

Ombudsman's Determination

Applicant	Mr N
Scheme	Devonport Royal Dockyard Pension Scheme (the Scheme)
Respondents	Devonport Royal Dockyard Pension Trustees Limited (the Trustee) Devonport Royal Dockyard Limited (the Employer)

Outcome

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

Complaint summary

2. Mr N complained that an early retirement factor was applied to his benefits from the Scheme, reducing the value of his pension. He contends that it should not have been applied because the Employer had informed him that his pension would not be reduced.

Background information, including submissions from the parties

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. Mr N was a member of the Scheme, a defined benefit occupational pension scheme.
5. In June 2000, a newsletter was issued to members of the Scheme. It stated that only Scheme members who transitioned directly from employment to retirement had the opportunity to retire early and receive an unreduced pension. It detailed the terms under which this may be possible.
6. Between 2015 and 2017, Mr N had negotiations with the Employer about early retirement. This was prompted by the fact that the Lifetime Allowance (**LTA**) was set to reduce from April 2016.

7. The Pensions Manager at the time gave Mr N a spreadsheet (**the Spreadsheet**) which stated that after opting out of the Scheme in April 2016, Mr N could retire at age 63 and receive a pension with no reduction.
8. On 31 March 2016, Mr N opted out of the Scheme.
9. Mr N consulted an independent financial adviser (**the IFA**). Mr N said the IFA informed him that he could retire at the age of 63 and receive a pension with no reduction.
10. On 11 April 2016, Mr N was sent a deferred benefits statement. It stated:

“New Entrants / New Employees - you may be able to receive your benefits at a reduced rate anytime from age 55.”
11. Mr N was provided with a Scheme booklet issued in 2006 (**the 2006 booklet**). Page 18 of the 2006 booklet stated:

“If you are over 50, you may be entitled to retire on a reduced pension and lump sum. ... These benefits will be reduced for each year...between the date that you left the scheme and your normal pension age.”
12. The 2006 booklet contained a chart which showed that if a Scheme member left the scheme two years before their normal pension age, their pension would be reduced by three percent. Mr N left the scheme at the age of 63, which was two years before his normal pension age of 65.
13. Page eight of the 2006 booklet stated:
14. “If you do opt out, you will be treated as having left service”. On 31 March 2017, Mr N’s employment with the Employer was terminated under a settlement agreement. The agreement did not address pension issues.
15. In 2018, a new Scheme booklet (**the 2018 booklet**) was issued to members of the Scheme. It stated that Scheme members who retired early would receive a reduced pension and explained that this was because the pension would be paid for longer than it would have if it had been drawn at a Scheme member’s normal pension age.
16. In May 2018, Mr N informed the Employer that he intended to start receiving his pension in May 2019, at the age of 63. The Employer informed Mr N that his pension would be reduced by three percent and said that the provision allowing employees to take their full pension at the age of 63 was only for those in active employment at that age. Mr N said that this was not in the Scheme Rules the Employer had given him.
17. Mr N decided to take his pension, at the age of 63, in May 2019. A three percent reduction was applied to it.

Summary of Mr N's position

18. The Employer told him that he could retire at the age of 63 and receive his full pension. If that was incorrect, the Employer should have informed him before the settlement negotiations ended.
19. There is little evidence that the Trustee and the Employer are separate entities, as all of their staff are employees of Babcock International Group.
20. Page eight of the 2006 booklet undermines the Trustee's assertion that active and deferred Scheme members were subject to different rates of reduction on early retirement. It says that Scheme members who opt out of the Scheme will be treated as having left service. So, there is no difference between the pension entitlement of Scheme members who opted out of the Scheme and remained employed by the Employer, and Scheme members who opted out and did not.
21. He would like his pension benefits to be reinstated in full. Alternatively, he should be paid by the Employer to make up for financial losses caused by the early retirement factor being applied to his pension benefits.

Summary of the Trustee's position

22. The Trustee and the Employer have separate roles and duties. The Trustee was not part of the negotiations regarding Mr N's employment settlement agreement.
23. The Trustee is required to pay benefits in accordance with the Scheme Rules. This includes applying an early retirement factor when a deferred Scheme member retires before their normal pension age.
24. The Spreadsheet was given to Mr N in 2015 to help him decide to whether to opt out of active membership of the Scheme. It was not presented as, and was not, a quotation of pension benefits. When the Pensions Manager gave Mr N the Spreadsheet, he did not know about Mr N's future plans for retirement or employment. The Spreadsheet did not change Mr N's retirement benefit entitlement.
25. The 2006 booklet shows that an early retirement factor is applied when deferred Scheme members take their benefits before their normal retirement date. If Mr N was confused about his pension, the Trustee would have expected him to confirm the correct position before he made decisions about it. After receiving the 2016 deferred benefits statement, Mr N could have made enquiries to confirm whether he would receive his full pension upon retirement. He did not do so.

Summary of the Employer's position

26. The reduction applied to Mr N's pension was required under the Scheme Rules. This is because under the Rules, an early retirement factor must be applied to the pensions of Scheme members who retire before their normal pension age.
27. The reduction was communicated clearly to Mr N, through a newsletter issued to Scheme members in June 2000, the 2006 booklet, the defined benefit pension

illustration dated 11 April 2016 and the 2018 booklet. So, Mr N had the resources necessary to make an informed decision about taking his pension before he received the Spreadsheet or negotiated the employment settlement agreement. It was also open to Mr N to seek clarification of information from the Scheme administrator.

28. The Employer has never had any specific duty to advise Mr N about his pension entitlement.

Adjudicator's Opinion

29. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or the Employer. The Adjudicator's findings are summarised in paragraphs 30 to 33 below,.
30. Mr N was given the correct information regarding his pension benefits before he drew his pension. The 2006 booklet informed him that a person over the age of 50 may receive a reduced pension if taken before their normal retirement age. Furthermore, it included a table which set out the specific percentage by which a Scheme member's pension would be reduced if they drew their pension two years before the normal pension age, as Mr N did. So, Mr N had specific information about how his pension would be calculated before he decided to take his pension. Mr N also received notification of the possibility that he would receive a reduced pension through the pension illustration dated 11 April 2016.
31. Although Mr N received incorrect information in the Spreadsheet, this does not change the fact that he had also received correct information. Given the disparity between the information provided concerning his pension in the 2006 booklet and the 2016 pension illustration, as compared to the Spreadsheet, it is reasonable to have expected Mr N to make enquiries to determine which were correct. The Spreadsheet was not an official pensions document, but instead a document provided for supporting discussions about his employment. So, it was not reasonable for Mr N to have relied solely on the information in that document in place of the information provided in the official pension documents he received.
32. Mr N has not provided evidence to support his claim that he would not have left the Scheme and retired early if not for the information in the Spreadsheet. He said that he left the Scheme due to the new LTA coming into force, which was also the reason he was in negotiations to leave the Employer. The early retirement settlement agreement came about as a result of those negotiations, its primary purpose was not to address pension issues.
33. The Adjudicator was of the opinion that there had been no maladministration on the part of the Trustee or the Employer.
34. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments, which I have noted but they do not change the outcome. Mr N said:-

- He was not informed that the termination of his employment would lead to his pension being reduced. He was not told anything that would have prompted him to look at the official pensions documents previously provided to him or doubt the accuracy of the information given to him by the Pensions Manager.
- The Employer failed to discharge its duty to inform him of the effects of his employment being terminated, such as his pension being reduced.
- The information in the April 2016 pension illustration contradicted the information the Pensions Manager had given him. The Pensions Manager was an expert who was highly experienced in the provisions of the Scheme. The Pensions Manager's verbal assurance that he would receive an unreduced pension at the age of 63, and the Spreadsheet he was given reflecting this, gave him sufficient reason to not further investigate his pension entitlement.
- He was not confused about his pension; he had received clarification about his pension entitlement from the Pensions Manager. The Spreadsheet was presented to him as a quotation of pension benefits. That is why it included pension estimates.
- The Scheme booklets are incomplete and cannot be relied upon. They do not contain information the Pensions Manager and the IFA had given him. They also do not mention the receipt of a full pension at the age of 63 being subject to the Trustee's discretion. Notwithstanding this, the Pensions Manager's assurances to him, that he would receive an unreduced pension at the age of 63, suggested that such discretion had been exercised.
- The April 2016 pension illustration used the word "may" when referring to the reduction of a pension. This suggested that other arrangements could apply instead. The Spreadsheet and verbal assurances given by the Pensions Manager supported this.
- He has no recollection of the June 2000 newsletter being issued. It is not appropriate for the respondents to rely on that now. However, that document confirmed that money had been put aside for Scheme members to receive full pensions at the age of 63. The Scheme documents said that Scheme members in active employment and Scheme members not in active employment would be treated the same. The information on the Spreadsheet is accurate for Scheme members in active employment.
- The conversations about him approaching the LTA limit and negotiating his employment settlement agreement were completely separate. However, the calculations used in the employment settlement agreement were based on the income he required until the age of 63.
- The Trustee failed to ensure the information provided by the Pensions Manager was correct.

- If he had been informed of what his pension would be, he could have negotiated for a compensatory addition to the money he received as part of his employment settlement agreement or pursued the discretion of the Trustee to pay him an unreduced pension.

Ombudsman's decision

35. Mr N complained that an early retirement factor was applied to his benefits from the Scheme, reducing the value of his pension. Mr N said that it should not have been applied because the Pensions Manager had informed him that his pension would not be reduced.
36. I have no reason to doubt Mr N's recollection of the conversation he had with the Pensions Manager in 2015 and it is understandable that Mr N considered the Pensions Manager to be an expert on pension matters. However, the information he received from the Pensions Manager contradicted the information in the June 2000 Newsletter, the 2006 booklet, the deferred benefits statement issued in 2016 and the 2018 booklet which all indicated that Scheme members who took their pension early would receive a reduced pension as it would be paid for longer than if it had commenced at the member's normal pension age.
37. Given the difference between all the other information provided to Mr N and the information provided by the Pensions Manager, it is not unreasonable to expect Mr N to have investigated the cause of this disparity to determine his actual entitlement in the Scheme, rather than relying solely on the assurances of the Pensions Manager. But in any event, there is nothing to support an argument of detrimental reliance given that the Employer informed Mr N in May 2018 that his pension would be reduced if he took his retirement benefits at age 63 the following year in May 2019.
38. Mr N said that he was not informed that the termination of his employment would affect his pension entitlement. He also said the calculations used in his employment settlement agreement were based on the income he required until the age of 63. Given that Mr N had been informed that a Scheme member's pension would be reduced if they retired before their normal pension age in both the 2006 and 2018 Scheme booklets, I find that it was reasonable for the Employer and the Trustee to have expected Mr N to be aware that his pension would be reduced. So, I do not accept that the Employer or the Trustee had a duty to reiterate this to Mr N. There was no indication in the employment settlement agreement that the Scheme Rules would not apply in Mr N's circumstances.
39. Mr N said that the Scheme booklets do not specify that the payment of a full pension to a Scheme member who draws their pension benefits at the age of 63 is subject to the exercise of discretion. There is no mention in the Scheme booklets that the payment of a full pension upon early retirement is payable at all. The 2018 Scheme booklet specifically says that a pension drawn before a Scheme member's pension age is reduced. So, I do not find that the Scheme booklets gave grounds for any

expectation that Mr N would receive a full pension upon drawing his pension before his normal pension age.

40. Mr N said he has no recollection of the June 2000 newsletter being issued. I understand that it may have been difficult for Mr N to remember or find such documentation given that it was issued many years ago. Notwithstanding this, the absence of the 2000 newsletter does not change the fact that Mr N received correct information about his pension through the 2006 Scheme booklet, the 2016 pension illustration and the 2018 booklet and before he decided to retire early.
41. Mr N stated that the June 2000 newsletter confirmed that money had been put aside for Scheme members to receive full pensions at the age of 63. He said that the Pensions Manager informing him that he would receive a full pension at the age of 63 could reasonably be interpreted as an exercise of discretion to waive the application of the early retirement reduction factor. The June 2000 newsletter clearly states that only Scheme members who transition directly from employment to retirement are eligible to apply to retire early and received an unreduced pension. Mr N's employment ended before he retired. So, he was not eligible to be considered for discretion to be exercised to waive the early retirement pension reduction.
42. Mr N contended that the fact that the Spreadsheet included pension estimates showed that it was presented as a quotation of pension benefits. I do not agree. The Spreadsheet was issued in the context of Mr N deciding whether to become a deferred member of the Scheme. It was clearly distinct from the official pension illustrations Mr N received clearly labelled 'Devonport Royal Dockyard Pension Scheme Deferred Benefits Statement', such as the pension illustration issued in April 2016.
43. Mr N said that the word "may" in the April 2016 pension illustration statement, "New Entrants / New Employees - you may be able to receive your benefits at a reduced rate anytime from age 55", suggested that in some circumstances, a new entrant or employee's pension would not be reduced from age 55. As Mr N highlights, a reduction would only apply in some circumstances and so cannot be taken as a right. On receiving the April 2016 pension illustration it is reasonable to have expected Mr N to have made enquiries with the Trustee or Scheme administrator to confirm whether he was entitled to an unreduced pension.
44. Mr N said that the Trustee failed to ensure the information provided by the Pensions Manager was correct. The Pensions Manager was employed by the Employer. The Employer is a separate body to the Trustee and is not accountable to the Trustee. So, I do not accept Mr N's suggestion that the Trustee had a duty to regulate the information provided by the Pensions Manager.
45. Mr N said that if he had been informed of what his pension payment would be, he could have negotiated for a compensatory addition to the money he received as part of his employment settlement agreement or pursued the discretion of the Trustee to pay him an unreduced pension. The terms of Mr N's employment settlement

CAS-56569-H4Q9

agreement are an employment matter and do not fall within my remit. But in any event, I find that Mr N was in possession of sufficient information to be aware before he negotiated his employment settlement agreement that if he retired early, he would receive a reduced pension.

46. I do not uphold Mr N's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
3 April 2023