



**An Bord Pinsean  
The Pensions Board**

**PAC-R-247**

**Correspondence 3.17  
Meeting – 19/01/2012**

Ms Eimear Lavelle  
Committee Secretariat  
Committee of Public Accounts  
Leinster House  
Dublin 2

16 January 2012

Dear Eimear,

Further to your letter of 14 December 2012 I write to furnish you with The Pensions Board response in relation to the matter raised with the PAC by Councillor Philip Cantwell of Trim Town Council.

I am aware that the Pensions Ombudsman has replied separately to you on this matter with a note covering the technical background to Income Continuance Plans.

Representations were made to The Pensions Board by Mr Cantwell as far back as the early nineties in relation to Employers Income Continuance Plan (ICP) at Tara Mines. Attached please find a copy of the outcome of the Boards enquiries in December 1992 in relation to these matters. This report was circulated at the time to Mr Cantwell and all other parties connected with this scheme, including the trustees, the employer and trade union representatives.

In the intervening years the Board has had extensive written correspondence with Mr Cantwell on a range of issues and has met with him in person on a number of occasions. In 2002 under a Freedom of Information (FOI) request, the Board supplied Mr Cantwell with a full set of all correspondence in relation to all his enquiries with the Board. In June 2010 following a meeting with Mr Cantwell the Board gave him copies of any recent correspondence he had with the Board and re-copied the 2002 FOI file for him.

As recently as November 2011, the Board was in correspondence with Mr Cantwell in relation to his concerns about the selection of trustees to the Tara Mines Pension Scheme (PB No. 2755) and a range of his ongoing concerns.

In our correspondence with Mr. Cantwell in November 2011, the Board pointed out that the trustees of this scheme have confirmed to the Board that in December 2005/ January 2006, an Alternative Arrangement was put to the members by way of a preliminary poll. The members accepted the alternative arrangement which appointed 3 company and 3 trade union nominated trustees for a term of office expiring on 18 March 2012. The Standard Arrangement for election of trustees was therefore not required. However, this does not diminish in any way the rights of members to seek an election at any future time under the regulations.



On the broader issues he raised about the Boards actions in relation to this scheme, it may be useful to set out the responsibilities and powers of The Pensions Board.

The Board is responsible for supervising the compliance of pension schemes with the Pensions Act 1990. This Act covers issues such as managing and administering schemes, funding of benefits, providing information to members, etc. Where pension scheme trustees do not comply with the Act, the Board has various powers, including prosecution. However, although the Act is wide ranging, there are a number of important pensions issues which are not covered. The most important are

- (a) the benefits that the scheme provides – the Board oversees the funding of the benefits set out in the scheme, but has no powers to set those benefits.
- (b) the choice of scheme trustees – the Pensions Act does not set out any requirements for how the trustees are appointed, other than the provisions for member-elected trustees which can be invoked.
- (c) employer and member contributions – the Board has no power to compel anyone to contribute to a pension scheme.

The Pensions Act gives the Pensions Board the power to conduct an investigation of the state and conduct of a pension scheme. However, as the Board supervises over 100,000 pension schemes, we would conduct such an investigation only when there is a strong indication of a breach of the specific provisions of the Pensions Act, and when there is no other practical means of getting the information we need.

On the specific issue of electing trustees, the trust deed of a pension scheme will set out the basis on which the trustees are appointed or elected, and the law does not put any restriction on this. There is a provision under section 62 of the Pensions Act whereby member representatives can be elected, but there is a process for invoking this procedure: it does not apply automatically.

The Pensions Act and associated disclosure regulations set out what information the trustees of a scheme must provide to members, and what information members must be allowed access to. In broad terms, members are entitled to certain information about their own entitlements, and also to see the scheme's annual report and accounts, its periodic actuarial reports, and the rules of the scheme. Regulations set out what the annual report and the actuarial reports must include. However, there is no legal obligation on trustees to respond to ad hoc requests for additional information, though our experience is that most trustees are willing to provide information that they have available to hand.

Finally, the process by which the Pensions Board decides whether to investigate any scheme is directed by taking into account all the information we have or have received about a scheme, the level of risk arising from the concerns raised and whether an extensive investigation might be appropriate.

The Board has no formal process for deciding whether to investigate a scheme both because there is a very wide range of potential sources of information that could lead us to suspect an offence, and because any such offence could range from a serious

offence involving misappropriation through to a technical breach of some relatively minor provision for which prosecution might not be appropriate.

In the case of the Tara Mines pension scheme, it is our view that none of the matters brought to our attention by Mr Cantwell over the years are a breach of the Pensions Act such that would warrant an investigation of this scheme.

I trust you find this information helpful and if you have any further questions please do not hesitate to contact me.

Yours sincerely,

  
Brendan Kennedy  
Chief Executive

PENSIONS ACT, 1990

7 December  
1992

*Subject: Outcome of Pensions Board enquiries in relation to company  
Trustee of the Tara Mines Pension Plan with certain provisions of the  
Pensions Act.*

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1. Representations have been made to the Pensions Board concerning the Tara Mines Limited Pension Plan in relation to
  - (a) the level of benefits due under the pension plan at normal retirement age, in the case of a member who has left service on becoming incapable of work and who is in receipt of benefits under the Employer's Income Continuance Plan (ICP); and
  - (b) the level of contributions payable in respect of the members concerned to the pension scheme during such periods, in accordance with the terms of the ICP.

Representations have also been made regarding the disclosure of information to scheme members on the administration of the scheme, with particular reference to the accounts of the scheme.

Duties of Trustees

2. Section 59 of the Pensions Act, which came into force on 1 November 1991, sets down the general duties of the trustees of schemes and these include the following:

*"to ensure, insofar as is reasonable, that the contributions payable by the employer and the members of the scheme, where appropriate, are received" (Section 59(a)) and*

*"where appropriate, to make arrangements for the payment of benefits as provided for under the rules of the scheme as they become due" (Section 59(c)).*

The Trustee of the scheme, Noble Lowndes Irish Pensions Trust Ltd, were asked by the Pensions Board to explain fully the basis in the Trust Deed and

Rules for the calculation of the pensions due in respect of periods when a member is in receipt of benefits under the ICP. They were also asked to confirm whether contributions at the correct level payable for these periods under the pension plan are being received.

In the light of the explanations received by the Pensions Board, the position is as follows.

#### Retirement before Normal Pension Date

3. Provision is made under General Rule 10 of the pension plan that a member may retire prior to the normal pension date on grounds of incapacity, with the consent of the Trustee and of the Employer. In that event he will be entitled to receive either
  - ♦ an immediate pension at a reduced rate equal in value to the total value of his pension interest in the Fund, as determined by the Trustee, or such greater amount as the Employer, with the consent of the Trustee, shall decide or, if he so opts,
  - ♦ a deferred pension payable from normal pension date (age 65) under the 'Leaving Service' provisions, as set out in General Rule 12 of the scheme.
  
4. A Special Rule 10 of the scheme provides, however, that in the event of a member receiving benefit under the provisions of the ICP, the provisions of General Rule 10, insofar as they provide for early retirement on grounds of incapacity, do not apply. This has two effects. An immediate pension is not payable under the pension plan as the member is receiving a benefit under the ICP. Instead the member is entitled to receive a deferred pension under the 'Leaving Service' provisions, as set out in General Rule 12.

Sub rule (c) of General Rule 12 provides that members shall be entitled to whatever benefit they have been notified of prior to date of leaving.

### Benefits on Leaving Service

5. Members have been notified that on leaving service, the pension to be provided at normal pension date (age 65) is

$1/60\text{th} \times \text{pensionable salary (at date of leaving)}$

for each year of pensionable service up to date of leaving (*Plan Booklet and Special Rule 9 of Pension Plan refers*).

#### Example:

Pensionable salary - £18,000 (at date of leaving)

20 years pensionable service to date of leaving

#### Pension at Age 65

$20/60\text{ths} \times £18,000 = £6,000$  per year

They have also been notified that if they leave with entitlement to a deferred pension, cover for lump sum death benefit will no longer apply.

### Augmentation of 'Leaving Service' Benefits

6. Clause 8 of the Trust Deed, which is copper-fastened under General Rule 4(b) of the pension plan, provides, however, that the Trustee may, with the consent of the Employer, augment any of the benefits to which any person may be entitled under the Rules. The Trustee has been asked by the Employer to augment the deferred pension entitlements of members who leave service through incapacity and qualify for benefit under the ICP in the following manner.

The number of years from date of leaving service, during which the member is in receipt of benefit under the ICP, up to normal pension date (age 65) should be added to the number of years of pensionable service completed up to the date of leaving, for the purposes of calculating the deferred pension

entitlements of the members concerned. In the case of the example given in paragraph 5 above, the amount by which the benefits should be augmented would be calculated as follows.

If the member at date of leaving was aged 45, there would be 20 further years to age 65. Accordingly, the pension to be provided from age 65 would be

$$40/60\text{ths} \times \text{£}18,000 = \text{£}12,000 \text{ per annum}$$

The augmentation in that case would be £6,000 per annum from age 65.

In addition, the Employer has requested the Trustee to continue the death in service benefit at the level in force at point of disability.

#### **Benefits under Income Continuance Plan**

7. The Income Continuance Plan (ICP) is administered by the Employer independently of the Pension Plan. An annual income, equivalent to 75% of salary at date of disability less the single person's rate of disability benefit under the State social insurance scheme, is payable to those who qualify for benefit under the ICP. The income increases by 5% per year compound during disability, the first increase being effective after the benefit has been in payment for 12 months.
8. The ICP, in addition, provides "an amount which would maintain the level of contributions payable under the Pension Plan at the point of disability. This amount will be utilised towards maintaining contributions to the Company's Pension Plan in order that Death in Service and Pension Benefits continue to accrue" (extract from Plan booklet).

This provides the basis for the augmentation of the 'Leaving Service' benefits of those receiving benefit under the ICP, as described above in paragraph 6.

9. The ICP is financed in the case of Staff Employees by the Employer and in the case of Hourly Paid Employees by the Employees themselves. The plan is insured with an Insurance Company, whereby under the policy of insurance the Employer is paid a sum of money when an individual qualifies as a claimant. The money thus provided covers the cost of the benefit paid to the claimant and the cost of maintaining the contributions to the pension plan.

#### Matters at Issue

10. The representations made to the Pensions Board relate to the following issues:
- (a) Pensionable Salary, for the purposes of calculating the amount by which the pension and lump sum death benefits are to be augmented, should be increased by 5% each year in line with the increases made to the benefit payments under the ICP;
  - (b) The rules of the ICP should provide for this and, if they do not so provide, it was the intention, at least as understood by those who negotiated the introduction of the ICP on behalf of the employees, that the ICP would provide for a level of augmentation calculated on the basis described under (a);
  - (c) The amount of money payable under the policy of insurance towards the contributions for the pension and death in service benefits is sufficient to provide the level of augmentation sought, as this amount increases by 5% compound per year.

#### Calculation of Benefit Augmentations

11. Income Continuance schemes which provide benefits in the event of incapacity for work do not come within the scope of the Pensions Act and, therefore, the Pensions Board has no function in relation to the operation of these schemes.

However, the issue of whether provision is made under the ICP for the augmentation of benefits, that would involve adjusting the salary at date of disability in the manner described at (a) in paragraph 10 above, was referred



by a scheme member, who is receiving benefit under the ICP, to a Rights Commissioner, who investigated it on 18 June 1991. The Rights Commissioner issued the following recommendation on 2nd December 1991:-

*"I recommend that the worker accepts that he is in receipt of correct benefits under the Pension and Income Continuance Plans".*

The scheme member appealed against the recommendation under Section 13(9) of the Industrial Relations Act, 1969. The Labour Court heard this appeal on 23rd January 1992 and its decision given on 23rd March 1992 was as follows:-

*"The Court has given careful consideration to all aspects of the appeal and has concluded that the appellant is in receipt of his correct entitlements under the Pension and Income Continuance Schemes at present provided by the Company.*

*The Court accordingly rejects the appeal and upholds the Rights Commissioner's Recommendation".*

12. The issue of whether the actual provision for augmentation of benefits under the Pension Plan for those receiving benefits under the ICP reflects what was intended when the plans were being negotiated are essentially matters for further negotiation between the Employer and the representatives of the members.

There is no legal requirement on the Employer to amend the ICP to, in effect, provide for the improved level of augmentation sought. It is a matter for an employer either on his own initiative or following consultations with representatives of his employees to decide in the first place as to whether arrangements should be made for the provision of occupational benefits and then to decide on the range and level of benefits to be provided under any such arrangements. Accordingly, in this case it is ultimately a matter for the Employer as to whether provision should be made for the improved level of augmentation sought.

13. The third issue concerns whether sufficient funds are being provided under the policy of insurance to finance the level of augmentation sought. As pointed out above (paragraph 9) a sum of money is paid to the Employer under the terms of this policy in respect of each claimant to finance the benefits due to that claimant under the ICP, including provision for the augmentation of his benefits under the pension plan.

The level of benefits to be provided under the ICP do not have to be directly linked to the sum of money received under the insurance policy. If, for example, the sum of money received was less than the amount required, the Employer would still be expected to provide the level of benefits promised. It is understood from the technical advice given to the Employer on this matter that it is difficult to establish in individual cases whether the sum received under the insurance policy is more or less than required. Again it is ultimately a matter for the Employer to decide whether to improve the level of augmentation currently provided for, which could involve having to make extra funds available to meet any shortfall that may arise between the amount required to finance the improved benefits and the amount due to him under the insurance policy.

It is understood that the Employer has agreed to consider this issue in the case of the hourly paid employees who are financing the insurance policy in their case by means of deductions from their earnings. Proposals in this regard were submitted to representatives of the scheme members involved on 19 October and these are currently the subject of correspondence between both sides.

**Duty to Arrange for Payment of Benefits Due - Summary of Main Findings**

14. In the light of the foregoing, the Trustee of the pension plan are discharging their duty to make arrangements for the payment of benefits, as provided for under the rules of the scheme, as they become due (Section 59(c)), in the case of scheme members receiving benefits under the ICP.

The rules for determining the benefits due on leaving service are set down in General Rule 12(c) and in Special Rule 9 and these have been notified to members in the explanatory booklet (page 9 of booklet refers).

The Trustee can augment these benefits with the consent of the Employer. The level of such augmentation sanctioned by the Employer, in the case of scheme members receiving benefits under the ICP, is described above in paragraph 6. This is in line with the provision made in this regard in the ICP (paragraphs 8 and 11 refer).

The issue of whether the augmentation sanctioned should be increased further in line with the formula referred to at (a) of paragraph 10 above, is ultimately a matter for the Employer. There is no legal requirement on the Employer to provide for the level of augmentation sought.

#### Duty to Ensure Contributions are Received

15. With regard to the duty 'to ensure, insofar as is reasonable, that the contributions payable ..... are received' (Section 59(a)), the Trustee has stated that they will ensure, as far as possible, that the ongoing contributions payable continue to be sufficient to meet the Plan's liabilities (including the augmented deferred pensions). None of these deferred pensions have become payable to date.

#### Duty to Disclose Information

16. The Trustee was also asked to comment on representations made regarding the disclosure of information on the scheme to members. The Trustee has stated that to date members have been provided with an explanatory booklet on joining the pension plan and Annual Membership Certificates setting out the benefits at the annual renewal date (1st July) each year. In addition, in the past a one page statement has been issued by the Trustee with a view to expanding on the details of the explanatory booklet and Annual Statement. This statement covered:

- Legal status of plan
- actuarial position of the plan
- confirmation that contributions are being remitted in accordance with Actuary's recommendation
- assets: - size and distribution of assets and who the Investment Manager is.

The last membership certificate was issued in November 1989, at which stage the assets of the scheme were £8,376,888. The Trustee has stated that the Annual Accounts have always been prepared and audited for the plan, although these have not issued to the membership.

#### Annual Trustee Report

17. The Trustee is at present in the process of preparing the Annual Trustee Report and accounts for audit, in respect of the scheme year 1 July 1991 - 30 June 1992. These will be the first such report and accounts, which are required to be prepared in accordance with the terms of the Pensions Act and its regulations, and they must be made available within 9 months of the end of the scheme year, which in the case of this scheme is not later than end March 1993. The Trustee expects to be in a position to have the annual report and the accounts ready before this statutory deadline.

#### Actuarial Valuation

18. This pension scheme is defined benefit i.e. it sets out the pension and other benefits which will be paid to the member and/or the member's dependants. The Trustee is required under the Pensions Act to have an actuarial valuation of the scheme's assets and liabilities prepared not later than 31 December 1993. An Actuarial Funding Certificate signed by an actuary to certify that the scheme complies with the Funding Standard under Part IV of the Pensions Act, must be sent to the Pensions Board within 9 months of the effective date of the actuarial valuation.

As the last actuarial valuation was completed on 1 July 1990, the Trustee does not envisage that the next such valuation will be completed until 1 July 1993. However, the Trustee will be commenting on the findings of the last actuarial valuation in the Annual Report for the year ended 30 June 1992.

### Conclusion

19. In the light of the enquiries made into the operation of this scheme following the representations made in relation to the matters referred to above in paragraph 1, the Pensions Board is satisfied that the Trustee of the scheme is complying with the provisions of the Pensions Act in relation to these matters.