

Ombudsman's Determination

Applicant	Mr N
Scheme	Mitchells & Butlers Executive Pension Plan
Respondents	Mitchells & Butlers plc, Mitchells & Butlers Executive Pension Trust Limited

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Company and the Trustee.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N's complaint against the Company and the Trustee is that his pension from the Plan was reduced by about 40% for early payment, despite his understanding that a pension payable from the Plan on ill health grounds would not be reduced.

Background information, including submissions from the parties

4. Mr N said that in 1991 he was diagnosed as suffering from narcolepsy, a lifelong neurological condition affecting his sleep/wake cycle.
5. In 1999 Mr N was promoted to senior management level, and transferred from the Mitchells & Butlers Staff Pension Scheme to the Plan, a more generous pension arrangement.
6. A medical report on Mr N in 2000 referred to Mr N's previous medical history, stating "Nil of relevance but narcolepsy when younger. No treatment."
7. Mr N's employment with Mitchell & Butlers Group ended on 14 November 2010 after it decided to sell its non-core business to a third party, Stonegate Pub Company (**Stonegate**). Mr N then became a deferred member of the Plan (as he ceased to work for an employer participating in the Plan) and became employed by Stonegate. At that date Mr N's deferred pension from the Plan, to be payable from normal pension age (**NPA**) when he attained age 60 in October 2022, was £21,998.36 p.a.

8. In June 2013, then aged 50, Mr N applied to the Trustee for early payment of his deferred pension on ill health grounds. He signed an election to receive a tax-free cash sum of £76,762 and a residual pension of £11,514 p.a. (instead of a pension of £14,891 p.a. with no cash sum) payable from 1 August 2013.
9. Mr N complained to the Company and the Plan administrator, on 6 August 2013, that his pension should not have been reduced by 4% for each year by which his pension date preceded his NPA. Mr N said that the Plan rules stated that pensions payable due to ill health would not be reduced. He explained that his medical condition was classed as a disability.
10. The Company told Mr N that his pension calculation was correct because all deferred pensions starting before NPA were reduced by 4% for each year of early payment; there was a normal minimum pension age of 55, but Mr N's pension was payable before that age because there was an exception for ill health cases.
11. Mr N contacted the Trustee, in December 2014, to ask whether it would reconsider its decision to reduce his pension, as he said that he was facing financial hardship. The Trustee told Mr N that his benefits had been calculated correctly, in accordance with the Plan trust deed and rules, and that the provision of larger benefits would constitute an augmentation; the Company could request the Trustee to provide augmented benefits if the additional costs were met in full, but there was no obligation to provide augmented benefits.
12. The Company told Mr N, on 19 June 2015, that his benefits had been calculated in accordance with the Plan's trust deed and rules, and that the Company was unwilling to augment them.
13. Mr N also complained to the Company that his medical condition was known to the Company well before the transfer of his employment to Stonegate in 2010, but the Company had not forwarded that information to Stonegate when passing over his personnel file, and that failure had prejudiced his working relationships (Mr N left Stonegate after working there for a comparatively short time).
14. When Mr N contacted this Office, in June 2016, we informed him that he firstly needed to invoke the Plan's internal dispute resolution procedure (**IDRP**). He submitted an application to the Trustee, complaining about how his application for an ill health pension was processed. Mr N also complained to the Company that it had failed to inform Stonegate of his medical condition, and its implications for the workplace, when the transfer of his employment was made. When Mr N's appeals under IDRP were unsuccessful he contacted us again.

Adjudicator's Opinion

15. Mr N's complaint was considered by one of our Adjudicators, who concluded that no further action was required by the Company and the Trustee. The Adjudicator's findings are summarised briefly below:-

- The calculation of benefits under the Plan is governed by its trust deed and rules. The benefits payable on retirement from active membership are not identical to the benefits payable to a deferred member. The pension is normally payable from age 60. Under Rules 9(6) and 10(3) (see Appendix) a reduced pension is payable if it is taken early by a deferred member (as in Mr N's case). The earliest date of payment is at age 55 unless the pension is payable on ill health grounds, in which case the pension can be paid from an earlier date.
 - However, the fact that Mr N's pension became payable under age 55 due to his ill-health does not mean that his pension should have been calculated like an ill health retirement pension payable from active status. While he was an active member of the Plan Mr N never applied for an ill-health early retirement pension, although he could have done so. He applied for early payment of his deferred pension nearly three years after his active membership had ceased. Therefore, Mr N's benefits under the Plan were calculated correctly by the Trustee.
 - Mr N also complained that on the transfer of its business in 2010 the Company treated him unfairly and did not properly inform Stonegate of his medical condition. It seems clear from the background correspondence that Mr N would have preferred not to have been transferred by the Company to Stonegate. However, that transfer was a business decision that the Company, acting in its commercial interests, was entitled to make.
 - Furthermore, this part of Mr N's complaint essentially relates to employment law matters. These do not fall within The Pensions Ombudsman's statutory jurisdiction.
 - Lastly, the Company's awareness of Mr N's medical condition in 2010, and Stonegate's unawareness of that condition at that time, had no impact on the calculation of Mr N's pension under the Plan nearly three years later.
 - Therefore, this complaint should not be upheld.
16. Mr N did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr N, the Company and the Trustee (through its lawyers), provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.
17. Mr N raised several objections. He said that:
- his medical report in 2000 raised issues that should have been investigated further;
 - the Trustee did not comply with the provisions of the Equality Act 2010 relating to disabled employees;

- the recent British Airways judgment supports his case, and
- the opportunity to invoke IDRP should have been mentioned to him earlier.

Ombudsman's decision

18. The report on the medical examination of Mr N carried out in 2000 concluded that its results were, overall, very good. The examination appears to have been instigated by a request from Mr N, not a requirement of the Company or the Trustee, who were not copied in to the report. In the circumstances I do not consider that the medical examination should have caused either the Company or the Trustee to raise further enquiries at that time about Mr N's health, or his ability to work.
19. The Trustee has a duty to operate the Plan in accordance with its rules. These impose a reduction on all pensions that are paid early from deferred status. They do not discriminate against deferred pensioners who are in ill-health. Therefore, there is no breach of the Equality Act 2010 by the Trustee.
20. The recent British Airways judgment supports the independence of decision making by trustees, but it is not relevant to Mr N's case because the pension and lump sum that he received were entitlements under the Plan rules, not a matter for Trustee discretion.
21. Lastly, I do not consider that IDRP was unduly delayed. Although Mr N asked the Trustee in December 2014 to reconsider its decision to reduce his pension, it was not until 2016 that it became clear that there was a dispute that could not be resolved amicably. The explanatory booklet that was issued to Mr N refers to the IDRP option and says that "Every effort should initially be made by all concerned to settle any dispute informally". Therefore IDRP was not appropriate until 2016.
22. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
16 November 2017

Appendix

Relevant rules of the Plan

“10. ENDING PENSIONABLE EMPLOYMENT

Leaving the Plan

- (1) A Member's Pensionable Employment ends on the end date specified below if,
before his Normal Pension Age...
 - (b) He leaves Employment...
The end date...is the date of the event causing his Pensionable Employment to end. He becomes an Early Leaver on the end date.
- (2) A Member whose Pensionable Employment ends before Normal Pension Age is entitled to a deferred annual pension payable from Normal Pension Age...
- (3) Provided Registration would not be affected, an Early Leaver may request the Trustees in writing:
 - (a) to pay him a reduced immediate annual pension (which cannot start before he has attained his Minimum Pension Age unless he is retiring on account of Total or Partial Incapacity and is calculated in accordance with Rule 9(6)) instead of his deferred annual pension...”

“9. RETIREMENT BEFORE NORMAL PENSION AGE

...Other Retirement

- (6)...he may elect to receive an immediate annual pension...It is his Scale Pension reduced at a rate of 4% for each year (and proportionately for part of a year) by which the date of the Member's retirement precedes his Normal Pension Age.”