

Ombudsman's Determination

Applicant	Mr Y
Scheme	Du Pont UK Limited Pension Fund (the Fund)
Respondents	Du Pont UK Ltd (DUKL)

Outcome

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

Complaint summary

3. Mr Y's complaint is that he disagrees with DUKL's refusal to give consent for him to receive early unreduced retirement benefits.

Background information, including submissions from the parties

1. Mr Y has been a member of the Fund since 1980. His employment ended on 26 August 2016 and DUKL confirm that this was due to compulsory redundancy. His normal retirement age is 65 (for Mr Y, this is in 2021).
2. Before he left employment, on 17 February 2016, Mr Y was provided with a retirement illustration. Mr Y has not provided a full copy of this document, but the extract he has produced clearly states that it is an illustration of retirement benefits, the benefits quoted are not guaranteed and they are reduced due to early payment. DUKL said it is their practice to issue these to any member over 55 (the Fund's minimum retirement age) who are at risk of redundancy.
3. Mr Y met with DUKL on 19 April 2016, and they say that they discussed Mr Y's "position in relation to early retirement". In a follow-up meeting on 3 May 2016, Mr Y formally requested consent for unreduced early retirement.
4. The relevant rules of the Fund (see Appendix) allow for unreduced early retirement at either the request of the employee or the request of the employer. The relevant rules clearly states that a benefit may be paid only with the consent of the Principal Company and Employer. DUKL have confirmed that, in Mr Y's case, they are both.

DUKL have a discretion under the Fund rules to grant an unreduced early retirement pension.

5. DUKL considered Mr Y's request for unreduced early retirement as both an employer and employee request.
6. In relation to the employer request, DUKL say that Mr Y did not retire at their request and therefore he is not eligible for a benefit under this rule (Rule 5.2.1.1). Mr Y disputes this and argues that DUKL did give consent, as they provided him with an early retirement illustration in February 2016.
7. DUKL also rejected the employee request (this was considered as a request under Rule 5.2.1.2). In summary, they rejected the request on the grounds of the Fund's deficit and the cost of having to fund the additional benefit. They said at the time they were considering Mr Y's and other members' requests discussions were under way with members and unions about the Fund's deficit and that a consultation process had begun on the closure of the Fund. They said:

"For all these reasons, it was, at the relevant time, clear to the directors of DUKL that (a) it was not possible for them to consent to any requests for payment of unreduced early retirement pensions, and (b) this would remain the case until such time as the plan's funding position as well as DUKL's financial resources experienced a significant improvement."
8. These reasons were explained to Mr Y in his meeting with DUKL on 11 July 2016, and also in the response to his complaint dated 17 August 2016.
9. Following DUKL's decision not to grant Mr Y's request for unreduced early retirement benefits, Mr Y made a complaint to this office.

Adjudicator's Opinion

10. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by DUKL. The Adjudicator's findings are summarised briefly below.
 - DUKL had correctly interpreted the Fund Rules and had followed the correct legal principles when considering exercising their discretion. In doing so, they were entitled to take into account their own interests and the overall funding position of the Fund.
 - The Adjudicator did not agree that the merely because DUKL provided him with an early retirement illustration that this was evidence of them giving consent to his early retirement. In particular, the illustration provided details of reduced benefits and, if they had provided consent, then he would have been provided with an illustration of unreduced benefits. There was nothing within the papers provided by Mr Y to say that he had to accept early payment of his benefits but given in

order to assist Mr Y with his financial options following compulsory redundancy. There was no evidence to support Mr Y's contention that he had left employment by any means other than compulsory redundancy.

- Mr Y argued that, for the majority of his service with DUKL, unreduced early retirement was granted to members. However, DUKL can only take account of the Fund Rules at the time Mr Y left service and, merely because a different decision was made in the past, does not mean that DUKL are bound by it in the future. The Adjudicator felt that DUKL had done nothing wrong by changing their position in exercising their discretion, if indeed this was the case. It was right for them to take into account the current funding position to ensure that all benefits could be paid in accordance with the rules of the Fund DUKL have provided evidence to show that, currently, the Fund is in deficit with consideration being given to close the Fund to future accrual. In these circumstances it would seem entirely inappropriate to agree the payment of an early retirement benefit putting additional strain on the Fund. t
- Mr Y also commented on the annual profits of DUKL. The Adjudicator responded that the employer and the Fund are two separate entities and just because the employer may currently be solvent does not mean that they have sufficient assets to fully fund the pension scheme deficit.

11. Mr Y did not agree with the Adjudicator's Opinion. He has reiterated many of the same arguments, in particular in relation to the retirement illustration and his length of service. I agree with the Adjudicator's previous views on these points. However, Mr Y has also argued that:

- DUKL's employee core values confirm that he should not be discriminated against or treated differently from other members;
- there was pressure to accept the February 2016 retirement illustration as he feels he had to choose reduced early retirement or to use his redundancy pay to augment his benefits, but in doing so he had to take retirement at the same time; and
- that DUKL's decision is immoral and unfair.

12. As Mr Y did not agree with the Adjudicator's Opinion the complaint was passed to me to consider. Mr Y has provided his further comments 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 Y for completeness.

Ombudsman's decision

13. As stated above, Mr Y has argued again that the retirement illustration is proof that DUKL had provided their consent to unreduced early retirement. This point has been covered in the Adjudicator's Opinion and I have nothing further to add to this. The same can be said for Mr Y's argument in relation to his length of service.
14. However, he has raised a number of new arguments and in particular has commented on what my role is in relation to complaints. Mr Y says:

“A reasonable resolution covering the “spirit of the law” and company ethics should be to mediate a settlement taking into account the vast majority of my contribution period & facts shared, which I believe is within the Ombudsman's remit to support.”
15. My role is to adjudicate complaints and make a determination as to whether or not maladministration has occurred and, if so, whether the member has suffered a loss as a result. While Adjudicator's may, if a case is suitable, mediate and try to reach an agreement between the parties, this is not the case here. As the Adjudicator has explained, there is no error on DUKL's part. They have correctly applied the legal principles and reached a decision that, given all the circumstances, is a reasonable one to have reached. Even if I felt that this case should be upheld, which I do not, the most that I would direct DUKL to do is to reconsider their decision and there would still be no guarantee that Mr Y would be awarded an unreduced early retirement benefit.
16. Mr Y has provided an extract from the January 2016 employee core values, and is relying on this as DUKL promise to treat him fairly in relation to other employees. However, I do not believe that this is relevant. This document would relate to him as an employee, not as a member of the Fund. Merely because apparently some members were treated differently in the past does not mean that Mr Y is being discriminated against. The particular Fund rule is discretionary and DUKL can change their policy on how they exercise their discretion taking into account the particular circumstances at the time. I can see nothing wrong with DUKL deciding that, from 2013, it was not affordable to grant consent to unreduced early retirement.
17. Mr Y is claiming that there was pressure put on him to take early retirement, either as an unreduced benefit, or by using his redundancy payment to augment his benefits, and therefore having to take early retirement immediately. He also says that, added to this, was the possibility that the reduction factors would change in the future. However, I have not seen any evidence to support this claim, as Mr Y also had the option to not take any benefits from the Fund and wait until his normal retirement age. More importantly, I cannot see how this is relevant on whether or not the decision made by DUKL not to exercise their discretion was incorrect.
18. Mr Y is clearly disappointed and feels that he has been treated unfairly by DUKL. He believes that the decision is unfair and immoral, however, for the reasons given above I do not believe this to be the case.

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19. Therefore, I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman

5 January 2017

Appendix

Rules of the Du Pont (U.K.) Limited Pension Fund

5. MEMBER'S PENSION

5.2 Early leavers

For a Member who ceases to be an Active Member before Normal Retirement Date, Rule 5.1 is varied as set out in the following sub-Rules ...

5.2.1.1 Employer Initiated Active Members

If an Active Member, who has attained Minimum Pension Age and has at least two Years' Qualifying Pensionable Service retires at the request of the Employer and the Principal Company and the Employer consent, he will be granted an early pension. If such a pension was granted, it will be calculated under Rule 5.1, but reduced (if applicable) under the next paragraph; it will, until the end of the month in which he reaches state pensionable age, be supplemented by an amount equal to the State Pension Deduction, similarly reduced (but the pension will be deemed, for the purpose of applying all other Rules, except Rule 6.3 and (until state pensionable age) Rule 12.2, not to include this supplement), the amount of the supplement must not in any case exceed the amount of the basic state retirement pension plus additional state retirement pension that would be payable at state pension age. For the purpose of this sub-paragraph: "additional state retirement pension" means the additional pension in the Category A retirement pension within the meanings of section 44 and 45 of the Social Security Contributions and Benefits Act 1992; and "state pension age" means the pensionable age specified in the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995;

The Member (if under the age of 55) may, within the consent of the Employer, opt for the pension to commence when he attains the age of 55; otherwise the pension and the supplement will be reduced by $\frac{1}{4}\%$ (one quarter of one percent) for each complete month between his retirement and the last day of the month in which he attains the age of 55;

5.2.1.2 Other cases

If Rule 5.2.1.1 does not apply, a Member on leaving Service with at least 10 Years' Qualifying Pensionable Service may, after having attained the age of 55 may, subject to the consent of the Principal Company and his Employer receive an early pension. If such a pension is granted, it will be calculated under Rule 5.1 and then reduced by $\frac{1}{4}\%$ (one quarter of one per cent) for each complete month which represents the greater of:

first the period of complete months (if any) (and not exceeding that between his retirement and the last day of the month in which he attains Normal Retirement Date) by which his Qualifying Pensionable Service is less than 15 years; and

secondly the period of complete months (if any) by which his retirement precedes the last day of the month in which he attains the age of 60;