

Ombudsman's Determination

Applicant	Mr T
Scheme	The Building and Civil Engineering Benefits Scheme (the Scheme)
Respondent	B&CE Financial Services Limited (the Trustee)

Outcome

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

Complaint summary

2. Mr T has complained that the Trustee has not agreed to pay him Lump Sum Retirement Benefits (**LSRB**) from the Scheme. The Trustee's decision was made on the basis that Mr T had not accrued sufficient weeks of qualifying pensionable service within the Scheme.

Background information, including submissions from the parties

3. On 5 April 1982, the Scheme was introduced to, and made solely available for the benefit of, workers in the construction industry. The eligible members had to be paid weekly and work in an operative role. Contributions were payable by participating employers and, under the relevant Scheme Rules (**the Rules**), there was a minimum requirement of 80 weeks of qualifying pensionable service before a preserved benefit was payable.
4. Rule 22 of the Rules states:

“Lump Sum Retirement Benefits will be payable only upon an operative reaching 65 years or upon his early retirement in the circumstances set out in Clause 22.2...”
5. The Rules' Appendix sets out how the LSRB should be calculated and provides the definitions of Reckonable Service and Reckonable Week. It states:

“**Lump Sum Retirement Benefit** means $A \times B$ where

A is Reckonable Service SUBJECT TO Reckonable Service being equal to or greater than 80 Reckonable Weeks (unless the Trustee in its discretion decides to accept less than 80 Reckonable Weeks); and

B is the Retirement Benefit Rate applicable at Retirement Benefit Date or if earlier the date of death.” (original emphasis).

“Reckonable Service means the sum of the Reckonable Weeks

Reckonable Week means any week prior to the Retirement Benefit Date or date of death as the case may be in accordance with Clause 21 commencing on or after 5 April 1982 during which an Operative has been employed by an Employer and in respect of which an Employer has paid a contribution PROVIDED THAT if the contribution has not been paid to the Trustee within 90 days of the end of the week of employment to which the contribution relates then that week or weeks will not count unless the Trustee determines otherwise.” (original emphasis).

6. In 1988, Mr T worked for Irvine Contractors (**the Employer**) an operative role as a Site Foreman and joined the Scheme. During years 1988 and 1989, Mr T accrued 73 weeks of qualifying pensionable service.
7. On 11 September 2018, as Mr T was approaching his 65th birthday, he telephoned the Scheme to enquire about claiming his retirement benefits. He was told that he was not entitled to the LSRB as he had not accrued enough weeks of qualifying pensionable service.
8. In November 2018, Mr T raised a complaint with the Trustee under the Scheme’s two-stage Internal Dispute Resolution Procedure (**IDRP**). In his submissions he said, in summary:-
 - The Employer had paid £620.50 into the Scheme on his behalf, which he would like to be entitled to.
 - He felt aggrieved that he was not entitled to a refund of the contributions the Employer had paid into the Scheme on his behalf.
 - Had he been provided with adequate information, he would have been able to make an informed judgment about when to terminate his employment. He would have most likely stayed in his employment to accrue 80 weeks of qualifying pensionable service.
9. On 20 March 2019, the Trustee sent Mr T its stage one IDR decision, not upholding his complaint. It said, in summary:-
 - Under the Rules, a member must have 80 weeks of pensionable service to qualify for the LSRB.

- As Mr T had only completed 73 weeks of qualifying pensionable service in the Scheme, he did not qualify for the LSRB.
 - As his Employer's contributions were paid into a centralised fund to provide retirement benefits for qualifying members, these could not be returned to him.
 - When Mr T joined the Scheme, the Employer should have provided him with adequate information regarding the Scheme. Such information would have mentioned the qualifying criteria for the LSRB.
 - Those members for whom the Scheme held a current address, should have also received an annual membership statement from the Scheme.
 - Participating employers in the Scheme contributed towards it by the addition of a small contribution to the Scheme holiday stamps. During Mr T's membership in the Scheme, this contribution was £0.81 per week and the total pension contributions paid on his behalf by his Employer was £59.13 (£0.81 x 73).
10. On 23 July 2019, Mr T escalated his complaint to stage two of the IDRPs. In his submissions, he said, in summary:-
- He never received any information from the Employer regarding his retirement benefits.
 - He was informed verbally by the Employer that he would receive his retirement benefits at age 65, along with his annual holiday stamp pay which was less than the annual holiday pay he was receiving at the time, before he was transferred to the Scheme.
 - It was very disappointing that he was only seven weeks short of the qualifying service for a pension payment.
 - He would like the Trustee to reconsider its decision in his favour.
11. On 26 November 2019, the Trustee sent Mr T its stage two IDRPs decision, not upholding his complaint. It reiterated its previous stance that Mr T had not accrued enough qualifying weeks to secure retirement benefits from the Scheme.

Mr T's position

12. In January 1988, he was informed by the Employer's Managing Director that the company would no longer be paying holiday pay. He was employed as a Site Foreman at the time and no letter was issued to staff informing them of the change. He was told that the Employer would be paying into the Building and Civil Engineering holiday stamp scheme and that all employees would be better off, as they would receive a lump sum pension at age 65.

13. The Employer did not issue staff with Scheme information and there was no acknowledgement from the Scheme informing staff that they were in it. No documentation was issued.
14. The three weeks summer holiday and two weeks Christmas holiday pay was stopped and replaced with the holiday stamp scheme. He pointed out to the Managing Director that he would lose money in the Scheme, as the stamp payouts would be less than his existing holiday rate of pay. The Managing Director informed him that he would be better off in the long term, as he would receive the LSRB payout at age 65.
15. When he reached age 65, he tried to claim his LSRB payout from the Scheme and was informed that he was not entitled to it, as he only had 73 stamps in the Scheme, instead of the 80 that were required.
16. As he was never given any Scheme information, he was unable to make an informed decision on when to end his employment with the Employer in order to secure a LSRB payout. Consequently, he lost out on this benefit. Had he been given the Scheme documentation, he would not have left employment until he had accrued 80 holiday stamps.

The Trustee's position

17. Its position is set out in its responses under stage one and two of the Scheme's IDRPs.
18. The Trustee said it has acted correctly, both in terms of its fiduciary duty and legislative requirements and in accordance with the Rules. Consequently, it should not be required to reconsider its position in respect of Mr T's pension position.
19. 'Holiday Stamps' and 'Weeks of Reckonable Service' are terms which it used interchangeably to describe Scheme members' entitlement. Construction workers, including Mr T, would receive a stamp from their employer for the work they completed on site, which credited them with one week of qualifying reckonable service.
20. Mr T did not make any contributions to the Scheme or pay Additional Voluntary Contributions (**AVC**) to the Scheme's AVC Section, which ran alongside the Scheme.
21. As Mr T did not make any contributions to the Scheme, no refund of contributions was due.
22. While it had the discretion to make a decision to award a lump sum, the Trustee and employer representatives decided that a two-year rule would apply. This would require a minimum period of Scheme membership to be completed in order to qualify for the LSRB. The cost to the Employer was based on this rule.

Adjudicator's Opinion

23. Mr T'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 Trustee's role is to ensure that the Scheme is administered in accordance with the Rules that govern it. The Adjudicator reviewed a copy of the Rules, and was satisfied that the Trustee had acted in accordance with the Rules when making a decision regarding Mr T's eligibility to the LSRB.
- As Mr T had only accrued 73 weeks of qualifying pensionable service, he was not entitled to the LSRB. This was because the Rules required Mr T to have accrued at least 80 weeks of qualifying pensionable service. So, Mr T was not eligible to receive the LSRB.
- In a case where a member does not accrue enough qualifying pensionable service, the Rules allow the Trustee to exercise its discretion to award the LSRB. The Adjudicator noted that the Trustee did consider Mr T's circumstances and decided not to use its discretion to award him the LSRB. It explained that in order for it to have granted such an award to Mr T, he would have to have completed two years of Scheme membership. As he did not complete two years' membership, it decided not to award him the LSRB. The Adjudicator was satisfied that the Trustee demonstrated that it had fully considered Mr T's circumstances and provided the reasons for not exercising its discretion. Given the fact that Mr T did not complete two years of Scheme membership, it was not unreasonable that the Trustee decided not to award him the LSRB.
- The Adjudicator noted that the Trustee also considered whether Mr T was entitled to a refund of contributions. However, Mr T never paid any contributions to the Scheme. It was the Employer who paid contributions on his behalf. Sections 21 and 22 of the Rules (see the Appendix) explain how the employer's contributions are paid and when these can be taken from the Scheme. However, the Rules do not provide that the employer's contributions can be refunded. Sections 27 and 28 of the Rules (see Appendix) cover the options to pay Voluntary and Additional Voluntary Contributions. In any event, even if Mr T had made these additional contributions, the Rules would not have allowed for these to be refunded.
- The Adjudicator appreciated Mr T's situation must have been upsetting for him, as he was only short by seven weeks to qualify for the LSRB. But the Trustee could not be held responsible for Mr T having insufficient qualifying pensionable service.
- Turning to Mr T's complaint regarding the provision of inadequate information by the Employer, the Adjudicator separately noted that Mr T had worked for the Employer from 1988 to 1989. To the extent that the Employer had failed to

provide information to Mr T, the negligent act or omission would have occurred at that time. Accordingly, even if Mr T had only become aware of that potential failure recently, considerably more than 15 years had passed since the negligent omission had occurred and so it would not be possible to make an award in respect of that failure (as a result of the Limitation Act 1980). Furthermore, as a result of the Employer's dissolution in 2022, even if the Ombudsman upheld Mr T's complaint about the Employer, it would not be possible to enforce any award determined by the Ombudsman because the Employer has been dissolved. As a result, after seeking representations from Mr T, the Ombudsman exercised his power to discontinue the investigation into the Employer.

- Consequently, it was the Adjudicator's opinion that this complaint should not be upheld.

24. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I have considered any additional points raised by Mr T. Nonetheless, I agree with the Adjudicator's Opinion.

Ombudsman's decision

25. Mr N raised some points against the Employer. However, this part of his complaint has been discontinued for the reason given above.

26. The Trustee must administer the Scheme in accordance with the Rules. I have carefully considered the Rules and find that the Trustee had acted in accordance with the Rules when making a decision regarding Mr T's eligibility to the LSRB.

27. In order for Mr N to qualify for the LSRB, he must have accrued 80 weeks of pensionable service. These Rules were in place prior to Mr T starting employment with the Employer. As Mr T had accrued 73 weeks of service, he is not entitled to receive the LSRB. However, the Rules allow the Trustee to use its discretion to award Mr N the LSRB. I consider the Trustee had considered whether or not to use its discretion to award Mr N the LSRB and provided its reasons for not doing so.

28. So, while I appreciate that this situation is frustrating for Mr T as he believes he should be entitled to the LSRB, I find there has been no maladministration by the Trustee in this regard.

29. I do not uphold Mr T's complaint.

Dominic Harris

Pensions Ombudsman
29 February 2024

Appendix

Extracts from the Supplemental Trust Deed of the B&CE benefits Scheme dated 6 April 2001

“21. Amount to be contributed by the Employers.

Each Employer shall in respect of all Operatives employed by it contribute to the Fund maintained under the Scheme such sum as may be determined by the Industrial Parties from time to time and notified in writing to the trustee and the Administrator and the Industrial Parties who will promulgate to Employers.

...

22.3 Amount of Lump Sum Retirement Benefit

The amount of Lump Sum Retirement Benefit payable to an Operative shall be either:

22.3.1 upon reaching age 65 or retiring at any age on the grounds of Total Incapacity an amount calculated by multiplying that part of Reckonable Service which relates to the period up to and including 8 April 2001 by the Retirement Benefit Rate applying at the Retirement Benefit Date...”

“Cessation or Variation of Voluntary Contributions

27.4.2 An Operative who ceases for any reason to pay Voluntary Contributions shall not be entitled to a refund of his Voluntary Contributions account but the same shall remain invested in the Scheme for the benefit of the Operative in accordance with this Deed...”

28.4 Cessation or Variation of Additional Contributions

28.4.2 On cessation of payment by an Employer of Additional Contributions in respect of an Operative that Operative shall not be entitled to a refund of his Additional Contributions account but the same shall remain invested in the Scheme for the benefit of the Operative in accordance with this Deed...”