

## Ombudsman's Determination

Applicant	Miss R
Scheme	BT Pension Scheme ( <b>the Scheme</b> )
Respondents	BT Pension Scheme Trustees Limited ( <b>the Trustee</b> ) BT Communications Plc ( <b>BT</b> )

## Outcome

1. I do not uphold Miss R's complaint and no further action is required by the Trustee or BT.

## Complaint summary

2. Miss R's complaint is twofold:-
  - The Trustee and BT have refused to backdate her ill health early retirement (**IHER**) to 2009, instead of 5 April 2018.
  - There was a delay in the handling of her IHER application.
3. BT was Miss R's employer and considered her initial IHER application. BT Pension Scheme Management Limited (**BTPSML**) acts on behalf of the Trustee and considered Miss R's later application. BTPSML responded to this complaint on behalf of BT and the Trustee.

## Background information, including submissions from the parties

4. On 12 February 1990, Miss R commenced employment with BT and joined the Scheme. On 10 May 2009, her employment was terminated on the grounds of capability due to ill health.
5. At the time Miss R left her employment, she was considered for an IHER due to an acoustic shock suffered at work. This was refused by BT, on the basis that she did not meet the criteria.
6. Miss R claimed that she was not aware of her right to appeal the decision until she brought her case to an employment tribunal which concluded in 2010. As a result, BT agreed to consider Miss R's appeal on an exceptional basis due to the facts of her case.

7. In March 2011, during the appeal, Miss R's case was considered by the Scheme's medical adviser (**MA**), who concluded that, based on the available evidence, the criteria for an IHER were not met. This was because Miss R's condition was expected to improve sufficiently to enable her to return to work. Consequently, Miss R's appeal was rejected by BT.
8. On 5 April 2018, Miss R contacted the Scheme administrator (**the Administrator**) regarding applying for an IHER from deferred status. On 15 May 2018, the Administrator received Miss R's completed application form.
9. On 11 June 2018, the Administrator referred Miss R to occupational health for an assessment. In a report dated 18 October 2018, an MA, Dr Folkes concluded that Miss R now satisfied the criteria for an IHER.
10. BTPSML subsequently wrote to Miss R notifying her that she met the criteria for an IHER. Her benefits would be payable with effect from 6 April 2018. It also enclosed a Retirement Statement and information regarding her pension options. She was asked to complete the forms and send them back to the Administrator, so her IHER could be processed. Miss R says she did not receive this letter.
11. In March 2019, Miss R contacted the Administrator to raise a complaint under the Internal Dispute Resolution Procedure (**IDRP**) regarding her ill health pension. She said in summary:-
  - She wanted to know the progress of her application.
  - She had found out that had she still been in employment with BT she would have qualified for enhanced IHER.
  - This would mean she might have received a lump sum payable at the Trustee's discretion.
  - So, she wanted to be treated as if she was still an employee of BT. She wanted to receive enhanced IHER which would be backdated to the day she left employment, 10 May 2009.
  - She believed her IHER should have been payable from May 2009, because she had suffered an accident while being employed with BT. As a result of this, her employment terminated due to capability on the grounds of ill health.
  - She was advised by the BT pension helpline at the time, she could not apply for an IHER before age of 50.
  - The MA's report dated 18 October 2018, said that she would have qualified for an IHER if she was still employed by BT.
12. On 1 July 2019, BTPSML sent Miss R a stage one IDRP response that said in summary:-

- At the time Miss R left her employment in 2009, she did not meet the criteria for an IHER. Following the assessment, her employment was terminated in May 2009.
- In the Administrator's letter dated 18 March 2019, it incorrectly advised Miss R that the date her IHER was payable, was 6 April 2018 instead of 5 April 2018. The latter date was correct because it was the date when Miss R contacted the Administrator to enquire about her application.
- It had investigated the delay between the date the MA's report was issued, 18 October 2018, and the letter dated 18 March 2019. It turned out that the MA's report was not directed to the correct mailbox for approval. This was brought to the Scheme's attention in March 2019 and subsequently corrected.
- It sincerely apologised to Miss R for the delay in processing her IHER benefits.
- Following the tribunal case, Miss R's case was considered by an MA in 2011 as part of her appeal and she was refused IHER. This was on the basis she did not meet the criteria because her condition was expected to improve sufficiently for her to return to work.
- The application she made in April 2018 was treated as a separate application to the one made in 2009.
- It had checked the Administrator's record, but the Administrator did not hold any records of her contacting the BT pension helpline regarding the eligibility age of 50.
- It had records of Miss R contacting the Administrator regarding her ill health pension in 2009 and 2011. Given that she was being assessed for an IHER then, she ought to have been aware she did not have to be aged 50 to be eligible for such assessment.

13. In September 2019, Miss R appealed under stage two of the IDRP. She said in summary:-

- She was unhappy that, at the time her employment was being terminated, she was told she did not qualify for an IHER.
- She was not surprised the Administrator did not hold a record of the conversation she had with the BT pension helpline regarding her eligibility. This was because it failed to inform her of her rights to appeal against the initial refusal.
- She had never received a letter dated 18 March 2019. Since she submitted her appeal, she had only received the letter dated 8 August 2019.
- Had she received the letter dated 18 March 2019, she would have acted on it and not waited until August 2019.

- She was shocked that, had she received her IHER while she was employed, it would have been higher by £3,377.70 per annum.
- Her manager at the time told her she was too young to qualify for an IHER.

14. On 17 December 2019, the stage two decision maker, a panel of the Scheme's Trustee Directors (**the Committee**), sent Miss R its decision. The Committee said in summary:-

- It had decided Miss R's appeal should be partly upheld. This was because the Administrator had failed to send her details of the outcome of her IHER application at the time it was approved. This would have caused Miss R distress and inconvenience.
- It did not uphold the complaints regarding the date her IHER benefits should be backdated to or the fact she was informed she could not apply for IHER before age of 50.
- It decided that Miss R's IHER should be backdated to the date of her application enquiry and not the date her employment terminated.
- This was in line with the Scheme rules (**the Rules**), which provided the initial decision for an IHER was made by BT not by the Trustee. This decision was made in 2009 and subsequently in 2011 by BT.
- It noted that in 2018, her application was accepted on the basis of her current condition and relevant evidence available at the time of the application. Her application was made by Miss R as a deferred member and not an active one.
- If Miss R had any concerns regarding the initial decision made in 2009 and subsequently in 2011, she should raise them with BT instead of the Trustee.
- It concluded that the proper process was followed in respect of her 2018 application, and it was correct for her IHER benefits to be backdated to 5 April 2018.
- It noted the Administrator had no record of its BT pension helpline telling Miss R that she was not able to apply for an IHER before age 50. Even if she had been incorrectly advised of this, she was still able to submit her application in 2009.
- Regarding advice received from Miss R's manager at the time, she would need to raise it with BT rather than the Trustee.
- It noted that, due to an error, Miss R was not notified that her application was successful until, at the earliest, March 2019 or the latest August 2019. In light of this, it offered Miss R compensation of £500 for the distress and inconvenience this had caused her.

15. Relevant sections of the Rules are set out in the Appendix.

**Miss R's position**

16. Miss R submits:-

- She has lost out on a full IHER pension from active status.
- She has struggled to stay in low paid employment due to ill health.
- She has had to stay at housing association accommodation.
- BT has shown no duty of care or remorse for the upset caused to her.

**BTPSML's position**

17. BTPSML submits:-

- For active members of the Scheme, BT leads the process to determine whether the applicant has met the eligibility criteria for an IHER.
- Neither the Trustee nor the Administrator is involved in this part of the process and they only get notified of the case if the decision is that the member has met the criteria. This was therefore the case when Miss R was considered for an IHER in 2009 and 2011.
- Employees are not able to apply for medical retirement under the procedure and they do not have any automatic right to be granted medical retirement. Under the employment procedure, line managers have a responsibility to "take appropriate advice on eligibility for health related pension benefits."
- The eligibility criteria for medical retirement state that the member must be "permanently incapable of giving regular and effective service in the duties of his/her position by virtue of ill-health."
- Miss R's application in 2018 was considered as a deferred member not an active one. The Scheme Rule that applies for deferred members is the same as the Rule for active members. The difference being that the process is run by BTPSML rather than BT.
- It is the Scheme's policy for IHER benefits to be calculated from the date that an application is received, in this case that is 5 April 2018. There is no provision in the Rules for the benefits to be backdated to the date Miss R left her employment.
- The test looks at Miss R's medical position in 2018 based on whether, had she still been employed by BT, she would meet its criteria for medical retirement. This is not the same as saying that she met the criteria when she actually left BT in 2010.
- Its offer of £500 compensation for the delay in notifying Miss R that her IHER application was successful, remained available to her.

## **Adjudicator's Opinion**

18. Miss R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or BT. The Adjudicator's findings are summarised below:-

- Member's entitlements to benefits when taking early retirement due to ill health are determined by the scheme rules or regulations. The scheme rules or regulations determine the circumstances in which members are eligible for ill health benefits, the conditions which they must satisfy, and the way in which decisions about ill health benefits must be taken.
- Rule 5.1, under Section C of the 2009 Scheme Rules covered ill health retirement for active members of the Scheme; whereas Rule 6.2 applied to deferred members. The definition of "incapacity" was the same for both.
- The Adjudicator noted that the Rules allowed for two different IHER processes; (i) one for active members under Rule 5.1, where BT was responsible for making the decision; and (ii) one for deferred members under Rule 6.2, where the Trustee was responsible for making the decision. BTSPML undertook this function on behalf of the Trustee.
- When Miss R first applied for an IHER in 2009 she was still employed by BT, so BT was responsible for deciding whether she was eligible for an IHER. As BT explained to Miss R at the time of her leaving employment, the MA had concluded that she did not meet the criteria for an IHER. This was because the MA was of the opinion that her condition was expected to improve sufficiently to enable her to return to work. Consequently, BT refused Miss R's application.
- Miss R's application from deferred status was considered by BTSPML. The Adjudicator was of the opinion that it had followed the process correctly in accordance with Rule 6.2. The MA concluded that Miss R now met the criteria to be eligible for ill health pension. This opinion was based on the evidence available at the time and not on the evidence available in 2009 and 2011.
- BTSPML subsequently awarded Miss R IHER in 2019 and backdated her benefits to the date she had made her application on 5 April 2018. BTSPML could not backdate her benefits before that date, as Miss R had not started the process with it before then. The Adjudicator noted that there were no provisions under the Rules that allowed BTSPML to award an enhanced level of IHER and backdate it to the date Miss R left her employment, on 10 May 2009. In the Adjudicator's view, BTSPML had followed the process correctly and in accordance with the Rules. So, Miss R's IHER benefits could not be backdated to the date of her last day of employment.
- Regarding the delay in handling Miss R's application. The Adjudicator noted that BTSPML had accepted that the Administrator had not sent Miss R confirmation of her IHER entitlement in a timely way and had offered her an award of £500 for

this. The Adjudicator's view was that its offer was sufficient as it was in line with The Pensions Ombudsman's current guidance. If Miss R now wished to accept this sum, the Adjudicator suggested that she should contact BTSPML. Consequently, it was the Adjudicator's opinion that Miss R's complaint should not be upheld.

19. Miss R did not accept the Adjudicator's Opinion and in response provided further points. She said in summary:-
  - While she considered BT made flawed decisions in 2009 and 2011, in declining her application for IHER from active status, she understood that both matters were out of time for bringing a complaint to the Pensions Ombudsman.
  - There was no new evidence in 2018 that was different from the evidence provided in 2009 and 2011.
  - The Adjudicator's opinion had not addressed that the Trustee was now offering her IHER which was lower than the benefits quoted to her in 2007.
  - She would like her pension backdated to April 2018 at an enhanced rate in recognition of the fact that she had worked hard for BT and her career had been cut short by an accident at work.
20. In a subsequent exchange between Miss R and the Adjudicator, the Adjudicator explained that as Miss R was not eligible for enhanced IHER from active status, her IHER benefits would be now calculated on an actuarially reduced basis. This was the reason why her current pension was lower than the one quoted to her when she was in employment in 2007.
21. Miss R's complaint was passed to me to consider. I have considered Miss R's further comments, but I find that they do not change the outcome. I agree with the Adjudicator's Opinion.

## **Ombudsman's decision**

22. I have put to one side Miss R's comments regarding the decisions made by BT, in 2009 and 2011, not to award her an IHER from active status, as the complaint which Miss R brought to my Office, which was duly accepted for investigation, concerns the date from which her deferred benefits have been put into payment and the fact that no enhancement has been applied. Miss R is also aware that a complaint about those decisions is out of time for me to consider.
23. Miss R contends that the evidence she provided in 2018 was the same evidence that she provided in 2009 and 2011.
24. In her report, the MA, Dr Folkes, listed the medical evidence which she had reviewed. I agree with Miss R that much of this dated from 2008/09 and 2011. However, it also included an up-to-date report from Miss R's GP and a report of an assessment with an occupational health doctor in June 2018.
25. While Dr Folkes concluded that Miss R satisfied the criteria for IHER, it does not mean that she would have reached the same conclusion at an earlier date. A key factor in determining Miss R's eligibility for an IHER is the likelihood of her becoming able to carry on her occupation at some point before her normal pension age. It is not unusual for expectations as to the likely future course of a person's incapacity to change over time.
26. Miss R was awarded IHER in 2019 and the Trustee backdated her benefits to 5 April 2018, the date she made her application. I find that the Trustee could not backdate her benefits before that date as Miss R had not started the process before then. I have considered Rules and they do not allow the Trustee to award an enhanced level of IHER and backdate it to the date Miss R left her employment. Under Rule 6.2, the deferred pension becomes payable once the Trustee is satisfied that the member is suffering from Incapacity (as defined). I consider that BTSPML, on behalf of the Trustee, followed the process correctly and in accordance with the Rules. I find Miss R's IHER benefits have been backdated to the correct date.
27. Regarding the point that Miss R's IHER benefits are lower than the benefits quoted to her in 2007. I agree with the Adjudicator's explanation to Miss R. (See paragraph 20 above).
28. With regard to the delay in handling Miss R's application for an IHER, I find that this did amount to maladministration which caused Miss R injustice, in the form of distress and inconvenience. However, I consider that the Trustee's offer of £500 is sufficient redress for that. Miss R should now contact BTSPML if she wishes to accept the Trustee's offer.



CAS-37531-Z6M9

29. I do not uphold Miss R's complaint.

**Anthony Arter**

Pensions Ombudsman  
08 September 2022

## Appendix

1. As relevant Rule 5.1 of the Rules states:

“5.1 Medical early retirement after 2 years’ Qualifying Service

A Member who leaves Service before Normal Pension Age with at least 2 years’ Qualifying Service and who is certified by the *Employer* as having been retired under the *Employer’s* medical retirement procedure may choose an immediate pension (but not before Minimum Pension Age, unless the Member is suffering from Incapacity).”

2. As relevant Rule 6 of the Rules states:

“6.2 Early Pension

A Member entitled to a preserved pension may choose to start receiving it before Normal Pension Age (but not before reaching Minimum Pension Age, unless the *Trustees* are satisfied that the Member is suffering from Incapacity.”

3. “Incapacity” is defined as:

“means incapacity that entitles the Member to retirement under the Employer’s medical retirement procedure or would have done had the Member been in Service, provided that:

The Trustees have obtained evidence from a registered medical practitioner that the Member is (and will continue to be) incapable of carrying on the Member’s occupation because of physical or mental impairment; and

The Member has in fact ceased to carry on the Member’s occupation.”