

Ombudsman's Determination

Applicant	Mr N
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 N'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 N, as the lead applicant with two other applicants associated with this case, has complained that the Trustees and Aon have not calculated the final pensionable salary correctly, resulting in a lower than expected pension. Mr N says that the Trustees have not treated him and the other applicants, as protected persons under the Electricity Act of 1988 and have not applied the pensionable salary dynamisation.

Background information, including submissions from the parties

4. Mr N 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 N 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.
5. Mr N from June 2003 to June 2006 was a member nominated trustee of the Scheme. While he acknowledges he transferred from SPPS to the Scheme and that the Scheme "was a good scheme", he feels he was misled about not having his final pensionable salary adjusted on retirement.
6. Mr N retired from the Scheme in April 2007 aged 58. Mr N first complained in July 2013 but he did not raise the matter whilst he was a trustee of the Scheme. Mr N

says that it was only after one of the other applicants realised that the pensionable salary had not been dynamised that he became aware of the issue.

7. Mr N 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 Mr N was 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 N has received a pension from the Scheme that is both in equal value and 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 N and the two other applicants have said that they did not receive any information regarding how the pensionable salary would be calculated. Mr N says that as protected persons, the Scheme needs to replicate like for like pension within the Scheme that Mr N would have received from SPPS.
11. The Trustees' position is that the pension they provided Mr N was no worse than the pension provided by SPPS. The Trustees say Mr N has received a pension greater than what he would have received had he remained within SPPS. The Trustees based this on the comparison they completed. The Trustees say that as Mr N retired at 58, the Scheme pension was £28,278.60 whereas from SPPS it would have been £25,657.79 – this figure includes the dynamisation. Similar comparisons were completed for the other applicants.
12. Mr N disagrees with the Trustees' calculations. He says that the Trustees have not responded to his fundamental complaint, in that within SPPS there was a provision that allowed pensionable salary to increase, if increases to pensionable salary were less than the increases in cost of living in the years before retiring. Mr N says that he received no increase to pensionable salary therefore this provision from SPPS, of salary dynamisation, should be applied by the Trustees to his pension from the Scheme.

Adjudicator's Opinion

13. Mr N's 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:
- Mr N 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 Mr N could have received from SPPS.
14. Mr N did not accept the Adjudicator's Opinion because Mr N insists that the Scheme is not comparable because it does not offer a pensionable salary dynamisation. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

15. 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. The Trustees have produced a comparison that shows that the pension that they paid Mr N at 58 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 has less 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 N 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.

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17. Therefore, I do not uphold Mr N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
4 July 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.