ombudsman's decision

21. Mr T has complained that, in 2014, his request for ill health early retirement was not responded to correctly. I note that neither the Trustee nor Barnett Waddingham had been appointed at this time.

22. The main issue in Mr T's case is that the Scheme Rules do not distinguish between early retirement on the grounds of ill health or early retirement on any other grounds; the amount of the benefits paid would be the same whatever the reason. Mr T's request for early payment of his benefits was, therefore, agreed without further medical advice being sought. I do not find that this amounted to maladministration. Seeking further medical evidence and formally agreeing to Mr T's request for early payment on the grounds of ill health served no purpose at that time.

23. A problem only arose once the Scheme entered the PPF Assessment Period. The PPF required evidence that the early payment of Mr T's benefits had been on the grounds of ill health. It initially declined to accept that this had been the case. I find that the Trustee took appropriate steps to persuade the PPF to treat Mr T as an ill health retiree. I do not find that there was any maladministration by the Trustee in applying the statutory requirement to reduce Mr T's pension until the PPF accepted that he was an ill health retiree. It had no option but to do so.

24. In any event, the PPF has since accepted that Mr T is an ill health retiree and his pension has been restored to its former level. He has also received back-payments covering the period for which his pension was reduced. Mr T is now back in the position he would have been in if his pension had not been reduced.

25. I do not find that there has been any maladministration on the part of the Trustee or Barnett Waddingham.

26. The letter which Mr T received in November 2019 relates to entirely separate matters. The fact that Mr T has been told that his pension will increase as a result of the review undertaken by the Trustee and Barnett Waddingham is not evidence of maladministration on their part. It was perfectly proper for the Trustee to undertake a

review of the Scheme Rules and the benefits being paid by the Scheme when it entered the PPF Assessment Period. And it was clearly to Mr T's benefit that it did so since his pension has increased as a result. It would be difficult to argue that he sustained any injustice as a result of the Trustee's actions.

27. I do not uphold Mr T's complaint.

Anthony Arter

Pensions Ombudsman
29 January 2020

Appendix

The Pensions Act 2004

28. Section 138 says:

"**Payment of scheme benefits**

(1) Subsections (2), (2A) and (3) apply where there is an assessment period in relation to an eligible scheme.

(2) The benefits payable to or in respect of any member under the scheme rules during the assessment period must be reduced to the extent necessary to ensure that they do not exceed the compensation which would be payable to or in respect of the member in accordance with this Chapter if -

(a) the Board assumed responsibility for the scheme in accordance with this Chapter, and

(b) the assessment date referred to in Schedule 7 were the date on which the assessment period began.

…

(8) For the purposes of subsections (2), (2A) and (3) the trustees or managers of the scheme may take such steps as they consider appropriate (including steps adjusting future payments under the scheme rules) to recover any overpayment or pay any shortfall.

(9) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with subsections (2) to (3) …"

29. Schedule 7 says:

"Pensions in payment at assessment date

3

(1) Compensation is payable in accordance with this paragraph where, immediately before the assessment date, a person is entitled to present payment of a pension under the admissible rules of the scheme.

(2) That person (**"the pensioner"**) is entitled to periodic compensation in respect of that pension (**"the pension"**) commencing at the assessment date and continuing for life ...

(3) The annual rate of the periodic compensation is the appropriate percentage of the aggregate of -

(a) the protected pension rate, and

(b) any increases under paragraph 28 (annual increases in periodic compensation).

(4) In sub-paragraph (3) **“the appropriate percentage”** means -

(a) in a case to which sub-paragraph (7) applies, 90%, and

(b) in any other case, 100%.

(5) In sub-paragraph (3) **“the protected pension rate”** means the annual rate of the pension, under the admissible rules, immediately before the assessment date.

(6) ...

(7) This sub-paragraph applies where the pensioner has not attained normal pension age in respect of the pension before the assessment date and his entitlement to the pension -

(a) is attributable to his pensionable service, and

(b) did not arise by virtue of any provision of the admissible rules of the scheme making special provision as to early payment of pension on grounds of ill health …”