Ombudsman’s Determination

Applicant	Mr R
Scheme	Chapelthorpe Plc Pension Fund **(the Scheme)**
Respondent	Trustees of the Chapelthorpe Plc Pension Fund (**the Trustees**)

Outcome

1. Mr R’s complaint against the Trustees is partly upheld. To put matters right the Trustees shall pay Mr R £500 for the significant distress and inconvenience caused to him.

Complaint summary

2. Mr R has complained that his Normal Retirement Age (**NRA**) has been changed from 62 to 65 and this has resulted in him suffering a significant financial loss.

Background information, including submissions from the parties

3. On 6 April 1986, Mr R joined the Scheme and was a member of the Executive Section.

4. On 27 September 1996, Mr R left pensionable service and became a deferred member of the Scheme.

5. On 26 February 2013, Buck Consultants (**Buck**), the Scheme’s administrator at that time, provided Mr R with details of his Scheme benefits and a transfer value. The information in the covering letter said:

   “Please note that the Normal Retirement Age of the Scheme is 65, however, as you are a member of the Executive Section, you can take your retirement benefits from age 62, unreduced.”

6. On 11 July 2018, Mr R received a letter from Broadstone, the Scheme’s administrator, to remind him of his Scheme benefits and options. The letter said:-

   - The Trustees have noted that as a deferred member of the Scheme regular information has not been provided to you.

- Mr R's Scheme pension at 5 April 2018 was £5,614.46 per annum.
- Mr R's current transfer value at 30 June 2018 was £82,721.
- If he chose to draw his pension before his NRA of 62 it would be reduced to reflect the fact that it will be in payment for longer.

7. On 30 August 2019, the Trustees sent a letter to Mr R (**the 2019 Letter)** to say that it was changing its practice regarding the calculation of Executive Section member's pensions if they commenced early between ages 62 and 65. The letter said in summary:-

- The Trustees had consulted International Fibres Group (Holdings) Limited as the Principal Employer of the Scheme and it had agreed with the course of action they were proposing.
- Previously when an Executive Section member who was also a deferred member had retired early on or after reaching age 62 the Trustees did not apply a reduction to their pension.
- The Trustees had now received legal advice relating to the Scheme benefits. Following this if Mr R's pension commenced before his NRA of age 65 a reduction would be applied to his pension to take account of the cost of early payment.
- The Scheme Rules stated that on early retirement of deferred members, including Executive Section members, their pension benefits must be reduced to take account of early payment unless the Trustees' consent is given.
- The Scheme Rules being referred to were the Deed of Amendment and Consolidation in respect of the Scheme dated 3 September 1998 (**the 1998 Rules**) as altered by all subsequent amendments to it.
- Specifically, Rule 13.6 stated that, on the early retirement of a deferred pensioner:

  > "The immediate pension shall be of an appropriately reduced amount determined by the Trustees on a basis certified as reasonable by the Actuary or in the event that the deferred pensioner has attained the age of 60 the immediate pension may be paid without reduction if the Trustees consent thereto".

- This was different to the Rule applying to members who had remained in pensionable service, active members. Such members were entitled to an unreduced pension on early retirement from age 62 without any consent being required.

- Previously, the Trustees had received legal advice that the Scheme was required by legislation to pay the same pension to deferred members as it would pay to active members when they took their pension benefits.

- After a sponsoring employer of the Scheme became insolvent in March 2018, the part of the Scheme in relation to these employees became segregated into a separate section, known as the “SCD Section.” The rest of the Scheme, known as “the Main Section,” continued. Mr R was a deferred member of the Main Section which now included the Executive Section.

- The SCD Section was assessed to determine whether it was eligible to enter the Pension Protection Fund (PPF). As part of this process, the PPF panel Trustee legal advisers reviewed the Scheme Rules. They advised that on retirement before age 65, there was no legislative requirement to treat deferred members the same as active members. Consequently, Mr R was still able to take his pension before his NRA of 65, but it would be reduced to take account of its early payment.

- The Trustees had taken further legal advice from different legal advisers which agreed with the PPF panel’s opinion.

8. On 1 October 2019 Mr R sent a letter of complaint to the Trustees. The letter said in summary:-

   - The reduction in his benefits was unacceptable and inequitable.

   - He enclosed a letter from Broadstone from 2018 that clearly stated that his NRA was 62. He had been provided with the information that his NRA was 62 for many years and he now had an expectation that this was the case.

   - The Trustees could not begin to fully understand the difficulties and distress it had caused him, and he asked that the Trustees revisited the legal advice they had received.

9. Following correspondence from The Pensions Ombudsman in August 2020, the Trustees confirmed that they had not received Mr R’s complaint. They provided details of how to initiate a complaint under the Scheme’s Internal Dispute Resolution Procedure.

10. On 30 September 2020, Mr R resubmitted his complaint. He said:-

    - The letter he received in 2019 was completely counter to the statement which was issued in 2018 which said that his NRA was 62. The Trustees had admitted at the time that the 2018 statement was issued that there had been very little communication about his benefits in the past. In the circumstances it would be expected that care would have been taken to ensure all the details provided were correct.

- Now it seems that he must accept that should he draw his pension benefits at age 62 they will be reduced. He believed that this reduction, or having to delay taking benefits in order to receive a full pension would cause significant loss to him. He would like to know how much the change could affect his pension benefits.

- He also completely relied on the information about retirement age when considering the offered transfer value and assumed that it was based on his NRA of 62. He was advised that a transfer was not recommended. It may be that this value was in fact based on an NRA of 65. If this was the case, he had been further misled and was not able to consider the transfer possibilities correctly.

The Rules

- There were further legal issues arising from the 2019 Letter. It was not fully clear whether the advisers were considering all the Rules including amendments that occurred between or after the consolidating versions.

- The quoted extract of Rule 13.6 set out that there was no reduction in benefits after age 60 subject to the Trustees' consent. It seems likely that this arose originally from the adjustments to the Rules that were made to meet the sex equality requirements. In 1991 an announcement was made that this provision was being introduced. It was expected that consent would be given in all cases so long as the financial condition of the Scheme was "satisfactory." He was not aware of any notification that financial conditions no longer allowed the possibility of the Trustees' consent.

- He left in 1996 and unless it was intended that the 1998 Rues should apply to him it was not clear that the legal advice considered the full Rules for deferred members in his position.

- He understood that there was overriding legislation that required the aligning of the early retirement terms for those retiring from service and those who had left earlier. He was not clear why the discretion must be withdrawn for the deferred members.

11. On 12 November 2020, the Trustees sent a letter to Mr R and said in summary:-

    - The Trustees accepted that the statements provided in 2018 were issued on an incorrect basis. This was that Executive Section members retiring from deferred status were entitled to a pension from age 62 without reduction for early payment. The error was not discovered until 2019. When they became aware of the error, they notified affected members as soon as reasonably practicable after consulting their original legal advisers, taking further legal advice, and consulting with the Principal Employer.

- They had estimated Mr R’s pension figures. Allowing for expected future increases up to a proposed retirement date at age 62 the projected pension was:-

  - Unreduced pension at age 62 = £6,007 per annum or a pension of £3,905 per annum plus a £26,000 lump sum.

  - Reduced pension at age 62 assuming his benefits were corrected in accordance with the Scheme Rules = £5,169 per annum or pension of £3,361 per annum plus a £22,000 cash lump sum.

  Assuming that the full pension was taken, that is no reduction for a lump sum, the impact would be a reduction of £828 per annum.

- An enhanced transfer offer was made to some members in 2015. The Trustees accepted that the incorrect information about Mr R’s early retirement pension would have affected the value attributed to the Scheme pension by a financial adviser when giving advice.

- The Scheme is a defined benefit (**DB**) scheme and provides a specified level of benefits. As such the Scheme provides a high level of security over a long period underwritten by the Principal Employer and if it should become insolvent the PPF. The Pension Regulator’s guidance is that it believes it is likely to be in the best financial interests of the majority of the members to remain in their DB scheme. The Trustees do not believe that there is sufficient reason to conclude that Mr R would have acted differently had he known his true benefits at the time of the enhanced transfer offer or that he had suffered a detriment as a result.

The Rules

- The Trustees have considered all the Scheme Rules and amendments that they are aware of and have no reason to believe that there are any other governing documents that affect Mr R’s early retirement benefits.

- Rule 13.6 of the 1998 Rules applies to members who were active members when the Rules were adopted on 6 April 1998 or joined the Scheme on or after that date. It appears that the 1998 Rules gave the Trustees the discretion to allow deferred members who were active members at 6 April 1998 to retire on an unreduced pension after age 60.

- The Rules set out in the first schedule of the Deed of Amendment and Consolidation dated 26 April 1989 (**the 1989 Rules**) set out Mr R’s benefits. These were substantially the same as the benefits set out in the later consolidated documents currently applicable to the Scheme, which is the 1998 Rules. The main relevant difference in the benefits in the two documents is that the Trustees have no discretion to allow Mr R to retire before his NRA of 65 with an unreduced pension. This is in contrast to the position for active members at the date the 1998 Rules were adopted who could retire on an unreduced pension after age 60 subject to the Trustees' discretion.

- The provision that confirms that the 1989 Rules continue to apply to Mr R is Clause 1.1 of the 1998 Deed of Amendment which provides:

  "1.1 The provisions of:

  1.1.1 (This relates to Active Members at the Operative Date (6 April 1998)
  1.1.2 The Definitive Deed shall apply together with such provisions of the Rules as are necessary to effect such application to all members who ceased to be Active Members before the Operative Date, but in all other respects the Existing Rules shall continue to have application in respect of all such Members."

  The "Existing Rules" are defined as the Rules set out in the first schedule to the 1989 Deed.

- The early retirement provision for deferred members under the 1989 Rules is Rule 12 (C)(6). This provides:
  "If this option is exercised the annual amount of the deferred pension

  …
  shall be reduced by such amount as the Trustees shall determine acting on the advice of the Actuary."

  This rule does not entitle any category of deferred pensioner to an unreduced early retirement pension on commencement before their NRA.

- The Trustees have not seen any evidence of any policies regarding the payment of unreduced early retirement pensions in 1991 that relate to the financial condition of the Scheme. Any policies that the Trustees may have had on giving consent would, however, not be relevant to a deferred member in Mr R's category of membership.

- The overriding legislation they believed Mr R was referring to is known as the preservation legislation as contained in the Pension Schemes Act 1993. It was incorrect legal advice about the effect of this legislation that resulted in Mr R being informed incorrectly that he was entitled to retire from age 62 on an unreduced pension.

- The Trustees' current understanding after taking further legal advice is that the pension legislation does not apply to give Mr R as a deferred Executive Section member a right to retire on an unreduced pension from age 62.

- In relation to Mr R's complaint that his NRA had been changed from age 62 to age 65, his NRA has not in fact changed and was always age 65. There was a misunderstanding of the law for a period of time during which it was thought that Mr R as a deferred Executive Section member was entitled to retire from age 62 on an unreduced pension. Benefits provided on this basis at age 62 would have been the same if his NRA had been 62.

- The Trustees do not have a discretion to pay Mr R an unreduced pension before his NRA under the 1989 Rules, which are applicable to him.

12. The Trustees' position:-

- The PPF's panel legal adviser's advice was that early retirement pensions for Executive Section members retiring from deferred status should be provided for in accordance with the Scheme Rules that were applicable to deferred members.

- After consulting with their original legal advisers, the Trustees took further legal advice on this matter. This advice agreed with the PPF's panel legal advisor's opinion. It confirmed that the Trustees are generally required to take steps to ensure the correct pension are paid including adjusting pensions in payment to the correct amounts as specified in the Scheme Rules and recouping any overpayments.

- As Mr R's pension is not currently being paid, the Trustees were advised they are required to ensure that Mr R's pension is paid at the correct amount when it comes into payment.

13. Mr R's position:-

- He will suffer significant financial loss due to his pension benefits being delayed from age 62 to 65.

- Firstly, the three years' pension he would have received between age 62 and age 65.

- Secondly and more significantly the loss as a direct result of him declining to accept the enhanced transfer option. The option was declined as not being viable at the time because he was expecting to receive his full pension benefits at age 62.

- If he had known at the time that his pension was not payable until age 65, this would have made the transfer option much more financially viable and he would have accepted the transfer option.

Adjudicator's Opinion

14. Mr R's complaint was considered by one of our Adjudicators who concluded that the Trustees had provided incorrect information to Mr R, and he had suffered a loss of expectation as a result of this. The Adjudicator's findings are summarised in paragraphs 15 to 22 below:-

15. There was no dispute that Mr R was sent paperwork that set out that he could take unreduced benefits at age 62. However, Mr R's NRA had not been changed from age 62 to age 65 but rather the Trustees interpretation of the Rules had changed following new legal advice that it received after the SCD section of the Scheme entered the PPF.

16. The 2019 Letter set out that the Trustees' position regarding how Rule 13.6 of the 1998 Rules applied to Mr R's benefits and the application of the Trustees' consent. However, as Mr R correctly stated he was not an active member of the Scheme when the 1998 Rules were introduced. The Trustees subsequently set out that the 1989 Rules applied to Mr R and that Rule 12(C)(6) which did not allow for Scheme benefits to be paid without a reduction if they are paid before the member's NRA applied. In the Adjudicators opinion the current application of the Rules was not maladministration, and this aspect of the complaint should not be upheld.

17. Mr R had however been provided with incorrect information. Mr R was issued with a statement in 2018 by Broadstone which said that his NRA was age 62. He was sent a statement by Buck that said that his benefits would not be reduced from age 62. He was also given incorrect information regarding his benefits during the enhanced transfer value exercise.

18. The Pensions Ombudsman's position on the provision of incorrect information is that a member is only entitled to receive the benefits provided for under the Scheme Rules. That is those based on correct information accurately reflecting the Scheme Rules. Broadly, the Pensions Ombudsman will provide redress if it can be shown that financial loss or non-financial injustice has flowed from incorrect information given.

19. In this case Mr R was misinformed and was provided with the information consistently over a number of years that he could take his pension benefits at age 62 without any reduction being applied. In the Adjudicator's opinion it was reasonable that Mr R relied on the misinformation.

20. The Adjudicator considered whether Mr R took any action based on the misinformation that caused him financial detriment. Mr R has said that he would have accepted the enhanced transfer offer had it been offered based on the correct figures. This did not mean that he would necessarily have transferred his benefits. As the Trustee had stated it is usually in a member's best interests to remain in a DB Scheme as this provided guaranteed benefits. Mr R did not provide any evidence to support his assertion that he would have transferred out of the Scheme if he had been aware that his NRA was 65 and not 62.

21. Mr R had asked the Trustees for a calculation to illustrate what benefits he would have received if they were not reduced at age 62. Mr R was not entitled to receive his benefits without reduction before his NRA and so the information provided by the Trustees does not contain an actual financial loss. It is an illustration of a different benefit scenario in response to a specific query from Mr R. In the Adjudicator's opinion Mr R had not suffered a financial loss due to the incorrect information.

22. Although Mr R had not suffered financial detriment, he had suffered a loss of expectation that he would be able to take his benefits unreduced from age 62. In the Adjudicator's opinion, irrespective of the reasons, Mr R had suffered significant distress and inconvenience because of the actions of the Trustees. Accordingly, the Trustees should pay Mr R an award in recognition of this.

23. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided further comments in response to the Opinion. In summary he said:-

- It was incorrect to say that he had not suffered any financial detriment. He had suffered significant loss.

- His cash flow modelling of the expected pension from the Scheme had been ruined as a result of the Trustee's error.

- He had made life changing decisions based on the expectation that he would be receiving full pension payments from the scheme from the age of 62. Including the decision to retire in 2015. He also did not take the enhanced transfer value offer.

- The Trustees subsequent advice, in 2019, that the pension benefits had changed (from 62 to 65) was after he had retired, which gave him no prospect of mitigating the "loss."

- Following the NRA change to age 65 he had suffered significant financial hardship as he had to spend additional personal assets to "fill the gap" due to the Trustee's error. He had spent money he would have otherwise not have had to spend due to the Trustee's error.

24. I have considered the additional points raised by Mr R but they do not change the outcome, I agree with the Adjudicator's Opinion

Ombudsman's decision

25. There is no dispute that the Trustees provided incorrect information to Mr R regarding his pension benefits from the Scheme. The Adjudicator has explained that redress will be provided if it can be shown that financial loss or non-financial injustice has flowed from the incorrect information given. Her findings were that Mr R had suffered a loss of expectation that his benefits would not be reduced if he took them from age 62 however there was no financial loss.

26. I have considered the points that Mr R has put forward with regard to his financial loss. He has said that he made the decision to retire in 2015 based on the incorrect information that had been provided regarding his Scheme benefits. Mr R was a member of the Scheme between 1986 and 1996 and, while I sympathise with Mr R's situation, his pension benefits from the Scheme will, quite likely, not have been the only factor that he considered when he made his decision to retire at age 56. I appreciate that the incorrect information impacted on Mr R's future cash flow modelling which, inevitably, has caused Mr R significant distress and inconvenience. This is reflected in the payment of an award for non-financial injustice.

27. Mr R has said that he also did not take the enhanced transfer value offer as he expected that he would be able to take his benefits unreduced from age 62. I agree with the Adjudicator that it is usually in a member's best interests to remain in a DB Scheme, as this will provide guaranteed benefits, and Mr R has not provided any evidence to support that he would have transferred out of the Scheme if he had had the correct information about his pension benefits.

28. I also find that as Mr R was under the age of 60 in 2019, when he was informed that he could not take his pension unreduced from 62, he was in a position where he could have mitigated the fact that his annual pension would either be around £800 less than he expected, or to cover the "gap" between age 62 and 65. Mr R was able to retire early and was in a financial position to wait for the Scheme pension benefits to come in to payment, which indicates that he had other financial resources to rely upon. I am not persuaded that a change to what would have been one aspect of Mr R's retirement plans would have caused him significant financial hardship.

29. I uphold the complaint in part.

Directions

30. Within 28 days of the date of this Determination the Trustees shall pay Mr R £500 for the significant distress and inconvenience caused to him by the provision of incorrect information.

Anthony Arter CBE

Deputy Pensions Ombudsman
6 December 2023