

Ombudsman's Determination

Applicant	Mr H
Scheme	Rothesay Life Pension Plan (the Plan)
Respondents	The Trustee of the Merchant Navy Officers Pension Fund (the Trustee) Mercer (the Administrator)

Outcome

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

Complaint summary

2. Mr H's complaint is that his pension payments have not been backdated to his Plan's normal pension age (**NPA**), but to his 75th birthday. He considers that he has lost out financially because of this.

Background information, including submissions from the parties and timeline of events

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. On 25 March 1968, Mr H became a member of the Merchant Navy Officers Pension Fund (**the Scheme**).
5. On 31 December 1969, Mr H left the Scheme and became a deferred member.
6. From November 1997, Mr H lived in Australia. The Administrator held no address details for Mr H at that time. Its records showed Mr H's address status as 'gone away'.
7. From 2011, the Administrator's records showed Mr H lived at an address in County Down in Northern Ireland.

8. In 2014, the Old Section of the Scheme was bought out on a 'like for like basis' with Rothesay Life. The Administrator of the Plan was unable to issue a policy document to Mr H as it could not trace him.
9. In June 2016, Mr H reached age 75, which was the latest date a member of the Plan must take their benefits. This mirrored the Scheme, as detailed in Clause 6.1 of the Trust Deed and Rules.
10. In September 2018, the Administrator wrote to Mr H in Australia thanking him for confirming his change of address and that it had amended its records.
11. On 1 October 2018, the Administrator provided Mr H with a summary of his retirement benefits and details of how to claim them.
12. The same month, Mr H completed the Plan's 'Retirement Option & Payment Form' to claim an annual pension of £1,000. He also said he wished to claim for backdated pension payments from the age of 63¹.
13. On 3 December 2018, the Administrator wrote to Mr H to confirm his pension would be £1,000 a year.
14. On 31 January 2019, the Administrator wrote to Mr H regarding the backdating of his retirement date. It said it was only able to backdate retirement dates by a maximum of three months. But, if a member was over age 75, the retirement date could only be backdated to age 75, in line with the Plan's rules.
15. On 5 February 2019, Mr H submitted a complaint to the Administrator.
16. On 27 March 2019, the Administrator issued its response to Mr H's complaint which was not upheld. It explained that once pension benefits were put into payment, a crystallisation event had occurred, and it was not possible to change this date. It also said the terms of the Plan allowed Mr H to defer receipt of his pension until his 75th birthday and late retirement increases had been applied. As the pension was put into payment from Mr H's 75th birthday, this was used as the date the benefits were crystallised.
17. Mr H's position:-
 - He did not apply for his benefits at an earlier age, as he only retired at age 77.
 - He did not think of applying for his benefits earlier, as he was still working.
18. The Administrator's position:-
 - It relied on clauses 6.1 and 25.0 of the Scheme's Trust Deed and Rules in deciding to backdate Mr H's pensions to the age of 75. This was the age which retirement benefits must be drawn.

¹ The Administrator has confirmed that the Plan's NPA is 61.

- It sought to trace Mr H in 2014, but this was not successful.
 - The process for a member claiming their pension benefits was for the member to contact the Administrator and request a quotation. The member would have to complete the required documentation and submit this to the Administrator. The request would be processed, and the pension put into payment.
 - The annuity secured for Mr H at his NPA was £547.66 per year.
19. Relevant extracts from the Scheme's Trust Deed and Rules are provided in the Appendix.

Adjudicator's Opinion

20. Mr H's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or the Administrator. The Adjudicator's findings are set out below:-
- To claim pension benefits from the Plan, a member had to contact the Administrator and request a quotation. The member then had to complete the required documentation and submit it to the Administrator for their pension to be put into payment.
 - As Mr H had not provided the Administrator with his updated contact details until 2011, it was unable to issue Mr H with statements concerning his benefits held in the Plan.
 - It was not the Administrator's responsibility to investigate where Mr H might be residing. However, it had tried to trace him in 2014 when his benefits were bought out but was unsuccessful. It was Mr H's responsibility to keep the Administrator updated with his changes of address so he would be able to receive correspondence in relation to his retirement benefits.
 - Mr H had acknowledged that he did not contact the Trustee or the Administrator at his NPA nor when he reached age 75. It was Mr H's responsibility to contact the Trustee to initiate the process of claiming his pension benefits. The Administrator was not at fault for not having Mr H's up-to-date address on record or for Mr H's pension not being claimed at an earlier date.
 - Mr H had asked for his pension benefits to be backdated to when he reached age 63. Clause 25.0 of the Trust Deed and Rules limited any backdated pension payments to six years after the member's NPA. In the opinion of the Adjudicator, for Mr H to receive backdated pensions payments to the age of 63, he would have needed to have claimed his benefits by age 69. However, he did not do so. It was the Adjudicator's opinion that Mr H was not entitled to receive his pension benefits backdated to the age of 63.

- By not claiming his pension benefits prior to age 75, Mr H was only entitled to receive backdated pension benefits from age 75, in accordance with Clause 6.1 of the Trust Deed and Rules.
- The Trustee had the authority, under the Trust Deed and Rules, not to pay any pension benefits at all to Mr H. However, the Trustee also had the power to exercise its discretion to pay a claim, in special circumstances. The Trustee chose to exercise its discretion in paying Mr H his pension benefits backdated to his age of 75.
- The Trustee and the Administrator acted in accordance with the Trust Deed and Rules by backdating Mr H's pension payments to the age of 75. So, there was no maladministration on the part of the Trustee or the Administrator.

21. Mr H did not accept the Adjudicator's Opinion. He has made no further comment. Due to the time that has passed since the Opinion was issued, and in fairness to all parties involved, the complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

Ombudsman's decision

22. It was Mr H's responsibility to notify the Trustee/Administrator when his contact details changed and when he wished to retire.
23. Mr H was 77 when he contacted the Administrator with his current contact details and to claim his pension benefits.
24. Clause 6.1 of the Trust Deed and Rules states that the member can postpone the start of their pension beyond their NPA, but not beyond their 75th birthday. As Mr H did not claim his pension benefits before he reached age 75, I find that he is only entitled to receive backdated pension benefits from age 75.
25. I do not uphold Mr H's complaint.

Anthony Arter

Pensions Ombudsman
6 December 2022

Appendix

Trust Deed and Rules of the Scheme, dated 25 June 1999

26. Clause 6.1 provides:-

“6.1 Postponed Retirement

A Deferred Member (whether or not still in employment) may similarly postpone commencement of the pension beyond Normal Pension Age, at any time up to (but not beyond) that Member's 75th birthday. In either case, the amount of the pension shall be actuarially increased as advised by the Actuary, according to the period of its postponement.”

27. Clause 10.0 provides:-

“BENEFITS ON LEAVING SERVICE

An active Member who leaves Service...shall be entitled to receive out of the Scheme as he shall select one of the benefits stated under this rule.”

28. Clause 10.1.1 provides:

“Deferred Pension at Normal Pension Age

A deferred pension to commence on attaining Normal Pension Age or earlier retirement permitted under these Rules of an annual amount calculated in accordance with Rule 6.0.”

29. Clause 25.0 provides:

“UNCLAIMED PENSION OR OTHER BENEFITS

The Trustees shall be entitled to treat as unclaimed and to forfeit and use for the general purposes of the Scheme any moneys standing to the credit in the books of the Scheme of any Member whose whereabouts are unknown to the Trustees in the circumstances where no claim is made thereto by such Member or his personal representatives or other person or persons claiming on behalf of or through him within six years after the date upon which according to such records the same became due and payable. The Trustees may, at their discretion, in any case where in their opinion special circumstances exist to justify the exercise of such discretion, meet, in whole or in part, a claim notwithstanding that forfeiture has taken place.”