

Ombudsman's Determination

Applicant	Mrs L
Scheme	Rentokil Initial 2015 Pension Scheme (the Scheme)
Respondent	Rentokil Initial Pension Trustee Limited (the Trustee)

Outcome

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

Complaint summary

2. Mrs L has complained that the retirement pack that she received, in June 2019, did not include an option to buy back years of service in respect of a period of employment when she was excluded from the Scheme.

Background information, including submissions from the parties

3. The Scheme was established under Trust and is governed by the Trust Deeds and the Scheme Rules, which set out how the Scheme operates.
4. On 9 June 1980, Mrs L commenced employment with Rentokil Initial Wipers (**Rentokil**). She was not eligible to join the Scheme based on her salary and working hours.
5. Mrs L has said that, in 1997:-
 - She wrote to Rentokil and asked to join the Scheme following a change to European Union legislation which allowed lower paid workers to join occupational pension schemes.
 - Rentokil confirmed that it was looking into the matter and had used two other employees as test cases.
6. Neither party has a record of Mrs L's letter to Rentokil.
7. In 1998, Mrs L joined the Scheme after a change to the eligibility criteria and has said:-

- She received a letter from Rentokil which said that she could buy back the previous years of pensionable service, when she was not a member of the Scheme, for approximately £3,500.
 - Rentokil implied that the offer would remain available up until she retired.
8. Neither party has a copy of the letter or a record of Rentokil's comment.
 9. In 2007, Mrs L left Rentokil and became a deferred member of the Scheme. Her normal retirement date was in August 2019, when she reached age 65.
 10. Mrs L says that she did not buy back the previous years of pensionable service before she left Rentokil because she did not have sufficient funds available.
 11. In June 2019, Mrs L received her Retirement Options Pack (**ROP**). It offered her a choice of any one of the following options:-
 - A full annual pension of £2,237.67.
 - A maximum tax-free pension commencement lump sum of £11,204.40 and a reduced annual pension of £1,680.36.
 - A non-guaranteed Cash Equivalent Transfer Value of £63,941.00.
 12. On 6 August 2019, Mrs L complained to the Trustee that the ROP did not give her the option to buy back the previous years of pensionable service as she believed it would. She said:-
 - She had "won the right" to buy back the previous years of pensionable service but, at the time, she was going through a divorce and did not have sufficient funds.
 - Rentokil told her that she could exercise the right to buy back the previous years of pensionable service at any point before she took her benefits.
 13. On 22 August 2019, the Trustee responded to Mrs L and did not uphold her complaint. It said:-
 - It considered her claim for backdated membership to be out of time.
 - It did not hold copies of the letters that Rentokil would have sent to Mrs L in 1998 with details of her options.
 - The offer that Rentokil made was separate to her entitlement set out in the Scheme Rules.
 14. In response, Mrs L made an application under stage two of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) because the response provided on 22 August 2019 was considered as the stage one IDRP response. Mrs L complained that she was led to believe that she would be able to buy back previous years of pensionable service up until she took retirement.

15. The Trustee requested further information from Mrs L to support her complaint.
16. On 28 October 2019, Mrs L explained that she no longer held a copy of the letter that offered her the option to buy back the previous years of pensionable service. Instead, she provided a timeline of events.
17. On 20 January 2020, the Trustee provided its stage two IDRPs response. It did not uphold Mrs L's complaint and, in summary, said:-
 - Mrs L had been unable to provide documentary evidence to support her claim.
 - Had Mrs L asked to buy back previous years of pensionable service while she was employed by Rentokil, she would have been expected to pay for the extra years when she made the request. So, it would not have been reasonable for Mrs L to expect that the offer made in 1998 would remain open until she retired.
 - It could not offer Mrs L the option to buy back the previous years of pensionable service as it would be a "substantial cost to the Scheme."
18. Mrs L's position:-
 - She was not informed that there was a time limit on the offer. Had she known, she would have borrowed the money or used her redundancy pay to buy back the previous years of pensionable service.
 - She had been denied the right to buy back the previous years of pensionable service that she was promised.
 - Rentokil was unable to provide details of the offer, or the test cases, and referred her back to the Trustee.
19. The Trustee's position:-
 - Mrs L had not provided evidence of the offer that was made to her.
 - There was no evidence that she had accepted the offer or that she was told that the offer would be available to her up until retirement.
 - It did not dispute that Mrs L was on a low wage during her employment with Rentokil.
 - If it accepted Mrs L's buy-back request, it would cost the Scheme around £250,000.
 - Mrs L would have to provide compelling documentary evidence to support her claim.
 - If it could accept Mrs L's buy-back request, under Rules 10.3 and 19.3 (see the **Appendix**), it would also require Rentokil's agreement.

Adjudicator's Opinion

20. Mrs 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:-
- There was no evidence to show that Mrs L was given the option to buy back previous years of pensionable service. So, the Adjudicator could not conclude that the Trustee had made an administrative error in not making the offer available now, given the lack of evidence to support Mrs L's claim that it should have formed part of her retirement offering.
 - Had the offer been made, it would have been unlikely that it was available indefinitely due to variable factors such as the Scheme's funding position, assumptions and the costs involved.
 - The offer to buy back previous years of pensionable service was not part of Mrs L's entitlement set out in the Scheme Rules.
 - The Scheme Rules do not give Mrs L an absolute right to buy back previous years of pensionable service, so the Trustee has no discretion to honour Mrs L's request.
 - While Mrs L did not have sufficient funds to pay the £3,500 as a lump sum in 1998, she has accepted that she could have borrowed the money or used her redundancy pay.
 - There was no evidence to show that an offer was made and available indefinitely, so it was not reasonable to expect the Trustee to honour an offer of which there was no evidence because Mrs L's circumstances had changed.
21. Mrs L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs L provided her further comments which do not change the outcome. Mrs L said that she was not properly informed about her rights to buy back previous years of pensionable service.
22. I note Mrs L's comment but I agree with the Adjudicator's Opinion.

Ombudsman's decision

23. The offer to buy back previous years of pensionable service was made by Rentokil. In the absence of any evidence to suggest that the offer to buy back years was available until retirement and that Rentokil has agreed to honour the offer, or that the Trustee has failed to act in response to an offer, I find that the Trustee has acted correctly and in accordance with the Scheme Rules.
24. I do not uphold Mrs L's complaint.

CAS-49787-H2M6

Anthony Arter

Pensions Ombudsman
7 September 2021

Appendix

Rentokil Initial 2015 Pension Scheme Rules

25. Rule 10.3, 'Discretionary benefits', provides:

If the Principal Employer agrees and the Employer pays any additional contributions that the Trustee considers appropriate (for which purpose the Trustee will consider advice from the Actuary), the Trustee may provide:

- (i) increased or additional benefits for, or in respect of, any Member;
- (ii) benefits for, or in respect of, any Member or Members different, or on different terms (including as to time of payment), from those set out elsewhere in the Rules or the Special Rules; or
- (iii) benefits for, or in respect of, any employee or former employee of the Employer or any spouse, civil partner or Dependant of an employee or former employee of the Employer (or for any other person for whom an Employer wishes the Scheme to provide benefits).

Any benefits provided under the Rule must be consistent with the Preservation, Revaluation and Transfer Value Laws and with, where appropriate, the Contracting-out Laws and must be authorised for the purposes of Part 4 of the Finance Act 2004.

26. Rule 19.3, 'Discretionary benefits', provides:

If the Principal Employer agrees and the Employer pays any additional contributions that the Trustee considers appropriate (for which purpose the Trustee will consider advice from the Actuary), the Trustee may provide:

19.3.1 increased or additional benefits in respect of any Member;

19.3.2 benefits in respect of any Member different, or on different terms, from those set out elsewhere in the Rules; or

19.3.3 benefits in respect of any Employee or former Employee or any spouse or Dependant of a former Employee (or for any other person for whom the Inland Revenue allow the Scheme to provide benefits).

Any benefits provided under this Rule will be consistent with the Contracting-out, Preservation, Revaluation, and Transfer Value Laws and with Revenue Approval of the Scheme.