

## Ombudsman's Determination

Applicant	Mr K
Scheme	Hays Pension Scheme ( <b>the Scheme</b> )
Respondents	Equiniti Paymaster ( <b>Equiniti</b> ), Hays Pension Trustee Limited ( <b>Hays</b> )

## Outcome

1. I do not uphold Mr K's complaint and no further action is required by Equiniti or Hays.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr K is unhappy because an early retirement factor (**ERF**) has been applied to part of his benefits under the Scheme. As a result, those benefits have been reduced.
4. Mr K was an active member of the Scheme from July 1991 to May 2004. After May 2004, Mr K was employed elsewhere and he became a deferred member until he transferred his benefits out of the Scheme in 2016. Between July 1991 and December 1996, Mr K was part of the Scheme's Guildford Category, which had a normal retirement age (**NRA**) of 62. After January 1997, Mr K was promoted and subsequently became a member of the Scheme's Senior Management Category and later the Executive Category. Both categories had an NRA of 60.
5. Mr K states it was agreed, at a trustee meeting in September 1998, that if a promoted member retires at NRA for his current category, an ERF would not be applied to any of his benefits. This would be the case, even for those benefits the member had accrued in relation to a category with an NRA which had not yet been reached.
6. Mr K was a promoted member and as such he believes his benefits have been incorrectly reduced.
7. Hays is the trustee for the Scheme, but has delegated responsibility for the administration of it to Equiniti. For this reason, Mr K's complaint is against both Hays and Equiniti. However, Hays has responded to the complaint on behalf of both itself and Equiniti, and as such only Hays has been referred to below.

## Background information, including submissions from the parties

8. On 23 September 1998, a meeting of the directors of Hays was held. As company secretary, Mr K was in attendance also; as well as representatives from Mercer, the Scheme's actuary at the time.
9. An extract from the minutes of the meeting (**the Minutes**) has been provided. In particular, one of the items discussed was "Pension Calculated for Promoted Members" and the following was recorded:-

"Following the merger of the pension schemes and a number of recent promotions, Mercer had requested clarification that when a promoted member retires his reduced contractual retirement age (usually 60 rather than 65) should apply to all his Hays pensionable service. This would make clear that there should be no "early retirement factor" applied in respect of the years of service which the employee is no longer required to work as a result of his reduced contractual requirement age, i.e. a promoted divisional managing director retiring at 60 instead of 65 should not be penalised by a 20% (5 x 4%) reduction of his "Guildford Section" pension.

After due consideration it was AGREED that the Secretary write to Mercer confirming that the early retirement factor should not be applied in these circumstances" [capitals as per original document].

10. Hays has stated that the above was a discretionary power and was intended to only be applied to active members. It states the agreement reached was not intended to include deferred members.
11. Hays has highlighted the relevant Scheme rules, which allow it to provide different levels of benefits to different Scheme members under certain circumstances. In particular, it has highlighted Rule 25(A), which states:

"At the request of the Principal Employer the Trustee may grant...

An increase in the amount of any benefit (including a lump sum) payable to or in respect of a Member."

12. In support of its statement that the agreement reached in September 1998 was only in relation to active members, Hays has highlighted that the Minutes refer to a situation where a promoted member no longer needs to work as a result of his contractual arrangement. Hays puts forward that such a situation would not be applicable to a deferred member. As such, Hays believes the Minutes clearly demonstrated only active members were being considered.
13. Mr K has argued that the Minutes do not differentiate between active and deferred members because no differentiation was intended. Mr K recalls that the discussion was in relation to all promoted members.

14. Mr K has also provided a copy of his annual benefit statement from 2000, which indicates no ERF will be applied to any of his benefits. This was including benefits he had accrued whilst he was a member of the Scheme's Guildford Category. However, Hays has noted that this statement was produced before Mr K left the Scheme. In particular, it highlights that the statement says the illustrations provided are, "assuming that you remain in service until each retirement age". Hays believes this supports its statement that an ERF will not be applied as long as the member retires immediately from active membership.
15. Hays has said that all retirement quotes prepared for Mr K since he became a deferred member have included an ERF for his Guildford Category benefits. Mr K's leaver's statement from 2004, for example, sets out his pensionable service for each category and states "NRA62" for his Guildford Category service.
16. In any event, the current Pensions Manager at Hays has confirmed that, since her appointment in 2009, all members have had their benefits calculated in line with the relevant Scheme rules. Hays has highlighted this in line with the relevant Scheme rules, which state:-

"If a Member has completed a period of Scheme Service to which a different Membership Category Schedule applies then his benefits in relation to that different period of Scheme Service will be calculated in accordance with the Membership Category Schedule which applies to his different period of Scheme Service".
17. In relation to further evidence, Hays has confirmed that there are minutes from the meeting of directors, which took place in December 1998. However, these minutes do not mention the agreement reached in September 1998. Mr K has provided a copy of the instructions sent to Mercer following the September 1998 meeting, but this letter contains the exact same wording as the Minutes, and does not clarify whether the agreement was also applicable to deferred members.
18. Hays has confirmed that the governing documents of the Scheme were never updated to incorporate the agreement reached in September 1998. It has added that Scheme members were never notified of the agreement.
19. Since the complaint was referred to our Office, Hays has identified 94 membership records where the Scheme member was part of a category which had a normal retirement age earlier than 65. Of these records, it selected a sample of 34 and conducted a thorough review on those with available information. This included members with transferred benefits, deferred members and retired members.
20. In all cases Hays found that, where a member had benefits from different categories, split calculations had applied such that their benefits were calculated in accordance with the relevant category. In other words, they had been treated in the same way as Mr K.

21. Mr K has been unable to provide evidence of any members with a similar membership record to him, who have been treated differently or more favourably than him. He has provided a statement from the previous Scheme manager at Mercer, who has said he cannot recall a distinction being made between active and deferred members when calculating benefits. However, the previous Scheme manager adds that, due to the passage of time, he cannot remember any applications for early retirement quotations from members who had similar circumstances to Mr K.

## **Adjudicator's Opinion**

22. Mr K's complaint was considered by one of our Adjudicators who concluded that no further action was required by Equiniti or Hays. The Adjudicator's findings are summarised briefly below:-
- The Adjudicator did not feel the wider intent of the relevant parties was clear from the Minutes, in relation to ERF for deferred members. The Adjudicator also noted that there was very little additional evidence following the September 1998 meeting, to show the intent of the parties. In particular, the Scheme rules were never amended to reflect the decision and Scheme members were never notified of the agreement.
  - The Adjudicator did not feel that reading the Minutes on face value favoured one party's interpretation over another. She noted that, whilst the lack of clear differentiation between active and deferred members could indicate there was not meant to be any differentiation, it is also reasonable to say that such a benefit would not be intended for employees who ultimately left service before retirement. The Adjudicator also felt the mention of a promoted member's contractual arrangements was significant and agreed this could indicate the discussion concerned active members.
  - The Adjudicator did not feel that the benefit statement from 2000 supported either party's position. In particular, the statement states that it assumes the member will remain in service until each retirement age. Therefore, no ERF is calculated because the figures assume the member has not retired early from any category.
  - The Adjudicator noted that the remaining evidence indicated Mr K's benefits had been calculated in accordance with the Scheme rules, rather than the agreement reached at the September 1998 meeting, and he had not been treated less favourably than any other Scheme members.
  - Overall, the Adjudicator felt there was no clear evidence that the agreement, made at the September 1998 meeting, was applicable to deferred members. She noted that there may have been an agreement made in relation to active members, which was reversed at some stage, but this was not relevant to Mr K as a deferred member. Furthermore, Hays had not treated Mr K differently to other members, and as such she could not say there was maladministration.

23. Mr K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr K provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will only respond to the key points made by Mr K for completeness.

### **Ombudsman's decision**

24. It is clear that an agreement was made in September 1998 whereby Hays would waive the ERF in relation to certain benefits for promoted Scheme members. From the evidence provided, I am not persuaded that the agreement was applicable to deferred members.
25. In any event the evidence indicates that, for a considerable amount of time, both active and deferred members have had their benefits calculated in the same way and in accordance with the Scheme rules.
26. I understand that Hays has said the agreement made in September 1998 was to be used on a discretionary basis, and it has highlighted that the Scheme documents and other relevant material were neither updated nor amended to reference the agreement. There is also no evidence that Scheme members were ever informed of the agreement made in September 1998.
27. However, Hays was only authorised to waive the ERF under the Scheme rules with the consent of the Principal Employer. Both parties have confirmed that the agreement made at the September 1998 meeting was at the request of the Principal Employer. However, the Principal Employer's consent would have been required by the Scheme rules because it is the Principal Employer who would bear the cost of the ERF waiver. As a result, agreements such as the one reached at the September 1998 meeting are usually applied on a case-by-case basis. There is no evidence that the Principal Employer ever considered Mr K's membership and agreed the ERF waiver in his case.
28. Even if the agreement reached at the September 1998 meeting was intended to act as a blanket rule for the foreseeable future, there was clearly a reversal of this decision at some stage. I would expect such a reversal to have been highlighted to affected members, who knew the discretion was being exercised. Whilst this would not include most Scheme members, as it appears they were never informed of the agreement in the first place, it would include Mr K if he was an active member. This is because he was present at the relevant meeting, and he therefore would have expected the discretion to continue to be applied unless informed otherwise.
29. However, as I am not persuaded that the agreement was meant to apply to deferred members there would have been no necessity to inform Mr K when the agreement to waive the ERF was ended.

30. Furthermore, since becoming a deferred member Mr K's benefit statements have never indicated that an ERF would not apply to his Guildford Category if he retired before the NRA for that category. Instead, his benefit statements have shown otherwise or been silent on the subject. Hays has then calculated his benefits in accordance with the Scheme rules.
31. I therefore do not find that there has been any maladministration and I do not uphold Mr K's complaint.

**Anthony Arter**

Pensions Ombudsman  
4 August 2017