

Ombudsman's Determination

Applicant	Ms O
Scheme	Railways Pension Scheme (the Scheme)
Respondent	Railways Pension Trustee Company Limited (the Trustee)

Outcome

1. Ms O's complaint is upheld and to put matters right the Trustee shall review its decision not to agree to Ms O's application for augmentation of her early retirement pension. It shall also pay Ms O £500 for the significant distress and inconvenience which she has suffered.

Complaint summary

2. Ms O has complained that the Trustee has refused her request to augment her pension by applying more favourable early retirement factors. She says she suffers from severe depression and anxiety and is in danger of losing her home and has to rely on food banks and help from friends and family.

Background information, including submissions from the parties

3. Ms O became a deferred member of the Clientlogic section of the Scheme on 9 August 2007, having joined service on 4 October 1993. She had 13 years and 10 days of qualifying membership in the Scheme.
4. On 6 July 2018 Ms O applied for early payment of her deferred benefits. She requested this be based on the use of 'Schedule 8' factors.
5. Under the Rules of the Scheme, the benefits of a member who retires early are subject to a reduction for early payment. However, there are two possible bases for calculating the reduction, either on 'such basis as is determined by the Trustee having considered the advice of the Actuary' or on 'Schedule 8' terms. Schedule 8 terms provide better retirement factors when calculating early retirement than would otherwise be the case.
6. Rule 11A of the Scheme says that Members are eligible to take benefits with Schedule 8 terms if they elect to receive their benefits immediately upon leaving

pensionable service. Otherwise, the agreement of the Trustee would be required for Schedule 8 terms to be applied.

7. As Ms O had left pensionable service in 2007 her request for the use of Schedule 8 factors required the agreement of the Trustee.
8. The Trustee delegates decisions such as this to the Trustee Case Committee (**the TCC**).
9. The Declaration Form Ms O had to complete said "I understand that unless I can put forward relevant evidence, which is likely to be exceptional, then I should not expect to receive the benefits calculated on the Schedule 8 reduction factors".
10. Ms O provided a statement outlining her circumstances, together with comprehensive details of her medical history, a financial summary of her income and expenditure, and copy letters from her mortgage provider showing payments were significantly in arrears.
11. Ms O's application was considered by the TCC. Minute 18/98 of the TCC meeting on 21 November 2018 stated "...on the evidence provided, there was no reason through particular need or other exceptional circumstance to grant preferential terms..."
12. Ms O appealed against the decision by instigating Stage 1 of the Scheme's Internal Dispute Resolution Process (**IDRP**) in January 2019. She provided further details of her financial situation.
13. The appeal was considered by the Scheme's Director of Administration who responded on 21 February 2019. His decision was to refer the dispute back to the TCC for its determination at Stage 2 of the IDRP.
14. Subsequent to this response Ms O provided further medical information as she had been admitted to hospital on 18 February 2019.
15. The referral to the TCC simply set out the facts of the case and attached the further medical evidence provided by Ms O. Other than that, it made no comment as to the validity of her claim.
16. The TCC provided a response to the Stage 2 IDRP appeal on 2 April 2019. It said it had considered all the evidence of the appeal but did not consider the medical evidence provided was sufficient to suggest Schedule 8 reduction factors should be applied. Consequently, it agreed there was no reason through particular need or other exceptional circumstances to grant preferential terms. The TCC therefore did not uphold Ms O's appeal.
17. During the course of our investigation the TCC agreed to again review Ms O's case. To support her claim, Ms O provided more detail of her financial situation. She said her mortgage payments remained in arrears and she was at risk of losing her home. She was also in arrears with council tax, utility bills and water rates. She said she was unable to eat on a regular basis due to lack of income and had to rely on food bought

by friends and family. Her only source of income was her pension and universal credit. Ms O also emailed a copy of a letter received from her mortgage provider which showed her case had been passed to its legal department.

18. This appeal was also considered by the TCC. It responded by letter dated 23 September 2019. In the letter the TCC said it had considered all the evidence provided. It said a member needed to prove they deserve to be treated differently to all other members due to hardship. It added it also took into consideration the funding of the section and current membership status. In conclusion the TCC said it found it did not have sufficient evidence to grant preferential treatment.

Adjudicator's Opinion

19. Ms O's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee. The Adjudicator's findings are summarised below:-

- When exercising a discretion, the decision maker must take into account certain legal principles. These are:
 - to ask themselves the correct questions;
 - to apply the correct scheme rules;
 - to consider all relevant factors (and not irrelevant ones); and
 - the decision that is made is one that another body, provided with the same facts, would have also made.
- The TCC was asked to provide full details of the evidence used to support its decision and a copy of its policy in relation to the awarding of discretionary payments. The TCC provided a copy of the legal guidance it followed and a summary of the documents considered, which comprised the evidence submitted by Ms O and copies of correspondence in relation to her complaint.
- From this it appeared the TCC solely considered the information provided by Ms O. It did not ask her any questions about her financial position or seek clarification or confirmation of the points she had made. There is nothing to show how it considered her detailed medical evidence or whether it sought expert advice. In fact, the minutes show a medical adviser was involved earlier in the 21 November 2018 meeting, but had left by the time Ms O's case was considered.
- There is nothing within the documentation provided that showed how the TCC reached its decision.

- The medical evidence provided has made it clear that Ms O is suffering from mental health issues and the TCC's approach to her complaint failed to consider how its actions affected Ms O.
 - Her initial application and appeals were dismissed without any clear explanation, save only for the fact the evidence provided was not sufficient. The onus was placed on Ms O to provide sufficient evidence with no indication whatsoever as to what further information might be needed for her application to be successful.
20. The Trustee did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
21. The Trustee provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by the Trustee for completeness.

Ombudsman's decision

22. The Trustee said the TCC had considered Ms O's application on three separate occasions, and on each one, found they did not have sufficient evidence to grant preferential treatment and terms to Ms O. It repeated it did not feel the evidence submitted showed a need for her to be treated differently to any other member of the scheme.
23. It added it wanted to highlight that, whilst it understood and sympathised with Ms O's position, her benefits are being paid in line with the Scheme Rules. Any change to the early retirement reduction factors is discretionary and never guaranteed.
24. Whilst I appreciate the additional efforts made by the Trustee and the TCC to consider Ms O's application, the fact they have considered it three times does not amount to compelling proof that it followed the correct procedure.
25. I have to consider the merits of this case in light of the evidence presented and the Trustee has been unable to show that it took into account the legal principles as set out in the Adjudicator's findings. It is therefore difficult to conclude that the decision made was a reasonable one.
26. I would not interfere with the Trustee's discretionary powers under the Scheme Rules unless I found that it had not properly considered Ms O's particular circumstances. When the Trustee exercises its discretion, it must follow certain well-established principles. It must apply the relevant Rules correctly, take account of all relevant evidence and the decision reached must not be perverse, that is to say the decision is one which no reasonable decision maker could have reached.
27. It is not at all evident that the Trustee considered Ms O's application for enhancement of her early retirement pension correctly.

28. The TCC should have sought clarification from Ms O as to her financial circumstances and obtained further information from her mortgage company, and others as appropriate. It should also have sought independent medical opinion on her fitness for work before reaching its decision. Therefore, its decision was not reached in a proper manner.
29. Furthermore, the Trustee should have communicated its decision, and the reasons for it, clearly to Ms O. To simply say it did not have sufficient evidence was not enough. It should have clearly set out the factors it had considered and the reasons behind its decision.
30. So there has been maladministration committed by the Trustee. This would have caused Ms O significant distress and inconvenience and she shall receive £500 in recognition of the distress and inconvenience caused by the Trustee's actions.
31. I uphold Ms O's complaint.

Directions

32. To put matters right the Trustee shall:

- reconsider the matter and reach a fresh decision as to whether or not to award an enhanced early retirement pension in line with the principles, it must take account of all relevant evidence, disregard irrelevant evidence and the decision reached must not be perverse, that is to say the decision is one which no reasonable decision maker could have reached; and
- if it still finds that the evidence provided does not warrant an enhanced early retirement pension award: it must give Ms O a clear, detailed explanation of the reasons for its decision; the factors it has taken into account; and give Ms O an opportunity to present any fresh evidence that she wants the Trustee to consider before reaching a final decision.

33. The review should be initiated within 14 days of the date of this Determination. The Trustee shall provide Ms O with a decision or if this is not possible, inform Ms O of when its decision is likely to be made.
34. If Ms O is due an enhanced pension, then such a pension shall be backdated to the date of application with any arrears paid as a lump sum with interest calculated from date of application to date of payment. The interest shall be calculated at the base rate for the time being quoted by the Bank of England."

CAS-29226-H0P2

35. Within 14 days of the date of this Determination, the Trustee shall pay Ms O £500 award in recognition of the significant distress and inconvenience caused by its maladministration.

Anthony Arter

Pensions Ombudsman
16 March 2020