

Ombudsman's Determination

Applicant	Mrs E
Scheme	Unilever Pension Fund (UPF)
Respondents	Trustees of the Unilever UK Pension Fund; Unilever plc

Outcome

1. I do not uphold Mrs E's complaint and no further action is required by Trustees of the Unilever UK Pension Fund or Unilever plc.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Trustees of the Unilever UK Pension Fund have provided a joint response on behalf of both respondents. As such, I will refer to both respondents collectively as "Unilever".
4. Mrs E is unhappy because Unilever led her to believe, for a number of years, that she would receive an unreduced pension from age 60. However, in 2014, she was informed that she could only take an unreduced pension from age 65. She states she had not planned for this and as a result she will be caused financial loss due to Unilever's maladministration.
5. Mrs E also believes that Unilever has provided an unreduced pension to other UPF members in her situation, and she questions the validity of their decision.

Background information, including submissions from the parties

6. In 1985, Mrs E joined an occupational pension scheme called the Best Foods Scheme. In October 2001, members received an announcement from the Best Foods Scheme that it would be merging with UPF. As part of this announcement, the following information was provided:

"If you do decide to transfer your accrued rights, you will be credited with additional pensionable service in UPF."

If you choose to accept the additional service credit in UPF your pension benefits for all your pensionable service, i.e. the past (up to and including 31 December 2001) and future (from 1 January 2002), will be provided by UPF, on UPF scale of benefits, as described in UPF member booklet.”

7. The same announcement also stated that UPF was currently exercising discretion in relation to certain members who wished to draw their pension before age 60. As part of this, the information pack provided in October 2001 also said:

“Unilever has consented to UPF deferred pensions drawn at age 60 being paid without reduction. This consent may be withdrawn in the future, this is not a guaranteed benefit.”
8. In January 2002, Mrs E became a member of UPF, after the Best Foods Scheme merged with it. On 30 November 2006, she then became a deferred member, following a redundancy.
9. In December 2006, Unilever changed its discretionary practice so that certain members could no longer draw an unreduced pension at age 60. However, it continued to exercise its discretion in certain circumstances – including where a UPF member had become a deferred member after 16 May 1990 following a redundancy exercise. As Mrs E had been made redundant in 2006, the early retirement reduction waiver (**the Waiver**) still applied to her benefits at this time.
10. However, on 28 April 2011, Unilever wrote to all UPF members to confirm that it would not be exercising its discretion to apply the Waiver after 1 May 2011, unless a member was already 58 on this date. Mrs E was not aged 58 on 1 May 2011, and as such the Waiver no longer applied to her deferred benefits.
11. Attached to the letter Unilever sent to UPF members on 28 April 2011, was an appendix. This appendix gave further information about the changes. In particular, it stated that women who joined UPF before 2 October 1987 had a Minimum Pension Age (**MPA**) of 60, whereas women who joined UPF after this date had an MPA of 65.
12. On 29 June 2011, Mrs E rang Unilever to confirm whether she was considered a pre-1987 member or not. Unilever confirmed that she was. In particular, on 27 June 2011, it wrote to her saying:

“I can confirm that as you joined [UPF] before 1st October 1987, you are able to take your benefits unreduced at aged 60.”
13. Mrs E states that she relied on this information and made plans as though she was retiring on a full pension at age 60. In particular, she left her current employment and set up her own business. This business was incorporated on 11 July 2011, and Mrs E states that she set it up on the understanding it would only need to generate her income for approximately six years.

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14. On 28 November 2014, as part of an unrelated enquiry, Mrs E was informed that she would not be able to take her pension unreduced from age 60. Mrs E immediately raised a complaint, stating that this meant her business would now need to generate her income for an additional five years – and she had not forecasted for this.
15. Mrs E has provided evidence that indicates she was looking for other employment as early as February 2011. She believes she had various opportunities open to her at the time, but she decided to set up her own business knowing it would only need to support her until age 60.
16. On 21 May 2017, Mrs E confirmed with this Office that she does not know for sure what she would have done differently, had she known in 2011 that Unilever would not offer her an unreduced pension from age 60. However, she feels pessimistic about finding clients for the additional years she will now need to work, and she highlights that it will also be more difficult to find employment elsewhere.
17. Furthermore, Mrs E has stated that she knows of other UPF members who share her circumstances but who have been offered an unreduced pension from age 60. She states she does not want to identify them, in case this may jeopardise their benefits. However, she argues that Unilever is treating UPF members inconsistently.
18. UPF has confirmed that it has treated UPF members consistently and in line with the UPF rule. In particular, it has highlighted that it was entitled to exercise its discretion to apply the Waiver, and also to stop exercising it when it did. It has also pointed out that pre-1987 members are still entitled to an unreduced pension at age 60, as this has always been their right under the UPF rules.
19. In other words, Unilever has confirmed that pre-1987 members were not affected by the Waiver, as their Minimum Pension Age under the rules has always been 60. For other members, their Minimum Pension Age is the UPF's Normal Retirement Age, which is age 65. Unilever has stated that a pension is reduced if it is taken before Minimum Pension Age, and it has highlighted the relevant definitions under the UPF rules:

“**Minimum Pension Age**” means the latter of:

(a) date of leaving Pensionable Service...or,

(b) (i) in relation to a Member other than a Pre-1987 Contributor, Normal Retirement Age

(ii) in relation to a female pre-1987 Contributor, age 60.

“**Normal Retirement Age**” means age 65”.

20. Mrs E argues that she is a pre-1987 female Contributor. However, Unilever has highlighted that UPF rules define a pre-1987 female member as:

“a woman who

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- was a Contributor in the [UPF] at 1st October, 1987, and
- who has been treated as a Contributor in the [UPF] from 1st October, 1997 until her [UPF] Transfer Date, and
- who has been treated as a Contributor in the Fund from her [UPF] Transfer Date until the date on which her Pensionable Service in the [UPF] ends.”

21. A Contributor is defined under the rules as:

“(a) an employee who is liable...to pay contributions to [UPF]...”

22. Section E1 (b) of the UPF rules then states:

“(i) At the request of the Contributor, at any time after leaving Service and before Minimum Pension Age the Trustees may substitute a reduced retirement pension payable from such earlier date as the Contributor shall request (but not earlier than age 50...)”

23. For the reasons above, Unilever believes it has treated UPF members consistently and that it has offered Mrs E a pension in line with the UPF rules. It has, however, offered Mrs E £1,000 compensation. This is in acknowledgement of the delays she experienced during its complaint process, as well as any distress and inconvenience she has been caused by its mis-statement on 29 June 2011.

24. Mrs E believes that Unilever has acted irresponsibly and that there should be consequences. Furthermore, she feels the focus should not be on her to show how Unilever’s actions have impacted her.

Adjudicator’s Opinion

25. Mrs E’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Unilever. The Adjudicator’s findings are summarised briefly below:-

- The Adjudicator was satisfied that Unilever’s response was in line with the UPF rules. She added that, without evidence of how other members have been treated, she could not say that Unilever was treating UPF members inconsistently.
- The Adjudicator agreed there had been maladministration. In particular, she noted that Mrs E had specifically asked about her pension, and she had been given incorrect information on 29 June 2011.
- The Adjudicator felt it would be reasonable for Mrs E to have relied on the mis-statement, however, she was not satisfied Mrs E had done so. Firstly, the evidence indicates that Mrs E was looking for alternative employment before the mis-statement occurred. Secondly, Mrs E herself has confirmed that she is not completely sure what she would have done, had she known her pension would be

reduced before age 65. The Adjudicator was therefore not satisfied Mrs E had relied on the mis-statement.

- Furthermore, even if Mrs E had relied on the mis-statement, the Adjudicator was not satisfied that she had suffered a detriment. The Adjudicator highlighted that there was no evidence Mrs E would not be able to continue her business up until age 65, or that she would be worse off financially.
- The Adjudicator did acknowledge that Mrs E will have to reconsider her business plans and that this will cause her stress and inconvenience. However, in the circumstances, the Adjudicator felt Unilever's offer of £1,000 for this was reasonable.

26. Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs E provided her further comments which, are summarised below:-

- Mrs E reiterated that other UPF members, who have similar circumstances to her, have been treated more favourably. She has confirmed that she does not feel comfortable asking those members to join the complaint, however, in case their pensions are adversely affected.
- Mrs E has stated that she did rely on the mis-statement, and she set up her business because Unilever led her to believe she only had "a few years to go" until she could receive her pension in full.
- Mrs E has provided details of what she believes her financial loss is. In particular, she indicates that she was earning approximately £95,000 per annum whilst in employment. She states that, whilst she is earning up to £176,000 per annum through her business, she believes she would have been receiving a salary of £208,000 per annum by now.
- Lastly, Mrs E has reiterated that there is no guarantee she will be able to secure clients up until age 65. She states that the current contract she has in place with a client is likely to come to an end when she is only 61.

27. Mrs E's further comments do not change the outcome. I agree with the Adjudicator's Opinion, and I will only respond to the key points made by Mrs E for completeness.

Ombudsman's decision

28. There is no dispute regarding whether maladministration has occurred in this matter. It is clear Mrs E received inaccurate information on 29 June 2011, and it is left for me to determine whether there has been an injustice as a result.

29. I do not believe an award for financial loss would be appropriate in this case, and I agree that the offer Unilever has made for non-financial loss is reasonable.

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30. In particular, Mrs E has not shown that she relied on the mis-statement, when deciding to set up her business in 2011 rather than pursue alternative employment. She has stated herself that she does not know what she would have done, had she known the letter dated 29 June 2011 was inaccurate.
31. As a result, I cannot conclude that she would not have set up her own business, but for the mis-statement.
32. In any event, Mrs E has not evidenced that she has suffered a loss as a result. Currently, the evidence indicates that she is earning more through her business than she was previously, and she is therefore in a better position than she was before the mis-statement was made to her.
33. Mrs E has argued that she would have been receiving a salary of £208,000 per annum by now, had she stayed in employment. However, she has provided no evidence of this. Notably, the evidence from 2011 merely demonstrates she was looking for alternative employment; there is no evidence she was offered a highly-paid position or that the likelihood is she would have received such a salary.
34. Furthermore, Mrs E has been continuing to secure contracts for her business past age 60. Whilst there is no evidence she will be able to secure contracts until she reaches age 65, there is also no evidence that she will not. At best, her future position is hypothetical, and it would not be appropriate for me to determine what has not yet happened.
35. Lastly, Mrs E has claimed that other UPF members, who share her circumstances, have been treated more favourably by Unilever. I appreciate her concerns regarding asking those members to join her complaint. However, as a result, I have only her case to consider and as such I do not find Unilever has treated members inconsistently. Instead, Unilever has provided Mrs E benefits in accordance with the UPF rules, and so I do not uphold Mrs E's complaint.

Anthony Arter

Pensions Ombudsman
26 July 2017