

Ombudsman's Determination

Applicant	Dr I
Scheme	Universities Superannuation Scheme (USS, the Scheme)
Respondents	Universities Superannuation Scheme Ltd (the Trustee)

Outcome

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

Complaint summary

2. Dr I complained that:-
 - (i) he was misled into believing his flexible retirement benefits would not be subject to an Early Retirement Reduction (**ERR**). However, when he took flexible retirement in August 2017 an ERR was applied to his pension benefits;
 - (ii) he was denied the opportunity to make alternative arrangements as he was not informed about the ERR until two months after his retirement;
 - (iii) he was not able to reinstate his Money Purchase Additional Voluntary Contributions (**MPAVCs**), held with the Prudential Assurance Company (**Prudential**) which were disinvested for use towards funding his early retirement; and
 - (iv) there were delays, errors and general poor service, which caused him distress and inconvenience for which he sought an apology and compensation.

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. Dr I had two separate periods of employment during which he was eligible to join the Scheme, as follows:-
 - Between 1 March 1994 and 31 August 2006.

5. During this period of employment, Mr I's benefits were accrued in the Defined Benefit (**DB**) section of the Scheme (**the pre-2011 benefits**), which had a Normal Retirement Age (**NRA**) of 60. Dr I resigned from this employment on 31 August 2006.
 - Between 1 June 2012 and 31 March 2016.
6. During this period of employment, Dr I's benefits were accrued in the Career Revalued Benefits (**CRB**) section of the Scheme (**the post-2011 benefits**), which had an NRA of 65.
 - From 1 April 2016 onwards, Dr I's benefits (**the post-2016 benefits**) were accrued in the Retirement Income Builder (**RIB**) section of the Scheme.
7. On 1 October 2011, the final salary section was replaced with the CRB section.
8. When Dr I recommenced employment with an employer which gave access to the Scheme on 1 June 2012, he was enrolled in the CRB section of the Scheme.
9. During his employment, Dr I had also been saving into an In-house Additional Voluntary Contributions plan (**AVC**) provided by the Scheme, as well as into the MPAVC provided to USS members by Prudential. One of the features of the Scheme gave Dr I the opportunity to use either or both of these plans to augment his retirement benefits.
10. On 18 November 2016, Dr I emailed the Scheme Administrator to say he was considering taking partial retirement at some point in 2017. He asked some questions, including the following:-
 - Who should he contact to obtain consent to take his pre-2011 benefits in full without the application of any ERR?
 - If he reduced his working hours by 20%, could he take a flexible pension of 50% or did the reduction in hours have to be the same percentage as the flexible pension?
 - Was there a table showing the ERR levels for the post-2011 benefits?
 - What difference would there be if he took his benefits in March, June or August 2017?
11. On 23 November 2016, the Scheme Administrator responded as follows:-
 - As Dr I was over age 55 on 30 September 2011, no ERR would be applied to any benefits built up in the Scheme.
 - Flexible retirement had to be agreed by his "Faculty", so he should discuss this with his Faculty's HR department.
 - Under the Scheme's flexible retirement terms, as long as he reduced his hours by at least 20%, he could take up to 80% of his Scheme benefits.

- He was directed to the Scheme's website, where a retirement factsheet was available (the **Factsheet**) which explained about reducing hours and claiming retirement benefits.
12. On 14 June 2017, Dr I emailed his Faculty to ask for permission to commence flexible working, with a view to reducing his working hours by 20% from August 2017 onwards, so that he could take flexible retirement.
13. On 7 July 2017, Dr I's Faculty confirmed approval of his request for flexible working. It suggested he speak to the Scheme Administrator so the implications of his decision could be discussed before the 20% reduction in his hours was processed.
14. On 10 July 2017, Dr I emailed the Scheme Administrator again and said:-
- His request for flexible working had been approved.
 - What benefits would he receive if he took 40% of his accrued benefits, and what would he receive if he took 60% of the pre-2011 benefits he had accrued?
 - What were the implications for his pension, as mentioned in his Faculty's email of 7 July 2017?
15. On 11 July 2017, the Scheme Administrator emailed to acknowledge Dr I's request, and said:-
- It would arrange for a flexible retirement quote, based on taking both 40% and 60% of accrued benefits, with effect from 31 July 2017.
 - It suggested a meeting with Dr I after his quote was received, so they could go through the details together before he made any decisions about taking flexible retirement.
16. On 17 July 2017, the Scheme Administrator wrote to Dr I to set out provisional standard flexible retirement benefits available on 31 July 2017 as follows:-
- | | | |
|---------------------------------|------------|------------|
| Flexible Retirement Percentage: | 40% | 60% |
| Standard Gross Annual Pension | £4,884.96 | £7,327.20 |
| Plus Standard Tax-free Lump Sum | £14,654.88 | £21,981.20 |
17. Dr I's AVC and MPAVC plans were valued as follows:-
- USS AVC Investment Builder Fund: £11,544.66
 - Prudential MPAVC Fund: £75,695.34
18. It was also confirmed that, if Dr I was going to use the AVC and MPAVC plans, then fund values could fluctuate, and Prudential may impose an exit penalty. Dr I could:-
- take the entire sums as tax-free cash, subject to HMRC limits;
 - take a series of lump sums;
 - take flexible retirement income;
 - purchase an annuity;

- or leave the plans invested.
19. On 3 August 2017, the Scheme Administrator wrote to Dr I to confirm that he could take up to 80% of his pension, provided his working hours were permanently reduced by at least 20%. The Scheme Administrator also confirmed that the only options for the MPAVC were to take it all when he commenced flexible retirement, or leave it all invested, as it could not be split into separate portions.
20. On 31 August 2017, the Scheme Administrator wrote to Dr I setting out his pension benefits at the 40% level from the various sources of funds as follows:-
- Main Scheme pension, including pre- and post-2011, totalling: £4,490.08
 - Pension from post-2016 RIB section: £394.66
 - Total standard lump sum: £14,654.52
 - These benefits could be augmented by using either, or both, of the AVC funds.
21. On 7 September 2017, the Scheme Administrator wrote to Dr I again and enclosed a flexible retirement quotation based on taking 40% of benefits and having reduced his hours to 80% with effect from 1 August 2017. There were three options for his benefits:-
- Option 1 - standard pension and lump sum;
 - Option 2 - higher pension, but no lump sum;
 - Option 3 - higher lump sum, but a lower rate of pension.
22. On 20 September 2017, Dr I wrote to the Scheme Administrator to say he had made his choice and he enclosed the completed, signed application form. He had decided to transfer the entire Prudential MPAVC plan proceeds into the Scheme in order to obtain the maximum lump sum and a reduced pension, leaving the AVC plan in place for future use.
23. On 5 October 2017, Prudential wrote to Dr I to confirm his MPAVC fund value was now £76,618.71, all of which had been transferred to the main Scheme.
24. On 18 October 2017, the Scheme Administrator wrote to Dr I to confirm his 40% flexible retirement benefits from 31 July 2017, inclusive of his Prudential MPAVC funds would be:-
- Gross pension: £6,418.20 per year;
 - Lump sum: £42,787.85.
25. The letter of 18 October 2017 confirmed Dr I's benefits had been reduced compared to those contained in the 31 August 2017 quotation. The Scheme Administrator explained the earlier quote was based on Dr I being an exempt member of the Scheme. Such exempt status would have meant his final salary benefits would have been exempt from any ERR. Therefore, Dr I would have been entitled to unreduced pre-2011 benefits, if retiring from active membership with employer consent.

26. However, having left service in 2006, and not re-joining until 2012, Dr I was absent from the Scheme as at 30 September 2011, which was the key cut-off date for being a member, or deferred Scheme member, to qualify for exemption from the ERR on the pre-2011 benefits. As he did not meet the criteria to be considered an exempt member his pre-2011 benefits had been reduced in line with the Scheme rules. The Scheme Administrator apologised for this error and confirmed Dr I's pension would commence on 21 November 2017, and the first payment would include arrears due from 1 August 2017 to 31 October 2017.
27. On 23 October 2017, Dr I emailed the Scheme Administrator regarding the reduction to his benefits, saying the possibility of such a reduction had not been mentioned to him in previous correspondence. He drew attention to the Scheme Administrator's email of 16 December 2016 in which it was confirmed no ERR would be applied because he was over age 55. He had taken the decision to access flexible retirement benefits on the basis there would be no reduction.
28. On the same day, the Scheme Administrator responded that it had received confirmation from its legal advisers that the reduction was correct. It had been applied due to the gap in Dr I's employment between 31 August 2006 when he had resigned from his previous employment and 1 June 2012 when he took up new employment which made him eligible again for Scheme membership. This period of absence from the Scheme meant the exemption from an ERR no longer applied to him. This oversight had not been noticed when the earlier quote had been sent to him.
29. On 24 October 2017, Dr I wrote again to the Scheme Administrator saying neither the preliminary quote of 3 August 2017, the final quote of 31 August 2017 nor the online modeller had made any mention of a reduction to his benefits. Further, one of the first questions he had raised in his email of 18 November 2015 was whether, or not, there was any reduction for early retirement.
30. The Scheme Administrator responded to apologise for the situation, and suggested Dr I should make a formal complaint.
31. On 26 October 2017, Dr I sent a formal letter of complaint to the Scheme Administrator as follows:-
 - The Scheme Administrator had failed to take into account the fact that he re-joined the Scheme in June 2012.
 - All previous correspondence led him to conclude that the ERR did not apply to his flexible retirement benefits.
 - Why should he suffer when the mistake was made by the Scheme Administrator?
 - He had reasonably relied on the information the Scheme Administrator had supplied when making a significant, life altering decision to take flexible retirement. If he had received correct information, he may have made a different decision.
 - He believed the Scheme Rules had been applied incorrectly.

32. On 21 November 2017, the Scheme Administrator responded to Dr I's complaint, and said:-

- It apologised for the fact that the benefits payable at retirement were lower than Dr I had been led to expect. However, the letter covering the higher quote stated that the actual retirement benefits would be calculated at the date of retirement, in accordance with the Scheme Rules, legislation and the factors in force at that time.
- The Factsheet to which Dr I had been directed in the email of 23 November 2016 stated that if a member was retiring on or after age 60, post-2011 benefits would be actuarially reduced if retirement were to take place before age 65, unless the member in question was a member of USS on 30 September 2011, and aged 55 or more on 1 October 2011, and was retiring with employer consent.
- When the calculations were performed, the Scheme Administrators had not appreciated the fact that Dr I was not a member of the Scheme at the cut-off date of 30 September 2011, and therefore were incorrect in treating him as an exempt member.
- It noted that a further error was contained within the retirement settlement letter, referring to pre-2011 benefits rather than post-2011. However, this error was confined to the letter, and had not affected the actual calculations, which it confirmed were correct.
- Dr I's options form had not been received by the Scheme until two months after his retirement date. The decision was made to pay the benefits rather than delay them while further options were explored with Dr I. It apologised for this situation, and offered the following options to him:-
 - The first option would be to cancel the flexible retirement altogether. This would require repayment of any lump sum and pension payment, which had been paid to Dr I on 21 November 2017.
 - The Prudential funds could be reinvested with Prudential, provided Prudential would accept them. If not, they could be invested into the AVC.
 - Dr I could raise the matter of his reduced hours with his employer, as these would not automatically return to their former level as a result of cancelling the flexible retirement.
 - A second option would be to remain a flexible retiree but alter the percentage of benefits taken to a lower proportion of the overall standard benefits. The minimum he could take would be 20% of standard benefits.
 - A third option would be to maintain the flexible retirement at 40% but change the ratio of pension to lump sum. He could return some of his lump sum, after which it would be converted into pension.

- Actuarial pension reductions did not apply to any spouse's pension benefits, which were calculated based upon the full standard pension before any lump sum was taken. So, in any consideration of what Dr I wanted to do, his provision for his spouse in the event of his death would be unchanged.
- It quoted the key Scheme Rules regarding the ERR.
- It said it had no discretion to pay benefits in a manner which was inconsistent with the Scheme Rules. It was, therefore, legally obliged to correct any errors discovered at a later stage, even if that action resulted in final benefits being lower than previously quoted.
- If Dr I did not wish to accept any of the options outlined above, he could invoke the Internal Dispute Resolution Procedure (**IDRP**).

33. On 17 December 2017, Dr I wrote to the Scheme Administrator and said he wanted to invoke the IDRP on the following grounds:-

- None of the options presented to him in its letter of 21 November 2017 were suitable or appropriate because they relied on third parties' discretion. The solutions did not rectify the Scheme's wrongdoing and were unreasonable. Dr I felt he was being treated unreasonably.
- The Scheme Rules had been applied incorrectly. The Scheme had made a negligent error in its calculation and its application of the Scheme Rules, to his detriment.
- He quoted the most recent version of the Factsheet, November 2017, which said there was an exemption for members retiring early, aged 55 or over on 1 October 2011 which meant no ERR would be applied.
- He contended that he was a member at that time, by virtue of being a deferred member.

34. The Scheme Administrator sent Dr I an application form for the IDRP, which he completed and returned on 14 January 2018. His primary points, in addition to the points above at paragraph 33, are set out below:-

- He had been told by the Scheme Administrator that there would be no ERR applied if he took flexible retirement in August 2017.
- However, the ERR was applied, and he was not informed until 18 October 2017 in the Scheme Administrator's letter of that date, which offered him no options at that stage. Although, subsequently, some options were offered, they were limited and he remained at a significant financial loss.
- The Scheme Administrator had made a series of errors and had not consistently applied the Scheme Rules.
- As a result of these errors, he had suffered undue stress.

- He had to put some of his retirement plans on hold. He was due to invest in a retirement property, utilising his pension and lump sum, but was now unable to proceed with this plan due to the reduction in benefits as a result of the ERR.
- He would continue to be affected by this situation for the rest of his life.
- The conclusion that he was not an exempt member, as outlined in the Scheme Administrator's letter of 18 October 2017, was incorrect. He was a deferred member and was therefore a member for the purposes of the relevant Scheme rule. The definition of exempt member did not discriminate between types of membership. He met all the criteria and on 30 September 2011, was a deferred member.
- As a deferred member, who was also an exempt member, he should be able to draw unreduced benefits as stated in the Scheme Administrator's quote dated 31 August 2017 and all previous correspondence. The Scheme Administrator had misinterpreted its own rules and definitions and had also changed its mind on the interpretation of his status, to his detriment.
- The Scheme Administrator had admitted its errors, but offered no rectification, remediation or compensation to him.

35. On 5 June 2018, the IDRPs Stage One response letter was issued, which said:-

- Under the Scheme Rules, the Trustee must apply an ERR to Dr I's post-2011 benefits.
- The quotes issued in July and August 2017 were incorrect, but these errors did not give Dr I the right to the overstated benefits.
- It was accepted that Dr I might have made a different retirement choice, had he been provided with correct quotes. Accordingly, the Trustee should allow him to reconsider his retirement options as follows:
 - Undo his retirement, by repaying all of his benefits to the Trustee. Dr I would need to consult with his employer if he wished to reinstate his working hours;
 - Alternatively, he could remain in flexible retirement, but select a different flexible retirement percentage; or
 - Continue with his 40% flexible retirement but change the ratio of his benefits.
- Dr I should be awarded the sum of £1,000 in recognition of the distress and inconvenience he had suffered as a result of the Scheme Administrator's error. It also apologised for any distress and inconvenience caused by its error.
- It explained the basis for its conclusions, which was that Dr I was not a member, or a deferred or exempt member, but rather was a former member, on 30 September 2011. Therefore, an ERR was applied to his post-2011 benefits.

36. On 14 July 2018, Dr I wrote to the Scheme Administrator and said he had not yet decided what to do regarding the options offered in the letter of 5 June 2018. He also made the following points:-

- He could not find anywhere in the Rules and definitions that a member should be an active member at 30 September 2011.
- For an exempt member, the only caveat was in respect of leaving service after 1 October 2011.
- He quoted the definition of “Member” as:-

“an individual who, immediately before the effective date, was a member of the Scheme by virtue of the rules then in force, who would have remained so on the effective date, had those rules not been superseded, and who had in either case, not withdrawn under rule 36 (withdrawal from membership) in respect of all eligible employments, and ‘Membership’ has a corresponding meaning.”
- He had never withdrawn from membership under Rule 36 and was therefore an exempt member.
- The Scheme Administrator’s argument that he was a “former member” was incorrect. He sought a detailed list of the Rules that excluded him from being an exempt member, and the Rules that explicitly required active membership on 30 September 2011.
- He asked who would compensate him for the year’s reduction in earnings as a result of reducing his working hours, preparatory to taking flexible retirement, representing a loss of more than £11,000 in income.
- Further, who would compensate him for the transfer into the Scheme of his Prudential MPAVC fund, which he said could not be undone.
- The selection of a different flexible retirement percentage would leave him with a total shortfall over a 20-year retirement of around £12,699. He asked who would compensate him for this loss.
- The options offered by the Scheme Administrator put the burden of its mistakes unfairly on him. The options were not offered until after his retirement and were unreasonable at this stage.
- The Trustee had a duty to rectify the consequences of these errors.
- The Stage One IDRPs response should have been issued within two months, but five months had elapsed between his complaint and receipt of the Stage One IDRPs response, representing yet another failure in the Scheme Administrator’s procedures. The delay had added to the stress he was suffering.

37. On 20 July 2018, the Scheme Administrator wrote to Dr I to acknowledge the points he had raised, and said:-

- It apologised for the additional stress Dr I had been caused by the length of time it had taken to issue its Stage One IDRPs response. This had resulted from the need to obtain advice regarding the correct interpretation of the Rules.
- It confirmed that the Rules do not define a member as an active member at 30 September 2011. It had quoted rule 4.2 in its letter of 5 June 2018. It clarified that its reference to “members” was to “active members”, which covered most instances referring to a member. It apologised for any confusion it may have caused to Dr I.
- Scheme membership depended on an individual being an “eligible employee”, who, by virtue of which status, automatically became a member. In most instances members are required to pay contributions in accordance with the Rules. An individual who ceases to be an eligible employee or elects to withdraw from the Scheme while remaining an eligible employee, ceases to be a member and instead becomes a “former member”.
- When Dr I left service in 2006, he ceased to be an eligible employee. His membership terminated and he automatically became a former member. The fact that he had never elected to withdraw from the Scheme was irrelevant to his becoming a former member.
- The relevant Rules in force at Dr I’s flexible retirement on 31 July 2017 were materially the same as the Scheme Rules from 1 April 2016, which in turn had incorporated all Deeds of Amendment, up to and including the Sixth Deed of Amendment dated February 2018.
- These Rules set out the definition of “exempt member”, which in turn referred to the Rules in force on 30 September 2011. These Rules were materially the same as the Scheme Rules of 1 May 2009, incorporating all Deeds of Amendment up to and including the Fourth Deed of Amendment dated 2 June 2011. The Rules and amendments could be viewed online or at the Trustee’s offices by appointment.
- Regarding Dr I’s questions as to who would compensate him for any losses, it said:-
 - Undoing of retirement – lost income was a reflection of Dr I’s reduced working hours, which the Trustee was not in a position to quantify whether and, if so, to what extent, he had suffered any loss. It was not possible to put a value on the benefit to Dr I of reduced working hours.
 - Remaining in flexible retirement – the error was acknowledged in the Stage One IDRPs letter dated 5 June 2018. However, the error did not give Dr I any entitlement to the overstated benefits.

- The income shortfall was not created by the Trustee's mistake but, rather, reflects the correct level of benefits to which Dr I was entitled. There was, therefore, no loss.
- The offer of £1,000 reflected the fact that the error had caused significant distress and inconvenience.

38. On 5 August 2018, Dr I wrote to the Scheme Administrator and said:-

- He had still not been supplied with the detailed information on the sections of the Rules that had been used to conclude he was not an exempt member and asked for the specific sections and subsections of the rules where former member status was applied.
- He was of the opinion that the Rules used the term "member" without discrimination in respect of the type of membership. The use of qualifiers such as "active", "former" etc were instances of subjective interpretation and were not in the spirit of the Scheme Rules. The Scheme website and guide define those who leave after two years' membership as "deferred members", and in no circumstances are they defined as former members.
- He disagreed with the points regarding his income shortfall saying it was a direct consequence of the Trustee's mistakes. Further, the shortfall was a result of not being offered any option to reconsider his position between the final quote and the reduction of his benefits.
- The letters and other communications sent to him never explained, in detail, the interpretation and application of the Scheme Rules that resulted in him not being considered as an exempt member. The responses he had received only served to muddle the issue by using different excuses regarding the membership types.
- On 28 November 2018, having received no satisfactory response to his letter of 5 August 2018, Dr I completed and returned the application form for Stage Two of the IDRP. Below is a summary of his main points:-
- He was being treated as an exempt member when, in his understanding of the Rules, he was a member before the effective date of 1 May 2009 and had never withdrawn from membership under Rule 39 so therefore he considered himself to be a member, aged over 55, at 30 September 2011 under the Rules then in force and therefore he was an exempt member;
- He believed that the Consolidated USS Rules incorporating the Fifteenth Deed of Amendment dated 1 December 2014, supported his contention that he was an exempt member;
- He had suffered from the Scheme Administrator's mistakes in the process of arranging his flexible retirement;

- He had suffered from the inconsistent application of the Scheme Rules on the part of the Trustee; and
- He had suffered as a result of the Trustee's failure to offer him any options when the mistake was discovered.

39. On 4 February 2019, the Trustee issued its Stage Two IDRPs response to Dr I as follows:-

- Dr I's complaint should be upheld in part because:-
 - The terms of the Stage One IDRPs response had been reviewed and were found to be correct. No further comment was made on the matter;
 - The quotes issued to Dr I in July and August 2017 were calculated incorrectly and for the distress and inconvenience caused by this mistake, Dr I should be paid £1,000.
- The main substance of the complaint should not be upheld. Dr I was not entitled to unreduced benefits.
 - The Scheme Rules had been applied correctly and the Trustee's legal advisers had confirmed Dr I was not an exempt member under the Rules because:-
 - To be an exempt member he would have to have been a member on 30 September 2011;
 - A member is an eligible employee who has not chosen to withdraw from the Scheme;
 - He was not an eligible employee on 30 September 2011 so he could not have been an exempt member;
 - When an individual ceases to satisfy the definition of "member" they become a "former member";
 - At 30 September 2011, Dr I was a former member, not a member;
 - The Trustee is required to administer the Scheme in accordance with the Rules, and as Dr I was not an exempt member, it was correct to apply an ERR to the benefits he had accrued after he re-joined the Scheme;
 - While it would have been appropriate for the Trustee to alert Dr I to the error before his retirement was processed, it was regretful that this was not done. However, Dr I was informed very shortly thereafter. The options offered to him including cancelling his flexible retirement. These options were effectively what would have been available before his retirement was processed.

Adjudicator's Opinion

40. Dr I'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:-

- The Scheme Rules had been interpreted correctly by the Trustee, Dr I had not been an eligible employee once he left the Scheme on 31 August 2006, with the gap between his previous and existing employment being greater than six months. This meant he could no longer be considered to be an exempt member.
- Dr I was offered the opportunity to unwind his retirement which would have put him in the same position that he had been prior to retiring. He was also offered the opportunity to take alternative pension options and to unwind his MPAVC benefits.
- Dr I had been offered £1,000 in respect of the distress and inconvenience he had undoubtedly suffered, which fell within my guidelines on payments for non-financial injustice.
- Dr has had the benefit of the extra time that would otherwise have been spent working and he will have paid less National Insurance and income tax on his reduced salary. He would have also paid less in pension contributions, all of which would have increased his available net income.
- It was reasonable to expect Dr I to have taken steps to mitigate any financial loss when he realised an ERR had been applied to his benefits. Dr I could have approached his employer and asked it to rescind his reduced hours, returning him to a full time working pattern, but he did not do so. Alternatively, he could have supplemented his income by obtaining additional work either with his employer or elsewhere. He also could have chosen one of the alternatives offered to him, and could have arranged the benefits so that the gap created by the ERR was covered by flexible benefits.

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

- He did not cease service on or after 1 October 2011, and therefore the Rule regarding an exempt Member leaving service on or after 1 October 2011 and who re-joins subsequently did not apply and could not be applied retrospectively.
- He was classified as a Deferred Member when he left on 31 August 2006. The definition of Exempt Member was introduced at a later date.
- He had reduced his working hours only because it was a condition for accessing flexible retirement, rather than wanting to reduce his hours and for that reason, accessing his pension early.

- He could have taken his full Scheme pension in August 2020 on reaching age 65, but instead has taken another flexible arrangement and is still working in order to improve his future pension and compensate for the loss suffered due to the mistakes made by the Trustee and Scheme Administrator.
- He was extremely disappointed that the Scheme Rules were being used to justify the mistakes and maladministration by the Scheme Administrator.

Ombudsman's decision

42. Dr I contended that he remains an exempt member, because he did not cease employment on or after 1 October 2011. The Trustee maintains that it had no choice but to apply an ERR to his post- 2011 benefits, as he was not in service on the relevant date of 30 September 2011.
43. I do not consider that Dr I can successfully argue that because he left service on 1 August 2006, the Rule that a “member who ceases service on or after 1 October 2011” does not apply to him and cannot be applied retrospectively. Clearly, having left service in 2006, and having not returned to service until 1 June 2012 the length of his break in service exceeded six months. This is the maximum length of time a break in service can endure before the member loses any right to be considered as an exempt member under Rule 1.1 of the Definitions in the Operating Provisions of the Scheme Rules. Accordingly, the Scheme Rules make it clear that Dr I was not an exempt member on the 30 September 2011 and so an ERR has been correctly applied.
44. I understand Dr I's disappointment at what may seem a rigid adherence to the Scheme Rules by the Scheme Administrator. However, pension schemes are governed by Rules, and there is usually no discretion to offer any alternative provision. In this case, the Scheme Rules state that an ERR shall be imposed where a break in service is longer than six months.
45. Although, it is clear that Dr I is not an exempt member, he was misled by the information supplied to him on which he relied in making his decision to reduce his working hours and take flexible retirement. I note Dr I's point that he only reduced his working hours because he could not take flexible retirement unless he did so. Nevertheless, he made the decision and accessed his retirement benefits having approached the Scheme Administrator.
46. Once the mistake was discovered, Dr I was given the opportunity to unwind the pension and could have sought a return to full time hours. He was also given the opportunity to reinvest his Prudential MPAVC into the In-house AVC if necessary. However, rather than unwind his pension, Dr I made the decision to continue working and join another flexible pension arrangement in the hope of improving his future pension provision. I find that the options offered by the Trustee would have effectively placed Dr I into the position he would have been in but for the maladministration. The Trustee cannot be held responsible that Dr I chose a different option to those offered.

47. The Trustee has offered Dr I £1,000 in recognition of the serious distress and inconvenience caused by its error. I find that this sum is appropriate in the circumstances. Should Dr I wish to do so he should contact the Trustee to accept this sum if he has not already done so.
48. I do not uphold Dr I's complaint.

Anthony Arter

Pensions Ombudsman
28 October 2021