

Ombudsman's Determination

Applicant	Mr L
Scheme	BT Pension Scheme (the Scheme)
Respondent	BT Pension Scheme Trustees Limited (the Trustee)

Outcome

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

Complaint summary

2. Mr L's complaint against the Trustee is that he has not been awarded an ill health retirement pension (**IHRP**) from the Scheme. Mr L believes that he should have been offered a cooling off period by the Scheme's administrator (**the Administrator**) after his pension benefits were crystallised in October 2018, in which he subsequently could have applied for an IHRP.

Background information, including submissions from the parties

3. The Scheme is managed by BT Pension Scheme Management Limited who responded to Mr L's complaint on behalf of the Trustee. However, for ease of reference, the named respondent is the Trustee as this is who Mr L has complained about. The Trustee has provided a response to the complaint on behalf of itself and the Administrator.
4. Mr L was a deferred member of the Scheme in October 2018. His pension benefits are regulated by Rule 6.2 of Section C of the Scheme Rules. The relevant section is set out in the Appendix.
5. On 2 October 2018, Mr L contacted the Administrator to request a retirement pension estimate based on a retirement date of 2 October 2018. This was sent to him on 5 October 2018.
6. On 6 October 2018, Mr L completed the Benefit Crystallisation Event Declaration Form (**the Form**) opting for a maximum lump sum of £25,011.09 and an annual pension of £3,751.66. The Form also said:

“I understand the long term impact of my decision and that my decision is irrevocable.”

7. Mr L also made a handwritten note in the Form asking the Administrator to process the payment of the lump sum immediately and credit it to his account on 12 October 2018.
8. On 12 October 2018, Mr L contacted the Administrator asking when his pension would be paid, and he was advised that this would be done on 16 October 2018.
9. The Administrator paid Mr L’s pension on 16 October 2018 and backdated it to 2 October 2018.
10. On 25 October 2018, Mr L contacted the Administrator to inform it that he had just been diagnosed with a heart disease. He asked whether “the Trustee would consider revising his benefits so that they could be paid on an early retirement for ill health basis.” The Administrator said that it would look into this matter as soon as possible.
11. Mr L subsequently provided a medical report to the Administrator supporting his medical condition. Mr L chased the Administrator for an update on 14 November, 26 November and 30 November 2018.
12. On 5 December 2018, the Administrator wrote to Mr L saying:

“The declaration you signed on 6 October 2018 to accept a lump sum and pension payable on an actuarially reduced basis from 2 October 2018 is irrevocable. Once a member’s benefits are crystallised it is not normally possible to allow a member to revisit their retirement option. This is due to restrictions under tax legislation which limit what the Scheme can do once a member’s benefits are crystallised. Furthermore, the Scheme rules do not allow for the benefits to be paid [sic] on a different basis once payment has commenced. There would generally need to be clear evidence that a pension scheme did not put the member’s benefits into payment in line with the member’s instructions. As confirmed, the Scheme put your benefits into payment in line with your instruction...”
13. On 17 December 2018, Mr L sent a letter of complaint to the Administrator that said:

“I acknowledge, my instructions were followed, however, my circumstances changed considerably due to my sudden and unexpected health mishap and as soon as I found out and was well enough to contact [the Scheme] I did. I did so within 30 days which is in my opinion, is [sic] a very reasonable period in which any benefit member should be allowed to change instructions as is allowed in some other policy schemes.”
14. Mr L’s case was subsequently referred to the Trustee for consideration. On 16 January 2019, the Trustee sent Mr L a response that said:

“Scheme pensions are not revised as a matter of course when there is the discovery of ill-health after benefits have been ‘crystallised’ (whether that discovery be years after a member has taken receipt of their benefits or months). Most pension schemes require an ill-health qualification to be established prior to benefits being paid. Members are also expected to consider their pension provision and seek independent financial advice before making any decision in relation to early retirement. Although we are sympathetic to your position...we are unfortunately not able to make the change that you have requested...When you retired from the Scheme in October 2018 you stated your confirmation to access your entitlement under the Rules...you made reference to a cooling off period. Please note there is no cooling off period in the Scheme and unfortunately this is therefore not relevant.”

15. Dissatisfied with the Trustee’s response, Mr L appealed in February 2019, by invoking the Scheme’s two-stage internal dispute resolution procedure (**IDRP**).
16. The Trustee agreed that Mr L’s complaint be escalated straight to stage two of the IDRP. On 12 April 2019, the Trustee sent Mr L a stage two response that partly upheld his complaint and said:

“...the pension forms you signed contained a statement confirming that they were [sic] irrevocable and that there is no cooling off period in respect of benefits in the Scheme...you raised your query asking to amend your pension benefits on 25 October 2018 but had to chase three times before being told on 30 November 2018 that your benefits could not be amended...The IDRP 2 Committee did however request the Secretariat to contact BT [the Principal Company] to ask whether they would consider agreeing to any additional benefits being provided to you...unfortunately BT have not agreed to this...In recognition of the distress and inconvenience that has been caused as a result of the poor service you received, the IDRP 2 Committee would like to offer you a compensation payment of £500.”

17. The Trustee maintained its previous stance and added that his pension benefits had been paid in accordance with his instructions. The Trustee was not aware of Mr L’s illness at the time. Also, there was no guarantee that he would have been successful with his application for an IHRP. The Trustee also said that as the Scheme was a defined benefit arrangement, there was no cooling off period for members.

Adjudicator’s Opinion

18. Mr L’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator’s findings are summarised below: -

- Mr L is not happy that the Trustee did not consider him for an IHRP shortly after he claimed his retirement benefits. Mr L is also unhappy that there was no cooling

off period after he applied for his pension. The Adjudicator noted that the Trustee did not uphold this part of complaint but offered an apology regarding the Administrator's delays in dealing with Mr L's enquiries.

- As Mr L was a deferred member of the Scheme, at the time he claimed his pension benefits, Rule 6.2 applies in his case. It allows Mr L to claim his retirement benefits on a reduced basis unless the Trustee was satisfied that he suffered a total incapacity.
 - The Adjudicator has considered a key document in this complaint, which is the Form. She was of the view that it was clear that once Mr L had decided to proceed with his application for pension benefits, his decision was irrevocable. The Adjudicator noted that there was no cooling off period allowing Mr L to change his mind on claiming his benefits. On that basis, the Adjudicator's opinion was that Mr L was not eligible to reverse his request to claim his pension.
 - At the time when Mr L completed the Form, he was happy with his decision to proceed with the application. He signed the Form and understood that his decision was irrevocable. He also made an additional note to the Administrator for the payment to be processed immediately. This would suggest that he may have had specific plans regarding the lump sum payment. As explained by the Trustee, the Scheme is a defined benefit arrangement and there is no provision in the Scheme Rules for a cooling off period. On that basis, the Adjudicator was of the view that the Trustee followed the process correctly.
 - Once Mr L's pension benefits came into payment it is only in very limited circumstances that HMRC allows benefits which have been paid to members to be unwound and repaid. This is when there has been a genuine error in the payment of those benefits. For instance, if there was clear evidence that the Scheme did not put Mr L's benefits into payment in accordance with his instructions, which the Adjudicator noted was not the case.
 - Turning to Mr L's point regarding his ill health. The Adjudicator appreciated that shortly after Mr L's pension lump sum was paid to him, he fell ill with a heart condition. However, as this occurred after he had received his pension, there was no provision under the Scheme rules or pension legislation to allow Mr L to have applied for his ill health pension once he started to receive his retirement benefits. Any application for an IHRP or an early pension based on compassionate grounds should have been made by Mr L before he signed the Form and his pension was put into payment. It was the Adjudicator's opinion that this complaint should not be upheld.
19. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L provided his 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 Mr L for completeness.

20. Mr L's summary of points: -

- Similar symptoms of dizziness, weakness, excessive sweating, breathless and fatigue were being experienced for nearly six months prior to 16 October 2018, which he was not aware at the time these related to his heart condition, as confirmed by his doctor.
- He is now permanently on life saving medication and Defibrillator. In addition, he has also been diagnosed with Type 2 diabetes in June 2019.
- Mr L had to chase the Trustee for an update on 14 November 2018, 26 November 2018, 30 November 2018, until 6 December 2018, when the Trustee sent him a decision letter.
- The IDRP 2 Committee did request that the Trustee ask BT whether it would consider agreeing to any additional benefits being provided to Mr L, however this request has been declined by BT.
- He is totally flabbergasted with the Trustee's position, in light of duty of care and sympathy shown by three of the Scheme's Trustee Directors.

Ombudsman's decision

21. I appreciate and sympathise with Mr L's situation that shortly after he claimed his pension lump sum, he discovered that he had a heart condition from which he has said, he had been showing symptoms of six months prior to his retirement. However, at the time when Mr L completed the Form, neither himself nor the Trustee would have been aware that he was ill. Mr L made a conscious decision to retire on 2 October 2017, and completed the Form asking for his pension lump sum to be paid to him on 16 October 2017. I consider that the Trustee rightly processed Mr L's pension payment in accordance with his instructions.
22. The Form advised Mr L that his decision was irrevocable and there was no cooling off period. There is no provision under the Scheme rules or pension legislation to allow the Trustee to reverse Mr L's decision. I appreciate that the IDRP 2 decision maker asked BT to consider paying Mr L additional benefits. It was at their discretion whether to do so, I have no powers to overrule this decision. The Trustee paid Mr L pension benefits in accordance with the Scheme rules and the decision cannot be reversed.
23. I also considered the fact that Mr L had to chase the Trustee for an update on a few occasions. In the circumstances, I find that the £500 offered to Mr L in recognition of the significant level of distress and inconvenience suffered, was sufficient. If Mr L has not yet received the £500 award and wishes to do so, he should contact the Trustee to arrange payment.

CAS-29766-K3N5

24. I do not uphold Mr L's complaint.

Anthony Arter

Pensions Ombudsman
20 February 2020

Appendix

Rule 6.2 states:

“A Member entitled to preserved benefits may choose to start receiving them before Normal Pension Age (but not before reaching Minimum Pension Age, unless the Trustee are satisfied that the Member is suffering from Incapacity)...”