

Ombudsman's Determination

Applicant	Mr Y
Scheme	Vallourec Mannesmann Oil & Gas UK Limited Pension Scheme (the Scheme)
Respondents	The Trustees of Vallourec Mannesmann Oil & Gas UK Limited Pension Scheme (the Trustees) Aon Hewitt (Aon)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by the Trustees or Aon.

Complaint summary

2. Mr Y believes that he may have been entitled to receive an enhanced pension when he retired early due to ill-health. He feels he was disadvantaged compared to someone in full health being offered early retirement. Mr Y also feels that he was ill advised when he retired as his original retirement illustration did not mention any ill-health enhancement.
3. Mr Y wants to receive an illustration showing his enhanced benefits, and to be reimbursed if he is due any additional enhancement.

Background information, including submissions from the parties

4. Mr Y was a member of the Scheme, a defined benefit (**DB**) arrangement with a Normal Pension Age (**NPA**) of 65.
5. On 2 July 2012, the Trustees agreed to offer Mr Y ill-health early retirement benefits. Mr Y received his ill-health retirement illustration (**the Illustration**) from Aon in accordance with the Scheme's 30 March 2012 Trust Deed and Rules (**the Scheme Rules**). Relevant sections from the Scheme Rules are set out in the Appendix.
6. The Illustration offered Mr Y either a full pension of £13,270.44 per annum, or a £40,000 lump sum payment plus a reduced pension of £11,402.04 per annum. Mr Y accepted the lump sum and reduced pension option.

7. In September 2012, Mr Y became a pensioner member of the Scheme, aged 52.
8. Mr Y says in July 2017 he was informed that he may have been entitled to an enhanced pension due to his retirement on ill-health grounds, so he telephoned Aon several times to clarify the position.
9. On 30 October 2017, Aon wrote to Mr Y setting out how his pension had been calculated, including details of the relevant section from the Scheme Rules for retirement due to incapacity. The letter showed that Mr Y had accrued 34 years of pensionable service, and no early retirement reduction had been applied to his pension. Mr Y says that there was no mention of enhancements in the letter.
10. On 3 November 2017, Mr Y emailed the Scheme's employer, Vallourec Mannesmann Oil & Gas UK Limited (**Vallourec**), to ask whether he had been entitled to receive an enhanced pension when he retired.
11. On 11 December 2017, Mr Y received a response saying that Aon would check his pension entitlement.
12. On 27 March 2018, Mr Y chased Vallourec for a response. On 30 March 2018, he received a copy of the Illustration.
13. On 5 April 2018, Mr Y asked Vallourec again to confirm whether he had been entitled to receive an enhanced pension.
14. On 20 April 2018, Vallourec confirmed that Mr Y was receiving his full pension entitlement, and had he not been awarded retirement on ill-health grounds, he would not have been able to access his pension until age 55, and it would have been reduced for early retirement. Vallourec said that this was in effect an enhancement to his pension, and under normal circumstances, if Mr Y had retired at age 55, his pension would have reduced by around 50%.
15. On 23 April 2018, Mr Y told Vallourec that, in his opinion, there was a strong possibility that he had been misinformed or misled about the Illustration when he retired. Mr Y said that the Illustration should have set out all of his options, including any enhancements.
16. On 26 April 2018, Vallourec suggested Mr Y contact Aon, which he agreed to do.
17. On 3 May 2018, Aon telephoned Mr Y and reiterated what Vallourec had told him in its email of 20 April 2018.
18. On 8 February 2019, Mr Y complained to the Trustees under Stage One of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said that, when he retired, he had not received correct and proper advice which explained his entitlement to an enhancement.
19. On 19 March 2019, Aon responded to Mr Y's Stage One complaint in its capacity as Secretary to the Trustees. It did not uphold Mr Y's complaint, as his benefits had been calculated in accordance with the Scheme Rules.

20. On 29 April 2019, Mr Y complained under Stage Two of the Scheme's IDRPs, and on 31 July 2019, the Chair of the Trustees replied. The main points in the Stage Two reply were as follows:-

- The Trustees [Vallourec] had agreed to provide Mr Y with early retirement due to incapacity. This pension was higher than would have been paid to Mr Y on standard early retirement terms.
- The Trustees thought that the term "enhancement" may have led to confusion.
- The Trustees were satisfied that the benefits being paid to Mr Y were in accordance with the Scheme Rules.
- As Mr Y's benefits had been calculated based on ill-health early retirement, the Trustees did not uphold his complaint.

21. On 12 April 2021, the Trustees stated the following to The Pensions Ombudsman (TPO):-

- The Scheme Rules provided some limited circumstances under which an enhancement would be applied to normal early retirement. Namely, the member must:
 - a) be an active member when the Scheme closed on 31 March 2018;
 - b) still work for Vallourec just before retirement;
 - c) be aged between 60 and NPA;
 - d) retire before 1 April 2023; and
 - e) retire with Vallourec's consent or at its request.
- It was possible that some of Mr Y's ex-colleagues had received an enhancement, but Mr Y was not eligible as he took ill-health retirement prior to age 60. Additionally, neither Vallourec's consent nor request for an enhancement were available to Mr Y when he retired in 2012.
- Mr Y had not suffered a financial loss. While Mr Y may have had some difficulties obtaining timely information from Vallourec and Aon, it was a complex issue that required necessary investigation and expertise to resolve his query.

Adjudicator's Opinion

22. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees or Aon. The Adjudicator's findings are summarised below:-

- Under the Scheme Rules, at the time Mr Y retired, a member could take normal early retirement from age 55 with the Employer's consent, or before age 60 but after age 55 at the Employer's request. In either scenario, the member's pension was reduced. A normal early retirement enhancement only applied where a member retired after age 60 but before NPA, either at the Employer's request or with the Employer's consent.
- Mr Y was not eligible for normal early retirement as he was under age 55 when he retired. Mr Y retired at age 52 after Vallourec agreed that he was eligible for early retirement on ill-health grounds. No early retirement reduction applied. This was in accordance with the Scheme Rules.
- Therefore, Mr Y did not receive a lower pension, as he was not eligible for normal early retirement in 2012.
- The Trustees were not obligated to inform Mr Y of the normal early retirement enhancement, as he was over seven years from age 60, and he could no longer carry out his job due to ill-health.
- Mr Y said that the Illustration did not mention an ill-health enhancement. This is because the Scheme's ill-health early retirement terms did not include an enhancement, other than not applying an early retirement reduction.
- Although it may have been helpful if the Illustration had included a note about the early retirement reduction not applying to him, it was reasonable that the Illustration did not mention an ill-health enhancement.

23. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his further comments, which are summarised below:-

- Vallourec's and Aon's admissions that his case was complex, and the fact that the Trustees submitted that the term "enhancement" had led to confusion, indicated that the Illustration was vague and lacked clarity and did not include information about an early retirement enhancement not applying.
- As he had still worked for Vallourec before he retired, and he had retired at Vallourec's request, he would have received an enhanced pension under normal circumstances. Therefore, he had been discriminated against and been disadvantaged as he had to retire due to ill-health.

24. Mr Y's comments do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

25. Mr Y believes that he may have been entitled to receive an enhanced pension when he retired early due to ill-health. He feels he was disadvantaged compared to someone in full health being offered early retirement. Mr Y also feels that he was poorly advised when he retired as the Illustration did not mention any ill-health enhancement.
26. Mr Y has submitted that the Illustration was not clear and did not include information about an early retirement enhancement not applying. The purpose of the Illustration was to outline the benefits payable to Mr Y on the grounds of ill-health. The Illustration included the terms of his ill-health early retirement as appropriate. There would have been a range of other terms that were not relevant to ill-health, and it would not have been reasonable to expect the Illustration to include terms which did not apply to it.
27. The type of enhancement Mr Y has complained about was subject to set criteria being met as set out in paragraph 21 above. Mr Y did work for Vallourec before he retired, and Vallourec consented to him taking early retirement due to incapacity. However, he was not entitled to receive a normal early retirement enhancement because he had not yet reached age 60, and taking ill-health early retirement when he retired was his only option. So, he was not discriminated against for retiring due to ill-health.
28. Therefore, I do not uphold Mr Y's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
30 March 2023

Appendix

Relevant extracts from 'Part 6: Members' Pension and Retirement Benefits' of the Scheme's Trust Deed and Rules dated 30 March 2012

29. Clause 2, 'Pensions on Early Retirement: Incapacity, provides:

"2.1 There shall be paid out of the Fund to every person who ceases to be a Member upon retiring from Service with the Employer and whose retirement is in the opinion of the Employer due to Incapacity an annual pension for life, subject to a maximum of two-thirds of Final Earnings, equal to the greater of the amounts calculated under Rule 2.1.1 and Rule 2.1.2 as at the date he ceases to be a Member:-

2.1.1 The amount under this Rule is the aggregate of the amount of his Final Salary Pension calculated in accordance with Rule 1.1.2 and the amount of his CARE Pension calculated in accordance with rule 1.1.3;

2.1.2 The amount under this rule is the lesser of

a) the fraction of his Final Pensionable Earnings specified in the following scale according to the years of completed Pensionable Service.

Number of completed years of Pensionable Service	Fraction of Final Pensionable Earnings
5 or less	10/60ths
6	12/60ths
7	14/60ths
8	16/60ths
9	18/60ths
10 or more	20/60ths

and

b) the aggregate of

i) 1/60th of his Final Pensionable Earnings multiplied by the number of years of Pensionable Service which he had completed before 31 August 2010; and

ii) the amount which would have been his CARE Pension calculated in accordance with rule 1.1.3 if his Pensionable Service had continued until and had ceased when he reached his Normal Pension Age, or if earlier, until he had completed 20 years of Pensionable Service, and in calculating his CARE Pension under that rule it shall be assumed that:-

R shall always be 1; and

his Pensionable Earnings remained unchanged from the amount which applied when he ceased to be a Member.”

30. As relevant, clause 1, ‘Pensions on Retirement’, provides:

“1.3 Where the Member retires:-

1.3.1 with the Employer's consent, after attaining the age of 55, there shall be paid out of the Fund to that Member an annual pension for life calculated as in Rule 1.1.1 but then reduced by such percentage as the Principle Company [Vallourec] may from time to time determine to reflect the fact that the pension is commencing to be paid before Normal Pension Age; or

1.3.2 at the Employer's request, before attaining the age of 60 but after attaining the age of 55, there shall be paid out of the Fund to that Member an annual pension for life calculated as in Rule 1.1.1 but then reduced by such percentage as the Principle Company [Vallourec] may from time to time determine to reflect the fact that the pension is commencing to be paid before the Member has attained age 60.”

...

“1.6 Where a member retires from Service before attaining Normal Pension Age, either at the Employer's request or with the Employer's consent, but after attaining the age of 60, the period of the Member's Pensionable Service completed prior to 31 December 2007 shall be increased by a period not exceeding the lower of:-

1.6.1 one year for each completed seven years of his Service with the Employers (or their predecessors in business) before 31 December 2007; and

1.6.2 the period between the date of his retirement and Normal Pension Age.”