

Ombudsman's Determination

Applicant	Mr R
Scheme	Veolia UK Pension Plan (the Plan)
Respondents	Mercer Limited (Mercer) Veolia UK Pension Trustees Limited (the Trustee)

Outcome

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

Complaint summary

3. Mr R's dispute concerns the Personal Accrual Rate (**PAR**) applied to his benefits within the Plan.

Background information, including submissions from the parties

4. In 1980, Mr R joined the Plan, with a normal retirement age (**NRA**) of 65. Mr R's 65th birthday was in December 2016.
5. Mr R has said that at this time, each member was assigned a PAR based on whether the member could attain 2/3 final salary pension within 30 years before NRA. Had Mr R only been able to accrue 30 years' service before NRA, the PAR would have been set at 2.22%. In Mr R's case, he had over 30 years to NRA so his PAR was set at 1.83% to reflect this.
6. On 18 February 2011, the Trustee wrote to Mr R explaining the Plan closure. An extract of this letter is set out below:

"On 31 March 2011 your final salary scheme will cease to future accrual. This means that from 1 April 2011 you will no longer be able to pay any contributions towards your final salary pension or build up future benefits in that scheme.

The final salary pension that you have built up will be calculated as at 31 March 2011 (based on your final pensionable pay at that date) and will remain

in your final salary scheme for the time being. The intention is to merge your final salary scheme into the VES Final Salary Division of the Veolia UK Pension Plan later this year. The Trustees will write to you about this nearer the time. This will not change any of your pension benefits.”

7. On 31 March 2011, the Plan closed and Mr R became an active member of the ‘VES Staff Money Purchase Division’ (**the new scheme**) from 1 April 2011.
8. Mr R raised a complaint as he felt the closure of the Plan meant that he would be disadvantaged. He believed that, as the Plan closure was out of his control, he should be compensated.

Adjudicator’s Opinion

9. Mr R’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Mercer or the Trustee. The Adjudicator’s findings are summarised below:-
 - As the complaint centres on the application of the Plan rules, it is not a complaint with Mercer.
 - The Trustee correctly applied the PAR.
 - Whilst the Plan closed before Mr R’s NRA, there is no provision in the Plan rules to retrospectively alter the PAR.
10. Mr R did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr R provided his 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 R for completeness.

Summary of Mr R’s comments

11. Mr R says the Plan handbook states the “PAR will vary according to the amount of pensionable service you can complete from the date you join the scheme to age 65”. He argues that, as the Scheme closed in 2011, the pensionable service he could achieve before NRA was reduced so the PAR should be recalculated.
12. A benefits statement in 2009 stated that the accrual rate was 2.2%.
13. The Plan actuary should recalculate his PAR “within the spirit of the pension plan promise as set out in my Plan handbook”.
14. An older member who joined the Plan at the same time as him would have accrued a higher level of benefits which is discriminatory.

Summary of the Trustee's comments

15. The Trustee rejects the claim that Mr R was promised a full 2/3 final salary at NRA and Mr R has not demonstrated that he has such an entitlement.
16. To change the Plan rules or recalculate the PAR would not be fair to other members.
17. Mr R signed his acceptance and understanding of the document setting out that the defined benefit accrual under the Plan would cease.
18. Whilst the Plan ceased to future accrual, enhanced contribution rates were paid on his behalf into the new scheme.
19. The retirement benefits Mr R received from the new scheme, when he started to draw his pension in January 2012, were higher than those he would have accrued within the Plan for the same period.

Ombudsman's decision

20. Under the Plan rules a PAR is applied when a member joins the Plan, and there is no provision within the rules for the PAR to be changed.
21. Whilst I appreciate the logic behind Mr R's arguments, he has not provided any evidence that he was entitled to a guaranteed 2/3 final salary pension at NRA.
22. Mr R has said that the PAR was incorrectly stated as 2.22% on his 2009 benefit statement. However, he had received statements before this, copies of which I have seen, dated 1995, 1999 and 2002, that correctly stated the PAR was 1.83%. So, the typing error on his 2009 benefit statement would not have caused a loss of expectation as Mr R was aware of his correct PAR for many years prior to this.
23. Therefore, I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman
8 August 2018