SUBMISSION ON PENSIONABLE PAY SUPPRESSION

www.tssa.org.uk

Introduction

The issue of Pensionable Pay Suppression has been highlighted by TSSA on a number of occasions at Contact Group meetings as well as in the evidence that we submitted for the 1st Call for Evidence.

Prior to the Review, TSSA had raised the matter of suppression with TfL at Pension Working Group (PWG) meetings and, through its Trustee, at Trustee Board meetings. During this Review, TSSA has continued to raise the matter at PWG when it was agreed a sidenote should be produced to clarify the matter.

Most recently, we raised it in connection with the Review Team's Interim Report which had not mentioned the issue and we were told that TfL had not supplied the data. At the latest Contact Group meeting (31st January 2022) when our data request was repeated (and agreed to again), it was suggested to TSSA that the union supply information about what it means by Pensionable Pay Suppression.

What is Pensionable Pay Suppression?

Traditionally, at TfL and its predecessor organisations, pensionable pay grew regularly to reflect promotion and more importantly, annual price inflation. With Senior Manager Reward Framework (SMRF) and Pay for Performance (PfP), the employer devised a way to decouple pensionable pay from inflation in such a manner as to cause real and lasting financial detriment to numbers of workers outside London Underground Limited (LUL).

The first point to note, therefore, is that TfL will certainly know what pensionable pay suppression means because it designed the PfP and SMRF systems and as such will be aware of the effects of keeping – or effectively even reducing - pensionable pay down by supressing salary increases and using non pensionable lump sum bonuses. This has a benefit for TfL's employment costs, helps to restrain the expense of their contributions to the Balance of Cost Pension Fund and means that the scheme's liabilities are also reduced through effectively capping pensionable pay levels. Recent Triennial Valuations reconfirm how SMRF and PfP have worked to reduce TfL's pensionable salary costs when measured against inflation (RPI).

The same approach is not applied to the pay policy in London Underground.

In fact, we are aware that employees under PfP come third in the pecking order in terms of settling pay rises. Staff under PfP have the earliest pay anniversary date (1st April) whilst those in LUL see increases applied from 1st July. However, in practice, TfL settle the LUL claim first, then deal with those employees under SMRF before returning to impose the effects of Pay for Performance. Those employees under PfP sense that they only receive what is left in the pay increase budget after the other two groups have been dealt with.

Members on TfL contracts also know what pensionable pay suppression means because they are exposed to the impact of the pay frameworks that TfL operate and which enable it to suppress pensionable pay through:

- Awarding TfL employees below inflation pay rises
- Only awarding pay increases through non pensionable, non consolidated lumps sums
- Awarding non-pensionable annual bonus with or without a salary sacrifice vehicle (dependent upon pay framework)
- Not awarding an annual uplift in pay at all.

Significance of Pensionable Pay

Pensionable pay is an important part of the basic calculation used to determine an individual's pension. The following formula, available on the TfL Pension Fund's website[1] (and described in detail in the Fund's Trust Deed and Rules), is used:

1/60 x pensionable service x pensionable salary

In the event that a member's pensionable salary is affected by any of the basic impacts listed above, it would mean that, at the very least, employees will see the amount used to calculate their pension

- Grow by a factor <u>below</u> inflation and despite deferred and pensioner members receiving RPI level indexation under the Fund's Rules;
- Remain static
- Potentially reduce because of the rules of the scheme for New members

For employees with TfL Contracts of Employment, TfL started applying pensionable pay suppression to senior managers under a newly constructed SMRF and then moved on to other workers under its revised PfP pay framework vehicle designed for that purpose. As such, this situation has been operating for years.

Our contention is that, in essence, PfP and SMRF have been used as a form of unofficial, unagreed and unilaterally imposed pensionable salary capping which, unlike in other schemes, has not been uniformly applied to all active members in the Fund because of the terms of the relevant pay systems.

We know that a significant number of employees have been affected by the system of pensionable pay suppression. For instance, in our response to the 1st Call for Evidence we included the outcome of a short online survey which found that:

- nearly half (45%) of respondents have only received below inflation pay increases in the last three years
- close to a quarter (23.44%) had not received any salary uplift in the same period.

The sense of injustice and anger is strengthened because TfL workers, including many transferred over into TfL employment from LUL (such as engineers), look at

[1] See: https://tfl.gov.uk/pensions/your-pension/retirement

the situation in London Underground and see fully pensionable RPI+ annual pay awards implemented.

TfL Pay Structures

TfL has a Pay Structure based on five Pay Bands (PB) with PB1-3 coming under the PfP arrangement and PB4-5 qualifying for the SMRF.

Pay Structures – Pay for Performance

Pay for Performance was imposed in 2015 and is a modification of the previous arrangement. TfL are on record of stating that they introduced PfP to use “non consolidated performance awards as the primary method of recognising performance… intended to develop a high performance culture that better recognises and rewards good and excellent performance.”[2]

But the darker reality, as evidenced in TfL Company Council meetings and minutes of the time, is that TfL was less concerned with ‘recognising performance’ and much more intent on tackling what it considered ‘above market’ salaries. This particularly applied to employees in what is now Pay Band 1 and those in the senior level (now Band 4) groups. TfL had implemented SMRF a few years before PfP - and it soon became alarmed how quickly workers outside SMRF, particularly those just-below senior managers, had overtaken SMRF senior managers in pensionable pay.

Once understood, the Pay for Performance system can appear to be fairly straight forward in how it is calculated, but in reality it is an imposed, deliberately opaque system, designed to individualise reward outcomes and reduce the impact of collective bargaining. It is made up of:

- Base Pay rating allocation in a range of 1 to 5 linked to performance
- Performance Bonus rating allocation into a range of 1 to 5 (5 being the best performance) following assessment
- Each band has four or five zones in the matrix (spot rates within the band).

The following table illustrates this for a TfL PB2:

	Minimum A	Minimum B	Minimum C	Minimum D	Minimum E
2015	27500	29900	38700	42200	44400
2016	28100	30700	39500	42700	44600
2017	28500	31000	39800	42700	44600
2018	29350	31500	40000	42700	44600
2019	29350	31500	40000	42700	44600
2020	30000	32000	41250	43250	45250

[2] See: Paragraph 4.8, Page 3 of: https://content.tfl.gov.uk/remcom-20140327-part-1-item06-tfl-performance-awards.pdf

As an example, an employee allocated a Base Pay Performance score of 3 and in Zone B in 2020 would have received a pay increase of 2.25%. PB3s have the same system applied (including percentage pay increase levels) but the Zones are based on higher salaries than those above.

A separate spreadsheet is included. (NOTE: TfL are proposing a four zone structure for 2022).

The figures in the previous paragraph show the increase that about half of staff in PB2 and 3 found themselves in 2020. Most years this is the case, but the level of pay increase can vary from year to year. In 2021, TfL staff did not get a pay increase but staff in London Underground received 1.6% (the third year of a four year deal).

The PfP system, however, has a number of aspects that undermine pensionable pay:

- **Bonus not pensionable and not consolidated:** Those PB2 and 3 employees rated as between 2 to 5 in the Performance system can receive a Bonus payment on top of the performance related salary increase but that payment is paid as a non-pensionable, non consolidated, lump sum. In 2020, this affected most of the 5726 people in PB2 and 3 (those not affected were the 558 employees who did not get a pay increase at all). Furthermore, PfP bonuses are much lower than those payable under SMRF for equivalent levels of attainment;

- **Performance does not guarantee a Base pay increase:** Not all staff, despite the level of their performance, get a Base pay increase. In 2020, for instance, only 64 of 260 employees from Pay Zone D who had been rated as Performance level 4 or 5 (ie, high performers) actually went on to get a modest 0.50-0.75% pay rise. At the same time, none of the 345 staff in Pay Zone E received a salary increase despite their level 4 or 5 performance;

- **Staff in Pay Zones D and E not given a pay increase:** Few of those employees at the upper end of Pay Zones D and E are given a pay increase which means that their pensionable pay is suppressed. On top of the staff not receiving a pay increase despite the level of their performance in the previous example, there are another 457 employees whose Performance was judged to be in the 1-3 range and whose existing salary was in Pay Zone D or E. These additional 457 employees did not get a pay increase at all – and despite 3521 lower paid staff in Performance level 2 and 3 receiving a salary rise. Combined with the previous bullet point, this means that 541 employees in Pay Zones D and E did not get a pay increase in 2020;

- **TfL failure re-test PB1-3 to external market**
  PfP justifies freezing pensionable pay because of market testing undertaken by Towers Watson (now Willis Towers Watson) that underpinned PfP's introduction some years ago. The problem here is that TfL never kept to its

word made at the inception of PfP – that it would retest PB1-3 pay levels to the external market. That re-testing was supposed to take place regularly and when new cohorts were added from LUL, such as the engineers mentioned above;

- **Pensionable pay for TfL employees less than equivalent LU staff:** At the same time as staff in TfL have been treated in this way, the equivalent grades in London Underground have **all** been receiving fully pensionable RPI (or above) based pay increases.

Year	TfL PB2/3	TfL B2/3	LU			TfL PB1
	Base Pay*	Non Pensionable Performance Bonus	Base Pay	RPI (year average)	CPI (year average)	Base Pay
2016	1.0%	2.0%	1.3%	1.0%	0.7%	1%
2017	0.75%	1.8%	3.2%	1.8%	2.7%	1%
2018	1.0%	1.5%	3.9%	3.6%	2.5%	1%
2019	1.0%	1.8%	2.7%	3.3%	1.8%	1%
2020	2.25%	1.5%	2.7%	2.6%	0.9%	2%
2021	0.0%	0.0%	1.6%	1.5%	2.6%	0%

*NOTE: Based on TfL PfP Zone B, Performance 3 rating

- **A long standing issue for many employees:** Whilst these examples have used 2020 to illustrate the point, their effect goes back to the inception of PfP in 2015 and means that Fund members' pensionable pay will have been affected since that time. For some people there are multiple years with no salary increase (see the attached spreadsheet);

- **Pay Band 1 staff see pensionable pay constantly eroded:** Below PB2 and 3 is the grade of PB1. As shown in the table above, staff in this group, the lowest paid in TfL, only receive a Base pay increase (which can be reduced, not increased, on performance grounds unless the employee is over the threshold). Since 2016, the pay increase has typically been around 1% a year despite RPI inflation in this timescale often exceeding that amount.

- **The impact of the LEL offset reduces static pensionable pay**
It is possible that New members (those who have joined the Pension Fund since 1st April 1989) who have the Lower Earnings Level (LEL) deducted from their pension calculation after the formula above has been applied could even find themselves in a situation where their pensionable salary reduces upon retirement. This occurs when the LEL figure increases annually (eg, in 2021-22, the annual amount of LEL is £6240 but it will increase to £6396 for 2022-23). The attached document has been produced by the TfL Pension

Fund to describe this situation;

- **Staff on secondment to higher graded roles receive non pensionable enhanced temporary pay increase:** TSSA is aware of an example of 40 staff placed on secondment for eighteen months. Each of these people were paid at a higher grade than their substantive salary for this extended period that went beyond a single Scheme Year but none of them saw any benefit to their pensionable pay.

- **Absence of salary sacrifice opportunity:** the opportunity has not been made available for staff under Pay for Performance to take advantage of any SMART salary sacrifice opportunities, perhaps by being able to use their non pensionable lump sum in the same way as PB4 and 5s can.

  Similarly, SMART salary sacrifice which involves maintaining base salary but with the employer paying the member's pension contributions into the pension scheme has not been introduced despite the NI savings that both the employee and company could make. Such arrangements are widespread in the various Sections of the Railways Pension Scheme.

  For the Fund member, such savings could at least enable them to consider supplementing their pension with an AVC.

  In the past, TSSA has raised this issue at Company Council only to be told that "it is uneconomic for the employer to allow this".

  This is in contrast to employees who come under the Senior Manager Reward Framework. Exclusive to that group and known as the TfL Sacrifice of Performance Award Scheme (SPAS), members must be able to commit to sacrificing a minimum of £1,000 from their performance award which is then exchanged for a contribution into the TfL Savings for Retirement Plan, a DC (Money Purchase) scheme separate from the TfL Pension Fund. In addition to the member's contribution, TfL also pays 50% of its employer NI savings into an individual's Plan.

  It is also worth making the point that even if staff under Pay for Performance had access to SPAS, none of them actually receive non pensionable bonuses worth the minimum £1,000 required.

- **An example of how PfP affects the pension a retired member receives** A TSSA member has volunteered information that illustrates our claim about pensionable pay suppression. We will keep their name and former job title confidential but can tell you that they were employed as a Pay Band 3 who retired in December 2017, two years after PfP was introduced.

  Having checked information available on the TfL Pension Fund's website, the member concerned has confirmed that between 2009 and 2017 they received the following pensionable pay increases:

'09 - '10	2.0%
'10 - '11	4.2%
'11 - '12	6.0%
'12 - '13	4.2%
'13 - '14	3.2%
'14 - '15	0.5%
'15 - '16	-0.5%
'16 - '17	0.0%

The average increase to 2015 was between 3 and 4% which meant that the person's pension forecasts increased in proportion. After 2015, with flat pensionable pay, their pension forecast continued to remain static at the same level.

However, if they had maintained pay increases at, say, 3.3% pa from April 2015 until retirement in December 2017, their pensionable pay would have increased by almost 8.5%. A 2% pa pensionable pay increase in this period would have earned them an extra 5% pension. The pensionable pay suppression, therefore, means that this member is now having to live on an income that is below what they could have anticipated from a Final Salary Pension prior to PfP being introduced.

Furthermore, as the years go by and more people affected by pensionable pay suppression come up for retirement, the effect will be much more pronounced. For instance, a person retiring in December 2021 who had not had any pensionable pay increases since 2015 could have missed out on six years' worth of rises taking their loss to be around 20% (using the 3.3% figure above).

Granted, their years of membership accrual would have increased but the pensionable pay element that forms part of the calculation to ensure the promised Final Salary promise of the Scheme will not have kept up but been suppressed to what it was six years before.

Imposition of Pay for Performance

According to the collective bargaining machinery the annual pay award is a matter for negotiation. However, since PfP was imposed in practice in 2015, any talks about pay in TfL would be in relation to a budget rather than an across the board increase, as PfP determines how the total pot is distributed between staff.

More to the point, in practice these talks are a sham. TfL has made very little adjustment to its initial proposals and generally imposes a settlement without agreement from the trade unions. The only exception to this was in 2020, when the union accepted TfL's offer of a 2% budget for pay awards with the guarantee that lower paid staff in Pay Band 1 would receive a minimum of £500.

The negotiations are not meaningful as TfL responds only to the threat of industrial action.

This is in contrast to the way that business is done in LUL where members have benefited from negotiated multi year pay deals.

Pay Structures – Senior Managers' Reward Framework

The SMRF system has been in operation since at least 2009. It "is TfL's annual performance related reward scheme for senior managers [PB4 and 5]. The framework provides for performance to be recognised by the use of non-consolidated performance awards. A separate base pay budget is also made available to enable directors to recognise an individual's overall value to the organisation."[3] The performance system was amended in 2018/9.

It should also be noted that unlike the PfP system which only encompasses PB1-3s on TfL contracts, SMRF is the system applied to all PB4 and 5 staff in both LUL and TfL.

TfL has always been very reluctant to make much information available about how staff under SMRF have actually faired in terms of their pay growth. We are aware, however, that the base pay (the pensionable element) has often been withheld. For instance, TSSA surveying has established that PB4 and 5s had a pay freeze (i.e. no increase to pensionable Base Pay) from 2011-2015 inclusive, followed by average increases of 2.5% in 2016, 1.5% in 2018, 0.73% in 2019.

These are **average** increases and it should be noted that approximately half of the PB4 and 5 population received **no** increase at all. TfL likes to publish the statistics in base pay awards in the previous paragraph but given that only half of the Senior Manager population received such awards, the figures are incorrect and represent twice the actual amount.

In 2019, TfL did supply information on the SMRF following a TSSA request and that confirmed that only 45.86% of people in PB4 and 5 received a base pay award, confirming our findings! This meant that of 967 PB4s, 524 people did not receive a base pay award whilst of the 204 PB5s, 110 employees went without a pensionable pay increase.

The same information also illustrated the extent to which the SMRF scheme is skewed towards performance pay. In that year, the pay budget was split, with £6,343,245 allocated to non pensionable performance awards and a far lower figure of £670,299 to (pensionable) base pay.

In 2020 TSSA undertook a survey amongst the Senior Manager population and asked the question "In how many of the last 5 years have you received a Base Pay

[3] See Paragraph 3.1, Page 1 of: https://content.tfl.gov.uk/remcom-20140327-part-1-item06-tfl-performance-awards.pdf

Award?" The response was 33% said zero and 29% said once – 62% having one or zero pay awards in the immediate years following a five year pay freeze!

In 2021, a further pay freeze was implemented for PB4 and 5 staff.

A key feature of the SMRF is that of the non consolidated – and non pensionable – performance awards meaning that despite the lack of base pay increases for many employees over a number of years, what pay increases they do get do not count towards their final salary pension because they have not been consolidated into their existing salary.

Instead, one option employees have is the TfL Sacrifice of Performance Award Scheme (SPAS) described above. Given the absence of a consolidated annual pay increase for most Senior Managers, we suspect that take up of SPAS is limited because the bonus will be used by many to fund the increased cost of living now rather than a future pension. We also suspect that because the PB5 staff are in higher salaries, they receive a higher percentage level of bonus and as such are more able to take advantage of SPAS.

We also see SPAS as inferior to the TfL Pension Fund because it amounts to a savings plan with the risk carried by the employee who may see their pension pot affected by stock market volatility, and, in common with other DC arrangements, it provides no guaranteed pension upon retirement.

In our view, all of the above represents a further example of widespread pensionable pay suppression. It is also no doubt a contributory factor to the findings of the Independent Review of TfL, quoted by TfL Pension Fund Review's Interim Report[4], that

> "Benchmarking of TfL's senior managers shows that the total cash remuneration is 20% below the market position."[5]

Conclusion

In this report we have sought to explain what we mean by pensionable pay suppression and demonstrate the extent of the practice in TfL.

The overriding rationale of PfP and SMRF is to restrict pensionable pay growth and to contain the end-cost of pensions for as many workers as possible. This is achieved by decoupling pensionable pay from inflation whilst also restricting salary sacrifice opportunities for all but the few who qualify for SPAS.

For both Existing and New Members, pensionable pay suppression delivers a very aggressive additional sting via steadily and stealthily devaluing benefits already accrued because it doesn't just apply to future service but impacts past service accrual.

The consequence is that many TfL employees have pensions that are much less valuable than comparative colleagues in other TfL businesses and as part of the

[4] See Page 7.

[5] Page 30, TfL Independent Review – Final Report, December 2020.

Review of the TfL Pension Fund, we would expect that this near decade-long delivery of disbenefit is adequately recognised and addressed. This is especially the case if TfL is going to have any chance of retaining staff should they decide to further undermine current pension benefits.