

Ombudsman's Determination

Applicant	Mr N
Scheme	GE Pension Plan (the Scheme)
Respondents	GE Pension Trustees Limited (the Trustees) GE Capital International (the Employer)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by either the Trustees or the Employer.

Complaint summary

2. Mr N's complaint against the Trustees and the Employer is that he was forced to become a deferred member of the Scheme and that the benefits for deferred members and active members are treated differently, which is to his detriment.

Background information, including submissions from the parties

3. Mr N's date of birth is 24 November 1966. He was employed by Fleet UK, a division of GE Capital UK. He has been a member of the Scheme since he joined in 1996.
4. In 2015, the Fleet UK business was sold to Arval/BNP Paribas. Mr N became an employee of Arval/BNP Paribas and, as a consequence, he was unable to remain an active member of the Scheme and became a deferred member.
5. The Scheme Rules (the **Rules**) state that on early retirement the "Reduction Amount" applied to a member's pension will be as follows:
 - (A) in relation to a Member who on 1 December 2006 was either a Member of the Scheme or a "prospective member" of the Scheme...
 - (i) 1/3 of 1% for each complete month between the date on which the Member retires from Pensionable Service and his 60th birthday, or
 - (ii) 0% if the Member retires on or after his 60th birthday, or
 - (iii) such other amount as the Trustees and the Principal Employer may agree."

6. However, for a deferred member the reduction is an amount that the Trustees, with the consent of the Employer, may decide. The Trustees say that the current rate is 8% pa up to Normal Retirement Age.
7. Mr N has said that it appears that the Rules have been changed and that this was not communicated to him. He also says that there is no mention of this in the member booklet he was given when he joined the Scheme and he asks how the Employer is allowed to change the Rules from what is stated in the booklet.
8. Mr N says that this is unfair because he was forced to leave the Scheme and become a deferred member. He says that the difference in treatment between active and deferred members is anomalous and is not a practice followed by other pension schemes.
9. He says that the difference in treatment was never made clear when he joined the Scheme in 1996, and has only become apparent to him fairly recently.
10. The Trustees have said that the Rules provide that an early retirement pension will be reduced by a "reduction amount" unless the Employer agrees to pay the costs of providing an unreduced pension. They agree that the Rules provide for different levels of reduction depending on whether the member is active or deferred.
11. They say that the Rules governing the treatment of early retirement pensions for active and deferred members have not changed.

Adjudicator's Opinion

12. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees or the Employer. The Adjudicator's findings are summarised briefly below:
 - There is no dispute that, as the result of the sale of the Fleet UK division, Mr N ceased to be eligible to remain as an active member of the Scheme. Nor was he made redundant as his employment was switched to Arval/BNP Paribas. He therefore became a deferred member of the Scheme.
 - The Rules are clear and make no distinction between deferred members' benefits dependent on the reason for leaving the Scheme. The Adjudicator accepted that leaving the Scheme was not Mr N's choice, but concluded that this had no effect on the level of benefit to which he is entitled.
 - The Trustees have provided a copy of the Rules as they have stood since 1997, which show that the policy of reducing pensions on early retirement has been consistently provided for, but that for active members the reduction may be eliminated or reduced subject to payment of additional costs by the Employer. The Adjudicator came to the view that the Rules had not been changed as Mr N has claimed.

- With regard to Mr N's claim that this is not a practice followed by other pension schemes, the Adjudicator acknowledged that it is not common practice, but he did not consider it anomalous. He noted the Rules permit the Trustees, with the Employer's consent, to augment the benefits for active members in certain circumstances provided that the Employer is prepared to meet the additional cost of doing so.
 - The Adjudicator acknowledged that Mr N may not have been made aware of the different treatment when he joined the Scheme, but said that, in his view, even if he had known this was the case in 1996, he would still have joined the Scheme.
 - The Adjudicator also acknowledged that Mr N had said that the fact that he could potentially retire from age 60 with no penalties was a key aspect of the Scheme which encouraged him to join. But, again, in the Adjudicator's view, whilst this may have been a factor in his decision, it was more likely than not that Mr N would have joined the Scheme anyway.
13. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments, many of which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

14. My role is to investigate complaints of maladministration in connection with the management of the Scheme. In this case Mr N has complained that he is being disadvantaged as he was forced to become a deferred member. It is not my role to consider the business decisions made by the Employer which led to Mr N ceasing to be an employee of GE Capital International. My concern is whether, given that Mr N ceased to be an employee, the Trustees and the Employer have applied the Rules of the Scheme correctly.
15. Mr N has said that throughout our investigation the question of whether he is an active member or a deferred member seems to be 'black and white'. To a certain extent this is the case. As the Adjudicator pointed out, there is no distinction in the Rules between members who become deferred through choice and those who become deferred through business decisions made by the Employer.
16. He emphasises that he was forced to become a deferred member and that, as this is not covered in the Scheme documentation, this possibility could not have been communicated to him. As a consequence, he says that the Scheme was misrepresented to him and that he has been materially disadvantaged.
17. Mr N joined the Scheme in 1996. The future direction of the business could not possibly have been foreseen at that time and so it is unreasonable to expect the consequences of Mr N becoming a deferred member in this way to have been

considered or explained to him, in much the same way as he could not have foreseen whether or not he would remain in the same employment.

18. And I agree with the Adjudicator's view that it is more likely than not that Mr N would have joined the Scheme anyway.
19. I do not agree with Mr N that the Scheme was misrepresented to him. The Rules refer only to a deferred member who has ceased to be an employee, not the manner in which they cease to be an employee. And further, as the Adjudicator pointed out, the Rules make no distinction in the reason for leaving employment when determining the benefits payable to a deferred member.
20. I am satisfied that the Trustees and the Employer have applied the Rules correctly. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
8 July 2016