

Ombudsman's Determination

Applicant	Mr D
Scheme	DHL Group Retirement Plan (the Plan)
Respondents	DHL Pensions DHL Trustees Limited (the Trustee)

Outcome

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

Complaint summary

2. Mr D's complaint is that his retirement benefits have been actuarially reduced for early payment. However, he claims that under the terms of his employment contract, his benefits should in fact have received an enhancement, because he was made redundant by the DHL Group and was over age 55 at the time.

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. On 6 October 1997, Mr D was employed by Tibbett and Britten Group plc (**the T&B Group**). He was a member of the Tibbett and Britten Pension Scheme (**the Scheme**) a defined benefit (**DB**) occupational arrangement. The Scheme was administered in accordance with the Tibbet and Britten Trust Deed and Rules (**the Scheme Rules**).
5. Rule 11, retirement before normal pension date, of the Scheme Rules, provided:

"11.1 A Member may retire from Service on immediate pension and with a lump sum at any time within ten years before his Normal Pension Date or in the case of a male Member with consent of his Principal employer and the Trustees at any time after he attains age 50. The amount of such immediate pension and lump sum shall be calculated in accordance with the provisions of Rule 11.3.

...

11.3 The annual rate of the immediate pension and amount of lump sum payable to a Member pursuant to rule 11.1 shall be calculated as if the Member were retiring at Normal Pension Date under rule 10.1 based upon the number of years and month of Pensionable service the Member has actually completed at the date of retirement but discounted at such a rate (not exceeding the rate recommended as appropriate by the Actuary) as the Trustees may at their discretion determine.”

6. The section of Mr D’s T&B Group employment contract (**T&B Group Contract**) that covered his entitlement under the Scheme stated:

“ (a) From the date of commencement of employment or on attaining the age of 18 years employees are eligible to join the Tibbet & Britten Pension Scheme in accordance with and on the terms of the Scheme Rules from time to time in force...

(b) Details of the provisions of the Scheme are set out in an Explanatory Booklet a copy of which will be supplied to you on joining the Scheme.”

7. On joining the Scheme, Mr D was sent a copy of the April 1998 Tibbet and Britten Pension Scheme Booklet (**the Booklet**). Page one of the Booklet “Introduction to Pensions” said:

“Each site has an elected Pensions Delegate, who attends a meeting with the Trustees at least once every year...

It is the Delegate’s responsibility to ensure that members know of each meeting in advance so that they can raise questions on the members behalf at the meeting, and report back to them afterwards.

If, after reading this Booklet, you have questions, ask your Delegate in the first instance...”

8. On page 13 of the Booklet, the question and answer for question 13 states:

“Can I take immediate pension benefits if I am made redundant?

Yes, if you are aged 50 or over. You can choose to take either:

- Your redundancy cash from the company with your normal withdrawal benefits under the scheme, or
- Increased immediate early retirement benefits under the Scheme with no redundancy cash from the Company

You cannot take both.

If you are aged 55 or over, your immediate early retirement benefits will be enhanced by up to a maximum of 15% depending on your age and the length

of your Pensionable Service. In addition, you can choose to have some, or all of your redundancy cash paid into the Scheme to buy increased benefits as above.

If you do not come into this category, you have to take your redundancy cash sum from the Company with your normal withdrawal benefits under the Scheme...”

9. The option for an enhanced retirement benefit, upon redundancy, was a discretionary benefit, through the T&B Group. So, it was up to the T&B Group to exercise this discretion, on a case-by-case basis, if an active Scheme member, upon redundancy, was aged 55 and over.
10. In 2002, the Booklet was updated, and the following statement was included (**the Caveat**):

“This Booklet has been issued to provide you with a guide to your benefits and it does not cover every aspect of the scheme. Full details are set out in the Trustee Deed and Rules, which will always overrule this Booklet if any question of interpretation should arise.”
11. In June 2004, the T&B Group was incorporated into the DHL Group. Mr D’s employment was subsequently transferred to DHL under the Transfer of Undertakings (Protection Of Employment) Regulations 2006 (**TUPE**). However, Mr D remained an active member of the Scheme.
12. On 29 October 2004, the DHL Group wrote to the Scheme membership and said, amongst other things, that the current site pension delegates operated by the T&B Group would remain in operation with the next pension delegates meeting occurring in January 2005.
13. After 2005, a decision was made that T&B Group employees would no longer be offered an enhanced retirement benefit upon redundancy.
14. In May 2007 the Booklet was updated, and the provision for an enhanced retirement benefits upon redundancy, was removed. The Booklet retained the Caveat and the information in relation to the site appointed pension delegates.
15. On 29 April 2009, the Scheme was merged with the Plan and the Scheme Rules were amalgamated with the DHL Group Retirement Plan Consolidated Trust Deed and Rules (**the Plan Rules**). Mr D became a member of the Tibbet and Britten section of the Plan, administered by DHL Pensions. Rule 4.4 of the Plan Rules provides:

“4.4 Early retirement Pension

(1) Any Member who has reached Normal Minimum Pension Age and who retires from Service before his or her Normal Retirement Date (but not because of Ill-Health or Incapacity) shall receive the Scale Pension and the

Scale Lump Sum. The Scale Pension shall be discounted at such a rate (not exceeding the rate recommended as appropriate by the Actuary) as the Trustee may decide.”

16. On 11 December 2013, the DHL Pensions notified Mr D that the DB section of the Plan (**the DB Section**) would close to future accrual on 31 March 2014. His pension benefits would be preserved, and he would be enrolled into the new defined contribution section (**the DC Section**) of the Plan. DHL Pensions explained that:

“...Whilst you remain employed by DHL you will be treated as an Employed Preserved Member of the DB Section subject to its applicable rules and any other relevant information (including member booklets and benefit statements), all read as necessary to reflect benefits ceasing to accrue from 31 March 2014.”
17. During the consultation period prior to the closure of the DB Section, special arrangements were agreed by the DHL Group and the Trustee, for ill health early retirement (**IHER**) from active status (**the Special Arrangements**). Subject to the approval of the Trustee, an actuarial reduction would not be applied to the IHER pension.
18. On 1 April 2014, Mr D was enrolled in the DC Section.
19. In April 2021, the DHL Group notified Mr D that his role was being made redundant. It explained that he was entitled to three months’ notice and that his last day of employment would be 12 July 2021.
20. In May 2021, Mr D made the decision to apply for early payment of his pension benefits and contacted the Trustee. Mr D referred to a copy of the Booklet from 1998 and said he believed he would be eligible for an enhancement to his pension, as he was over age 55.
21. The Trustee informed Mr D that the Plan Rules did not provide for an enhancement to his pension. As he was retiring before age 65, which was his normal retirement age, his pension would be actuarially reduced for early payment.
22. Mr D also contacted DHL Pensions to enquire about the possibility of the enhancement, and whether he could apply for IHER. Between May 2021 and June 2021 there were further exchanges between Mr D and the DHL Pensions.
23. On 5 July 2021, Mr D emailed DHL Pensions and said:-
 - When his employment was transferred to the DHL Group under TUPE, he retained his rights under his T&B Group Contract.
 - The DHL Group had honoured the redundancy terms in his T&B Group Contract. However, it did not appear that the pension enhancement terms outlined in the Booklet were being honoured.

24. In response, DHL Pensions said that Mr D was not eligible for an enhancement on his retirement benefits following his redundancy.
25. On 12 July 2021, Mr D left the DHL Group through redundancy.
26. On 13 July 2021, Mr D submitted a complaint under stage one of the Plan's Internal Dispute Resolution Procedure (**IDRP**) regarding his eligibility for an enhanced pension on redundancy from age 55.
27. On 2 November 2021, Mr D wrote to the Trustee and reiterated the comments raised through his IDRPs complaint of 13 July 2021. He said that the Booklet made clear his retirement benefits should receive an enhancement as he was over the age of 55 when he was made redundant.
28. On 3 December 2021, DHL Pensions Operations Manager (**the Pensions Manager**) responded to Mr D, under stage one of the Plan's IDRPs but did not uphold his complaint. The Pensions Manager explained that:-
 - It had conducted a thorough review of the Scheme Rules and the Plan Rules. There were no provisions for an enhancement to be paid under either the Scheme Rules or the Plan Rules either before or after the T&B Group merged with the DHL Group.
 - The enhancement was a discretionary benefit that the T&B Group could choose to exercise where a member was retiring from active Scheme membership. The Booklet did not infer a right or entitlement to receive an enhanced pension on redundancy.
 - After 2005, a decision was made to stop offering the enhancement and the Booklet was updated to reflect this. The fact that this discretionary benefit was referenced in earlier versions of the Booklet did not mean that he was eligible, or entitled, to an enhancement.
 - The Booklet provided a summary of the benefits a member might receive under the Plan. Only the Plan Rules gave rise to an entitlement to those benefits.
29. On 10 December 2021, Mr D asked for his complaint to be investigated under stage two of the Plan's IDRPs. He said that:-
 - His T&B Group Contract contained the following wording: "Details of the provisions of the Scheme are set out in the Explanatory Booklet a copy of which will be supplied to you on joining the Scheme".
 - The Booklet made clear that if he was aged 55 or over, at the time he was made redundant, his retirement benefits would be subject to an enhancement of up to 15%. There was nothing in the Booklet, or in his T&B Group Contract, to suggest that this was a discretionary benefit.

- The Booklet said that if at the point of redundancy, he did not fulfil the criteria for an enhancement to his retirement benefits, “[he would] have to take [his] redundancy cash sum from the Company with [his] normal withdrawal benefits under the Scheme”. This supported his understanding that he was eligible for an enhancement as he fulfilled the necessary criteria.
 - He was not informed at any time that the T&B Group had stopped offering the enhancement. He was concerned that DHL Pensions considered that the Booklet did not infer a right to an enhancement. If this was the case, his T&B Group Contract was not being adhered to.
 - In April 2021, he was told that his role was being made redundant, and that his last day of employment would be 12 July 2021; at the time he was age 59 and had issues with his mobility. Consequently, he made the decision to claim his retirement benefits in May 2021. He felt he was being penalised as he was unable to make a claim for IHER due to redundancy.
30. On 22 February 2022, the Secretary to the Trustee (**the Scheme Secretary**) issued a response under stage two of the IDRP, on behalf of the Trustee. The Scheme Secretary explained that:-
- The complaint had been discussed by the Plan’s Trustee Pensions Operations Committee (**the Committee**). The Committee upheld the stage one decision.
 - The Committee had considered the point Mr D had made about the possible impact of his redundancy on his option to apply for IHER. However, Mr D had not raised this under stage one of the IDRP.
 - In order to claim IHER, he would have needed to satisfy the Plan’s IHER provisions. However, as his benefits were now in payment, it would not be possible for him to apply for IHER.

Adjudicator’s Opinion

31. Mr D’s complaint was considered by one of our Adjudicators who concluded that no further action was required by DHL Pensions or the Trustee.
32. The Adjudicator’s findings are summarised below:-
- Mr D considered that DHL Pensions had failed to honour the pension terms outlined in his T&B Group Contract.
 - The enhancement of retirement benefits, upon redundancy, was at the discretion T&B Group. However, the offer of this enhancement ceased after 2005.
 - The Adjudicator noted that the Booklet said that if a member was over the age of 55, at the time the member was made redundant, they would be eligible for an enhancement of up to 15% on their immediate early retirement benefits. The

Adjudicator also noted that this provision was removed from updated versions of the Booklet from 2005 onwards.

- The Adjudicator explained that the Booklet was a summary of the Scheme Rules. If a dispute concerning a member's entitlement arose, the Plan Rules took precedence over the Booklet. The Adjudicator highlighted the Caveat included in the updated versions of the Booklet.
- The Adjudicator also highlighted that the Trustee must act in accordance with the Plan Rules. At the time that Mr D was made redundant by the DHL Group, there was no provisions in the Plan Rules to enhance his retirement benefits. So, the Trustee was required to actuarially reduce his retirement benefits in accordance with the rule 4.4(1) of the Plan Rules.
- TUPE Regulations covered an individual's contractual employment terms. While Mr D's T&B Group Contract made reference to the Booklet, this did not infer that Mr D was contractually entitled to the enhancement on his immediate early retirement pension from the Plan.
- The Special Arrangements were introduced for active members of the Plan applying for IHER. However, Mr D had left the DHL Group through redundancy, not ill health or incapacity, so he was no longer eligible to claim an unreduced pension under the Special Arrangements.

33. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr D, which are summarised below:-

- On joining the Scheme, he was provided with a copy of the Booklet. At no point during his employment with the T&B Group, or the DHL Group, was he provided with an updated version of the Booklet.
- He was not informed of any changes to either the Scheme Rules or the Plan Rules. He disputes that the Scheme and Plan provisions were consolidated following the merger of the Scheme with the Plan. A letter he received from the former Trustee of the Scheme, in January 2009, concerning the merger of the Scheme (**the January 2009 Letter**), contained the following statements:

“You will see no impact on the benefits that you are either receiving now, or entitled to receive in the future as a result of this change.”

And

“You will however notice a change in the name and from 1 April 2009, the scheme will be known as the Tibbett & Britten section of the DHL Group Retirement Plan.”

- These statements indicate that despite the merger, his pension benefits should not have been affected. Consequently, he should have been eligible for the enhancement at the time he was made redundant.

Ombudsman's decision

34. Mr D considers that he is eligible for an enhancement of “up to” 15% on his retirement benefits. Mr D submits that, in failing to enhance his retirement benefits, the Trustee and DHL Pensions have failed to honour the pension terms under his T&B Group Contract. He believes that the January 2009 Letter makes clear that the merger of the Scheme with the Plan would not have any negative impact on his pension benefits.
35. The Trustee has explained that the provision for an enhanced pension benefit, upon redundancy at age 55, was only available to employees at the T&B Group's discretion. Indeed, no specific amount was promised in the historical Booklet, rather it was expressed as an amount of “up to” 15%, showing the discretionary nature of that benefit. It was also not a benefit offered through the Scheme. The Trustee has said that there are no provisions under the past Scheme Rules, or the Plan Rules, to provide for such an enhancement.
36. After consideration of the Scheme Rules and the Plan Rules, I agree that there are no provisions giving Mr D a right to an enhancement following redundancy. The Trustee can only act in accordance with the Plan Rules, of which rule 4.4(1) provides that a “discount” is applied to the member's benefits for each year their benefits are taken before they reach their normal retirement date.
37. Accordingly, I am satisfied that the Trustee has acted in accordance with the Plan Rules and that Mr D's Plan pension was actuarially reduced when he claimed it in May 2021, at age 59.
38. Similarly, I am not persuaded that the enhancement of “up to” 15%, referred to in the Booklet was a contractual entitlement either. The T&B Group Contract (referred to in paragraph 6 above) gave Mr D the right to join “... the Tibbett & Britten Pension Scheme in accordance with and on the terms of the Scheme Rules from time to time in force”. The contractual right afforded Mr D was therefore the right to join the Scheme, but only ever “in accordance with and on the terms of the Scheme Rules from time to time in force”. It is clear from that wording that the benefits offered by the Scheme may change from “time to time” (although, as noted above, there was never a right in the Scheme Rules to the enhancement in any event).
39. Following on from the contractual right to join the Scheme, The T&B Group Contract goes on to point out that “details of the provisions of the Scheme are set out in an Explanatory Booklet...”. This was a helpful signpost to a separate, lay, summary of what benefits were provided at that moment in time by the Scheme. However, to my mind, it is not an attempt to incorporate the terms of the Booklet as a contractual right, not least because the previous clause had made it clear that the rights were always subject to the Scheme Rules from time to time in force, and so could, and

most probably would, change. Therefore, I am satisfied that Mr D does not have a right to the enhancement (and, so, the 'discretionary' benefit could be removed).

40. I accept that Mr D may only have been in receipt the 1998 version of the Booklet, which included information on enhanced retirement benefits on redundancy. Further, the Booklet that Mr D held did not contain the Caveat. The Caveat was only included upon the amendment of the Booklet in 2002. Generally, a member would not, in most circumstances, be able to rely on a scheme booklet if it contains a statement that it is a summary of the scheme benefits and that the applicable scheme rules would override what is stated in the booklet. However, in any event, Mr D was made redundant and did not 'make a choice' to accept redundancy and therefore could not have relied on the statement in the 1998 version of the booklet.

41. I do not uphold Mr D's complaint.

Dominic Harris

Pensions Ombudsman
30 May 2024