

Ombudsman's Determination

Applicant	Mr S
Scheme	The Hanson Industrial Pension Scheme (the HIPS)
Respondents	Heidelberg Materials UK Forterra Building Products Limited (Forterra)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by Heidelberg Materials UK or Forterra.

Complaint summary

2. Mr S' complaint is that he has lost the right to make a claim for an enhanced ill-health early retirement pension from the Hanson Brick Section of the HIPS. Mr S is represented by Mr R.

Background information, including submissions from the parties

3. Mr S was originally employed by the London Brick Company.
4. In 1984, the London Brick Company was acquired by Hanson Plc (**Hanson**). Mr S then worked for Hanson Building Products Limited (**HBPL**), part of Hanson UK (a subsidiary of Hanson).
5. Mr S held active member status in the defined benefit (**DB**) 'Hanson Brick Section' of the HIPS. Relevant extracts from the scheme rules (**the Rules**) are provided in the Appendix.
6. In June 2002, the DB sections of the HIPS were closed to new entrants with the formation of a defined contribution (**DC**) section.
7. In August 2007, Hanson became a subsidiary of HeidelbergCement.
8. In July 2010, Hanson UK wrote to members of the DB sections of the HIPS about the proposal to close the DB sections with effect from 30 September 2010. As relevant, the letter said:-

- Members would be offered membership of the DC section of the HIPS.
 - Members would have a choice about their past service pension benefits. They could either be preserved in line with the usual conditions applying to members who had left the company or take into account increases in a member's salary whilst employed by Hanson.
 - Members would continue to be eligible for enhanced early retirement benefits on ill-health or redundancy from the relevant DB section of the HIPS, calculated as if they were retiring from active service. No account would be taken of service after 30 September 2010 in the calculation¹.
9. The HIPS closed to future DB accrual from 30 September 2010 and Mr S (and all other employees) moved to the DC section of the HIPS. Mr S retained his accrued past service benefits in the Hanson Brick Section of the HIPS.
10. Following communications and consultation in May and June 2014, on 2 September 2014, Hanson UK wrote to Mr S to confirm that his contract of employment with HBPL (registered company 026306) had been transferred with effect from 1 September to a new company as part of preparatory work it was doing to divest the products business. The new company had the same name as HBPL but a different registration number (8960430). The company's name under registration 026306 was changed to Hanson Packed Products Limited. Mr S was notified that the transfer to the new company was on the same contractual terms and conditions, including salary, sick pay, pensions and holiday pay and continuity of service had been preserved.
11. In January 2015, HBPL wrote to Mr S to inform him of a proposed change to his future pension provision. HBPL said:-
- It was proposed that HBPL be sold by the Hanson group. Following the sale, both HBPL's and Mr S' pension contributions would need to be paid into a new pension arrangement. HBPL proposed a Group Personal Pension (**GPP**) administered by Friends Life.
 - Mr S may transfer his DC funds and potentially his DB benefits to the GPP or another pension arrangement of his choice. If he did not want to transfer his DB benefits or DC fund or both they would remain in the HIPS with the existing HIPS Rules continuing to apply.
12. Mr S retained his accrued pension entitlement within the Hanson Brick Section of the HIPS.
13. On 13 March 2015 HBPL wrote to Mr S:

¹ This was reiterated in a HIPS booklet, 'Hanson Industrial Pension Scheme – defined benefit sections – the way ahead...'

“I wrote to you on January 14, 2015 to open a formal consultation process about a proposed change to your future pension provision as a result of the forthcoming sale of Hanson Building Products. The proposal will mean ceasing membership of the Hanson Industrial Pension Scheme (HIPS) and joining a new Group Personal Pension plan (GPP).

...

The company has considered all the points raised and it is clear there is broad recognition of both the requirement for the change and the similarity between the HIPS arrangement and the proposed GPP. The two main concerns raised about the new arrangement are the removal of the salary link retained by 70 former HIPS defined benefit members, and the slightly higher fund management charges.

The salary link can only be retained while an employee remains employed by Hanson and an active member of HIPS, so there is no option but to cease the link at the time of the sale. With regards to the fund management charges, the company has noted the thorough selection process and price negotiations that have been undertaken and the expert advice received and does not believe it is possible to replicate the slightly lower charging structure within HIPS.

I can therefore now confirm that on completion of the sale of Hanson Building Products the change to the new GPP will be made on the basis already communicated to you. This letter confirms completion of the consultation process.”

14. The same month, HeidelbergCement sold HBPL to private equity firm Lone Star, at which point Mr S (and all other employees of HBPL) ceased to be an active member of the HIPS and HBPL ceased to be an employer in the HIPS.
15. In April 2015, HBPL was rebranded, as HBP Building Products Ltd (**HBP**).
16. In July, August and September 2015, Capita wrote to Mr S and the other employees of HBP about their options on leaving the HIPS.
17. On 18 September 2015, HBP wrote to the same employees (including Mr S) about its new pension scheme. As relevant it said:

“In respect of our new HBP Group Pension Scheme, the **FRIENDS LIFE** letters and packs are being posted today to your home addresses and will contain information for you if you decide to transfer your pension benefits to the Hanson Building Products FRA Scheme. This transfer opportunity will only apply to your HIPS Defined Contribution (DC) scheme **NOT** your Defined Benefits (DB) scheme. It is recommended that you take independent financial advice before transferring.

...

If you decide to transfer, you will be able to complete the forms in the pack and return them to **FRIENDS LIFE** in the free post envelope to reach them by **30 October 2015**. After this date, there is a 30 day cooling off period before the money

is transferred. The actual transfer will take place in the **second week of December 2015.**”

18. In October 2015, HBP was rebranded as Forterra. Forterra wrote to remind employees that if they wished to be included in the bulk transfer of their DC section in the HIPS with Capita to the Forterra Group Pension Scheme with Friends Life they needed to submit their completed transfer form by 30 October 2015.
19. In June 2018, Mr R acting on Mr S’ behalf, requested the terms and conditions for a deferred member to be successful in applying for ill health retirement under the HIPS, which Capita duly provided.
20. Mr R then asked Capita:

“There seem to be some suggestion that the terms of an ill-health pension were also changing over time. In [Mr S’] case, what difference does it make if he is granted an ill-health pension now?”
21. Capita informed Mr R that if Mr S was granted ill health retirement, he would be entitled to an unreduced pension calculated at the date of retirement.
22. Later in 2018, after Capita provided Mr S with an ill health retirement illustration, there were further email exchanges between Mr R and Capita. These resulted in Capita informing Mr R, in November 2018, that as HBPL (now named Forterra) had left the Hanson group in 2015 and had withdrawn as an employer in the HIPS, Mr S was not entitled to enhanced ill health retirement under rule 2.8 (of the Hanson Brick Section of the HIPS). Rather, Mr S was a deferred member, and the relevant rule was 2.16.2.
23. In January 2019, a representative for Unite (Mr S’ Union) wrote to Hanson UK. Unite said:-
 - Mr S was surprised to be advised by Capita that he would not be eligible for enhanced early retirement under the HIPS.
 - It was entirely reasonable and justified that Mr S had an expectation that his enhanced early retirement benefit, as indicated in 2010 and 2014, would remain intact, especially considering the March 2015 communication led employees to believe that all HIPS benefits (except the salary link element of the DB section) would continue to apply following the sale of HBPL.
24. Unite requested Hanson UK and the Trustees of the HIPS to reconsider Mr S’ position and others who might be affected.
25. In February 2019, the HR Director at Hanson UK replied to Unite. The HR Director said:-
 - Under the Rules a member who was earning benefits in a DB section when the DB sections were closed in 2010 continued to have a right to the enhanced ill health retirement pension under the HIPS while their employer remained part of the HIPS and Hanson.

- When HBPL left the Hanson UK group in 2015, the enhanced ill health retirement pension under the HIPS ceased to apply to Mr S.
- The only basis on which the HIPS could pay an enhanced early retirement pension to Mr S would be if the Trustees agreed the augmentation of a pension for him.
- Hanson was considering this and intended to discuss the position with the Trustees and would notify Unite once a decision had been reached.

26. In March 2019, the Pension Manager for Hanson UK notified Unite that Hanson had decided not to augment, and so would not provide Mr S with an enhanced pension. The Pension Manager said:-

- It had always been clear under the terms of the HIPS that when a member was no longer employed by a Hanson company the right to the enhanced pension on ill health ceased to apply.
- Mr S was one of many employees who transferred to HBPL (now Forterra). The consultation with the employee forum ahead of the transfer included slides which explained that “membership of [the HIPS] will not continue beyond the date of the external disposal”, clearly stating that Mr S and others would not remain members of the HIPS. On the sale, a number of presentations and documents were provided to employees which repeated this. The presentation of 12 January 2015 specifically noted that HBPL would cease to be an employer in the HIPS and employees would become deferred members in the DC section.
- Based on this, it was reasonable to assume that Mr S understood that he was not an active member of the HIPS and that Forterra was not an employer in the HIPS. If he were to review the terms of the HIPS or raise a question with Capita or the Trustees, Mr S would clearly have understood that the enhanced ill health retirement was no longer available.
- While Hanson did not explicitly point out that enhanced ill health pensions would not continue following the sale, this level of detail was beyond what would be expected, and Hanson did not suggest at any time that they would continue.
- There were opportunities, both on the transfer to HBPL and subsequent sale, for Mr S, or anyone else, to ask whether an enhanced ill health pension would be provided in the future. This suggested that this was not seen as a significant issue by employees or their representative at the time.
- Many employees had left Hanson and the HIPS, often as a result of a business transfer, and no enhanced ill health pension had been provided to them. On that basis, it did not appear fair to treat Mr S any differently.
- Given that Mr S was not entitled to an enhanced ill health pension, Hanson could only provide the normally reduced pension on ill health retirement.

27. In January 2020, Mr R wrote to Forterra on behalf of Mr S. Mr R said:-

- He could find no reference to Mr S' benefits being changed as a result of his transfer to Forterra. He would have expected a 'no change' position to be a requirement agreed between selling and buying companies. However, they (he and Mr S) now found this was not true.
- Mr S was currently unfit for work, and it seemed unlikely that he would return to work, certainly not in the near future. So, they (he and Mr S) had been exploring the possibility of Mr S taking ill health retirement.
- Based on the medical evidence, the Trustees of the HIPS could authorise an unreduced ill health retirement pension. Initially, Capita provided figures on this basis but then issued amended figures stating that Mr S was not eligible for an unreduced pension. They had challenged this decision with the Trustees but found the Trustees were administering the HIPS in accordance with the Rules.
- Forterra "decided" not to be a participating employer in the HIPS. This had the effect of changing the transferred-in members' status – something that had not been explained to them. By "decided" he meant he did not know if it was a deliberate act, knowing that it removed the "generous" early retirement provision for the few long serving members who might benefit from it, or whether no one in the acquisition team understood the implications of the decision. Either way, Mr S found his expected early retirement pension was no longer that originally promised from the HIPS and yet he was doing the same job.
- He believed that Forterra could change Mr S' position in one of two ways. Forterra could tell the Trustees of the HIPS that it wished to be a participating company, so that transferred-in members retained their original status and remained eligible to be considered for ill health early retirement. Alternatively, Forterra could ask the Trustees to consider Mr S for his original ill health pension terms.

28. The same month, Forterra replied to Mr R. Forterra said:-

- At the time the DB section of the HIPS was closed to future pension benefit accrual, members were told by Hanson UK that they would continue to be eligible for enhanced ill health early retirement pensions from the relevant DB section of the HIPS as if they were retiring from active service. These pensions would take into account pensionable salary at the date of retirement, but no account of any service after 30 September 2010.
- There was then an internal restructuring by Hanson UK, which resulted in the transfer of employees on 1 September 2014 to a new company with the same name, HBPL, but a different registration number. Employees were told there would no change to pension terms as a result of the transfer. However, it was also explained that HBPL would be sold and would then cease to be a member in the HIPS and alternative pension provision would be put in place by the new owner. All accrued benefits would remain in the HIPS.

- Communications were issued to members about the sale and future pension provision on 14 January 2015 and 13 March 2015 and during a consultation process between both dates. It was made clear that future pension provision following the sale would be made through a GPP from Friends Life rather than through the DC section of the HIPS. Members could transfer their DC and DB benefits or leave them in the HIPS with the existing Rules continuing to apply.
- The communications did not promise or refer to the continuation of enhanced ill health retirement or any further build-up of DB or DC benefits after the sale. The reference to the existing rules continuing to apply was simply a reference to accrued benefits in the HIPS continuing to be governed by the rules applicable to deferred members.
- When the sale of HBPL was completed, Forterra ceased to be a participating employer in the HIPS. At that point, Mr S also ceased to be eligible for an enhanced ill health pension under the Rules because he was no longer employed by a participating employer
- There was no decision by Forterra not to be a participating employer in the HIPS. It was simply the result of Forterra no longer having an association with the Hanson group and the other employers in the HIPS following the sale. It was standard practice for an employer to cease to participate in a pension scheme in these circumstances and to make its own future pension provision for its employees, as communicated during the consultation process.
- Forterra did not intend to ask the Trustees of the HIPS to re-admit it as a participating employer because it already had its own pension arrangements. Also, it was unlikely that the Trustees and the participating employers would re-admit Forterra in the HIPS given its lack of association with the other employers.
- It also understood that Mr S had already been considered by the Trustees for an enhanced ill health pension. Under the Rules, the Trustees could only pay Mr S this pension if Hanson agreed to augment his pension. After careful consideration, Hanson had decided not to do this, so the Trustees were not able to pay Mr S an enhanced pension.

29. In April 2021, Mr S' contract of employment with Forterra was terminated on grounds of ill-health capability. Mr S was then age 57.

30. In September 2022, HeidelbergCement changed its name to Heidelberg Materials as part of a global rebranding.

31. In 2023, Hanson and Hanson UK were rebranded as Heidelberg Materials UK (**Heidelberg Materials UK**).

Mr S' position as represented by Mr R

32. Mr R submits on behalf of Mr S:-

- When Mr S decided to retain his pension benefits in the HIPS, he had a right to at least apply for an ill health early retirement pension if he was no longer capable of doing his job.
- He does not know whether Heidelberg Materials or Forterra are at fault, but between them they have created a significant loss for Mr S.
- Heidelberg Materials state that the Rules are clear that when a member is no longer employed by a Hanson company, they lose the 'special right' given to deferred employed members. This is not clear.
- He understands why neither Heidelberg Materials nor Forterra would be happy to support an enhanced ill health retirement pension for Mr S, due to the cost.
- He does not accept that transferring members lost a valuable benefit that most would not need to take, and no one knew had happened. To find out that the enhancement had disappeared is totally unacceptable and cannot be right.
- Prior to leaving Forterra, Mr S had numerous medical examinations by an Occupational Health doctor. The last one was in March 2021.
- The doctor's report was then the subject of a Teams meeting with Forterra management and Mr S, where all agreed that Mr S was not fit to do his job, that no other job was available and, at the doctor's suggestion, management should terminate Mr S' contract on the grounds of ill-health capability.
- If the ill-health early retirement provision in the HIPS for in-service but deferred members still applied, then this situation is exactly what it was designed to meet – subject to the Trustees being satisfied that the medical position was serious enough, which it clearly was.
- Mr S has been "kicked out" of the company, having done his job or similar for about 40 years, with no thank you and, in particular, no well-earned ill-health early retirement pension.

Forterra's position

33. Forterra submits:-

- Around the time of the TUPE of employees in 2015, a consultation process took place which included consultation on a new pension scheme and provider.
- In March 2015, HBPL wrote to Mr S about the new scheme (see paragraph 18 above).
- Following this, several communications were sent to all employees regarding the new scheme, which at the time was administered by Friends Life (now Aviva). Under the terms and conditions of the Forterra Group Pension Scheme there is no enhancement early retirement benefit.

Heidelberg Materials UK's position

34. Heidelberg Materials UK submits:-

- Under the Rules applicable to the Hanson Brick Section of the HIPS, pensions are reduced when taken early except for a member:
 - (i) Who has been off work for at least twelve months due to ill health;
 - (ii) whose employer is a current employer in the HIPS; and
 - (iii) where both the member and the HIPS's doctors certify that the member is unlikely to return to work.

For such a member, an unreduced pension is available.

- When HBPL was sold, on 15 March 2015, it ceased to be an employer in the HIPS. So, Mr S is not entitled to an unreduced pension as his request for ill health retirement post-dates HBPL leaving the HIPS.
- Once the sale was finalised, Heidelberg Materials UK ensured that a clear communication was given to HBPL employees, including Mr S, that they would be leaving the HIPS. This did not specifically flag the change to ill health early retirement, but this was because the communications were not at that level of detail.
- Additionally, a consultation was conducted to deal with any questions or comments. No questions were raised by Mr S, other employees, or Unite, as to whether HBPL leaving the HIPS would affect ill health pensions.
- Mr S has not said that he would have made different decisions if he had known about this effect of HBPL's sale, or that he was actively misled by HBPL or Heidelberg Materials UK. Rather, he did not realise the effect of the sale and neither he nor any other employee chose to check the Rules, ask the company or raise a point during the consultation. So, he is now disappointed in the result.
- While the consultation did not cover every nuance of the change, that does not mean that Mr S has the right to an augmented early retirement pension but simply that the issue was not considered central enough to discuss at the time by Mr S or anyone else.
- While it appreciates that Mr S must be very disappointed and it is sorry about his ill health, it strongly disputes any argument that it is at fault because Mr S will not receive an enhancement to his early retirement pension.
- An early retirement pension remains available to Mr S, but not on an enhanced basis.

Adjudicator's Opinion

35. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Heidelberg Materials UK or Forterra. The Adjudicator's findings are set out in below in paragraphs 36 to 46.
36. The Adjudicator noted that Mr S' complaint was that he had lost the right to make a claim for an enhanced ill-health early retirement pension from the Hanson Brick Section of the HIPS.
37. Under the Hanson Brick Section of the Rules, an enhanced incapacity pension only applied if an active member was retired on grounds of incapacity, was age 60 or over and met the criteria set out in rule 2.8.2.
38. General Rule H1 (of the Rules) covered the withdrawal of a participating employer and specified the participating employer's 'Withdrawal Date'.
39. General Rule H2.1, 'Effect on Members in Pensionable Employment' (of their participating employer's withdrawal) provided:

"Each Member who is in Pensionable Service on the Withdrawal Date is deemed to have left Pensionable Service on the Withdrawal Date and his or her benefits are calculated accordingly under the Rules."
40. HPBL withdrew from the HIPS as a participating employer in March 2015. So, at that point, Mr S became a deferred member in the Hanson Brick Section and the provisions for active members in the scheme ceased to apply to him.
41. Rule 2.16.2, 'Early payment', provided:

"A Member entitled to a deferred pension from Normal Retirement Date may, with the consent of the Trustees, elect instead to receive a pension at an earlier date which cannot be before Minimum Pension Age unless the Member has retired from employment due to Incapacity. The pension is reduced to take account of the period by which payment is brought forward from Normal Retirement Date. The amount of the reduction is decided by the Trustees after taking the advice of the Actuary."
42. So, under the Rules, Mr S was not eligible to claim an enhanced incapacity pension. Instead, Mr S may claim an early retirement pension under rule 2.16.2. But this would be subject to an actuarial reduction as he was under his Normal Retirement Date under the HIPS.
43. At the time of HBPL's withdrawal from the HIPS, Mr S was informed that he had left the HIPS. The fact that the effect of this on a future ill health retirement claim was not pointed out does not amount to maladministration by either Heidelberg Materials UK or Forterra, as neither had a reason or an obligation to do so.

44. In effect, Mr S' claim was made with the benefit of hindsight. In 2015, neither Mr S nor Heidelberg Materials UK nor Forterra could have known that he would later claim early retirement on the grounds of incapacity.
45. Under General Rule D10.1, 'Augmentation/special benefits' the Principal Employer may direct the Trustees to augment any benefit payable under the Scheme, providing doing so did not result in an unauthorised payment and did not cause the Trustees to breach section 2.55 of the Pensions Act 2004 (see Appendix).
46. Heidelberg Materials was under no obligation to consider augmenting Mr S' pension. Nonetheless, it did consider the matter and decided not to do so. The Adjudicator found nothing to suggest that it did not properly exercise its discretion in reaching its decision.
47. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R, on behalf of Mr S, has provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr R.

Mr R's further submissions on behalf of Mr S

48. Mr R submits:-
 - Mr S' complaint is not just about losing the right to an enhanced ill health retirement benefit in the HIPS, he did not know he had until he tried to prepare his claim in 2018.
 - It was unreasonable to expect Mr S to have understood the technical reasons for his loss based on the written information provided to him.
 - Mr S did not leave the HIPS and was unaware that HBPL had withdrawn as a participating employer.
 - Members with deferred pre-2010 pensions were told nothing had changed regarding these benefits – the ill health provisions within the DB section of the HIPS were not altered, so why would any such member in continuous employment be over-concerned about their possible future entitlement to an ill-health early retirement pension? Staff at Capita were not aware of the change.
 - He disagrees with the Adjudicator's view that neither Respondent had a reason or obligation to notify Mr S (and other potentially affected colleagues) in 2015 that HBPL's withdrawal from the HIPS would affect future ill health retirement claims that they might make.
 - If, in 2015, Forterra had spelled out the change of status to those employees', this case would not have arisen. Mr S and his colleagues might have grumbled and sought help and advice from their Union but would have had to accept the change.

- While accepting that an unreduced early retirement pension is not a fair outcome, given that other ill-health cases have arisen since 2015 and appear not to have been enhanced, the mental stress caused to Mr S by this case on top of his physical problems warrant a compensation payment.

Ombudsman's decision

49. At the time of applying for an ill-health pension, Mr S was a deferred member of the Scheme and as such, the applicable provision of the Hanson Brick Section Rules is rule 2.16 not rule 2.8 which applies only to members who retire "from Service". As such, Mr S could only be entitled to a reduced ill-health pension and not an enhanced ill-health pension.
50. None of the communications issued to Mr S stated that he would remain eligible for an enhanced ill-health pension if he met the ill-health conditions at a future date while employed by HBPL (later Forterra) after the sale of HBPL and its withdrawal from the HIPS. It is fair that the communications issued at the time of the closure of the HIPS to future accrual in September 2010 did refer to the continued eligibility for enhanced ill-health and redundancy and death benefits for members affected by the closure and that the 2015 communications relating to the sale of HBPL, while dealing with other matters, did not state that HBPL's withdrawal from the HIPS would result in its employees who had been members of the Hanson Brick Section of the HIPS losing eligibility for the enhanced ill-health benefits. This was the effect of the rules but it was not spelt out.
51. While, around the time of HBPL's sale, either Respondent could possibly have flagged to Mr S and his colleagues that the withdrawal of HBPL as a participating employer in the HIPS would affect future ill health retirement claims that they might make, I agree with the Adjudicator that neither Respondent had a reason or obligation to do so. The matter does not appear to have been raised at the time by Mr S, his colleagues or their Union, and, in any case, it was covered in the HIPS Rules, as noted by the Adjudicator (see paragraphs 37 to 42 above).
52. Mr R says if Forterra (then HBPL) had notified Mr S and his colleagues, in 2015, they might have grumbled and sought help and advice from their Union but would have had to accept the change.
- That, in effect, is what subsequently occurred, albeit after Mr S submitted his claim for ill health retirement. Of course, in 2015, Mr S did not know that he would submit a claim in 2018.
53. So, while I sympathise with Mr S, I do not consider that he has suffered an actual loss (as he is not entitled to an unreduced early retirement pension) or that a compensation award is merited.
54. Mr S may take early retirement, but on a reduced basis.

CAS-30193-S3Y4

55. I do not uphold Mr S' complaint.

Camilla Barry

Deputy Pensions Ombudsman
07 January 2025

Appendix

Extracts from the HIPS

General Rules.

1. Under rule A1, 'definitions':

'Service' means:

"continuous service with an Employer".

'Employer Association' means:

"a relationship between an employer and the Principal Employer where:

(a) Both are members of the same group...or

(b) The relationship is specified with the consent of the Trustees as an Employer Association between them in the deed by which the employer is admitted to participation in the Scheme."

'Employers' means:

"the Principal Employer and any other firms and companies which have become Employers in accordance with Rule E1. In relation to an individual who is or has been in an employment, the Employer is the company or firm which employs or employed him or her in that employment."

2. Rule D10.1, 'Augmentation/special benefits', provides:

"At the Principal Employer's request the Trustees shall augment any benefit payable under the Scheme and/or pay any other benefit to or in respect of any Member or other person who is or has been employed by an Employer (or who was employed by a business subsequently acquired by an Employer), as long as doing so does not result in an Unauthorised Payment and does not cause the Trustees to breach section 2.55 of the 2004 Act (activities of occupational pension schemes)."

3. As relevant Rule E1, 'Employers', provides:

"E.1.1 New Employers: a company or firm may participate in the Scheme and so become an Employer if it agrees by deed to be bound by the Rules as an Employer...Participation may take place only with the consents of the Principal Employer and the Trustees, who must also execute the deed and if there is an Employer Association between the Employer and the Principal Employer.

4. Rule H2.1, 'Effect on Members in Pensionable Employment' (of a participating employer's withdrawal from the HIPS) provides:

“Each Member who is in Pensionable Service on the Withdrawal Date is deemed to have left Pensionable Service on the Withdrawal Date and his or her benefits are calculated accordingly under the Rules.”

Hanson Brick Section Rules

5. Under rule 2.1, ‘Definitions’, ‘Normal Retirement Date’: “is the Member’s 65th birthday”.
6. As relevant, rule 2.8, ‘Early Retirement (Incapacity)’, provides:

“2.8.1 Entitlement: If the conditions described in Section Rule 2.8.2 are satisfied in relation to a Member who retires from Service before Normal Retirement Date the Member is entitled to an immediate annual pension equal to the following amount. If the Member is under age 60 the Principal Employer’s consent is needed to the payment of the pension (such consent should not be unreasonably withheld):

2.8.1.1 If the Member is 60 or over, the Normal Pension increased by the following percentage difference between (i) the Normal Pension reduced by an amount decided by the Trustees after taking the advice of the Actuary to take account of early payment and (ii) the Normal Pension but calculated as if Pensionable Service had continued to Normal Retirement Date but based on Final Pensionable Salary when Pensionable Service ends, such percentage depending on the length of the Member’s Service:

<u>Service</u>	<u>Additional Pension Percentage</u>
0-9 years	0%
10-14 years	25%
15-19 years	50%
20-24 years	75%
25+ years	100%

2.8.1.2 If the Member is aged 50 to 59, the Normal Pension which is reduced by an amount decided by the Trustees after taking the advice of the Actuary to take account of early payment but there is no reduction if the Member’s last period of Service is at least 10 years.

2.8.1.3 If the Member is under 50, the Normal Pension which is reduced by an amount decided by the Trustees after taking the advice of the Actuary to take account of early payment but there is no reduction if the Member’s last period of Service is at least 10 years and the Member’s Incapacity is so serious, in the opinion of the Principal Employer, that he or she is unlikely to work again in any capacity.

2.8.2 Incapacity conditions: The conditions described in Section Rule 2.8.1 are:

2.8.2.1 the Member must have been medically certified as being too ill to attend work for at least a continuous period of 12 months (“the absence”);

2.8.2.2 the Member’s Pensionable Service must be at least 18 months by the end of the absence; and

2.8.2.3 at the end of the absence both the Member’s doctor and the Principal Employer’s doctor must have certified that the Member is suffering from Incapacity and is likely to do so for the foreseeable future. Independent medical advice from a third party will be obtained if there is any conflict between the Member’s and the Principal Employer’s doctor.”

7. As relevant, rule 2.16, ‘Leaving Deferred Pension’, provides:

“ ...

2.16.2 Early payment: A Member entitled to a deferred pension from Normal Retirement Date may, with the consent of the Trustees, elect instead to receive a pension at an earlier date which cannot be before Minimum Pension Age unless the Member has retired from employment due to Incapacity. The pension is reduced to take account of the period by which payment is brought forward from Normal Retirement Date. The amount of the reduction is decided by the Trustees after taking the advice of the Actuary.”