

Ombudsman's Determination

Applicant	Mr Y
Scheme	Railways Pension Scheme (the Scheme)
Respondent	The Trustees of the Railways Pension Scheme (the Trustees)

Outcome

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

Complaint summary

3. Mr Y's complaint arises because the Trustees rejected his application to access his Scheme pension before his Normal Pension Age (**NPA**) at "preferential", rather than cost-neutral, reduction factors.

Background information, including submissions from the parties

4. On 13 February 2015, as he was approaching age 55, Mr Y applied for payment of his deferred Scheme benefits before his NPA of 60. Under Appendix 5 of the Railways Pension Scheme 1994 Regulations (**the Regulations**), the Trustees delegated such decisions to the 1994 Pensioners Section Pensions Committee (**the Committee**).
5. The Committee had discretion to determine whether Mr Y could receive his pre-NPA pension payments at preferential reduction factors, or only on a cost-neutral basis. Payment at preferential early retirement reduction factors was only available to members who could demonstrate, to the satisfaction of the Committee, that their personal circumstances were exceptional, on the grounds of financial hardship, incapacity, or otherwise. The vast majority of applicants for pre-NPA access to their Scheme benefits were only entitled to payment of the pension at cost-neutral factors. Relevant extracts from the Regulations are provided in Appendix 1.
6. In support of his application, Mr Y was required to explain why a pension at cost-neutral early retirement reduction factors would not be adequate. Mr Y enclosed a copy of his most recent bank statement, a copy of his most recent building society ATM receipt and a copy of his most recent National Insurance Contributions (**NICs**)

record. This indicated that he made no Class 1 or 2 NICs in the tax year to 5 April 2013. Mr Y submitted that the bank statement and ATM receipt revealed that his savings were near zero, and the NICs record showed that he was out of work. He also provided a list of home repairs which needed to be done and household furniture which had to be replaced, estimating that these expenses would require an outlay of approximately £5,000.

7. Mr Y further noted that the Scheme's June 2014 newsletter contained a graph which showed its net assets had increased. He submitted that, as such, the Committee should reconsider the use of cost-neutral early retirement reduction factors when paying Scheme benefits before NPA.
8. On 2 June 2015, the Committee wrote to Mr Y to tell him that, while the value of the Scheme assets had increased, the rise in the liabilities of the Scheme outweighed this improvement. Accordingly, Scheme benefits taken before NPA would continue to be subject to cost-neutral reduction factors, unless the Committee was satisfied that there was sufficient evidence of exceptional personal circumstances.
9. Turning to Mr Y's application, it was concluded that there was insufficient evidence of exceptional personal circumstances, such that pre-NPA payment of the Scheme benefits using preferential reduction factors was permissible. The Committee told Mr Y he could access his deferred benefits before NPA, but on the basis of cost-neutral, not preferential, reduction factors.
10. On 24 June 2015, Mr Y wrote to the Trustees to appeal the Committee's decision. He calculated that the application of cost-neutral reduction factors would give an annual pension of £6,604.39, while the use of "preferential" reduction factors would result in an annual pension of £8,032.37. He maintained that payment using cost-neutral reduction factors would not be sufficient to enable him to replenish his income, which was only £6,000 per annum, along with savings of £1,157.17.
11. Mr Y accepted that the lump sum of approximately £18,000 would enable him to increase his savings, but said he intended to use this payment as "rainy day money" and not day to day expenditure.
12. Mr Y accepted he did not suffer from ill-health or disability which prevented him from working, but suggested that, since had not been able to find work for many years, he was unlikely to secure employment before he reached NPA.
13. The Committee considered Mr Y's appeal under the Scheme's internal dispute resolution procedure (**IDRP**), and the Trustees issued the stage 1 IDRP decision on 11 September 2015. They explained that the Committee had noted the following:-
 - There was no evidence that Mr Y was unable to work due to ill-health or disability.
 - There was no evidence that Mr Y had dependents who required financial support from him.

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- The financial information Mr Y submitted suggested he was meeting his living costs and there was no evidence of debt problems.
14. The Committee also noted that payment of Mr Y's pension before NPA, with the application of "preferential" reduction factors, would increase the Scheme's funding deficit. As a result, it had to be satisfied that his personal circumstances were exceptional.
 15. Overall, the Committee concluded that there was insufficient evidence of exceptional personal circumstances, or that the use of "preferential", instead of cost-neutral, reduction factors would make a meaningful difference to Mr Y in terms of his key financial needs.
 16. Mr Y submitted an appeal under stage 2 of the Scheme's IDRPs, which was also rejected by the Committee.

Adjudicator's Opinion

17. Mr Y's complaint was considered by one of our Adjudicators, who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:-
 - An actuarial valuation carried out in 2013 revealed a significant shortfall of Scheme assets over liabilities. On that basis, the Committee took the decision to apply cost-neutral early retirement reduction factors to Scheme benefits taken before NPA. Members could apply to have Scheme benefits paid out before they reached NPA using more favourable (preferential) early retirement reduction factors. However, those applications could only succeed if there was compelling evidence of exceptional personal circumstances.
 - When reaching a decision, the Committee gave appropriate consideration to the factors which its own guidance note required it to weigh up. These were:-
 - Mr Y's financial situation;
 - whether ill-health or disability prevented him from securing paid employment;
 - whether he had dependents who were financially reliant on him;
 - and whether paying his Scheme benefits at preferential, rather than cost-neutral, early retirement reduction factors would make a meaningful difference to his needs.
 - Accordingly, the Adjudicator took the view that the Committee had asked itself the correct questions.
 - In its decision letters, the Committee referred to Mr Y's testimony and the supporting evidence he submitted with respect to his financial situation. As such,

the Adjudicator was satisfied that the Committee considered all relevant available evidence.

- The Adjudicator reached the judgment that it could not reasonably be said that the decision made by the Committee was arrived at improperly.

18. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y 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 Y for completeness. In summary, these are:-

- During the application and IDRPA appeal process, from 13 February 2015 until 19 September 2016, his outgoings exceeded his income by £1,800 per annum. This led to a reduction in savings and an increase in credit card debt.
- According to his calculations, payment of his Scheme benefits at preferential, as compared with cost-neutral, early retirement reduction factors, would have resulted in a significantly higher monthly pension. He calculated that the difference would have been between £1,400 and £1,750 per year.
- In light of the above, Mr Y considers the decision reached by the Trustees to be perverse and unreasonable.

Ombudsman's decision

19. It is not my role to review the available evidence and substitute the decision reached by the Committee with my own. I am primarily concerned with assessing the Committee's decision-making process. I examine the relevant available evidence only in order to establish whether it supported the decision reached by the Committee. The issues considered include: whether the Committee applied the rules governing the Scheme correctly; whether it obtained and considered relevant and appropriate evidence; and whether its decision was supported by the available evidence.
20. It is for the Committee to determine what weight (if any) to ascribe to any of the available evidence; and it is entitled to take the financial position of the Scheme into account when reaching its decision. In the event that the decision-making process is found to be flawed, the decision will be remitted to the Trustees so that the Committee can reconsider.
21. The decision to permit the use of preferential early retirement reduction factors only where there is compelling evidence of exceptional personal circumstances was reached on the basis of an actuarial review, carried out in 2013. This review revealed a significant shortfall in Scheme assets over liabilities. The trustees considered that the shortfall continues to exist, therefore the rationale behind the choice of factors still holds good.

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22. The notes of the Committee meeting held on 23 August 2016 (Appendix 2) show that the Committee also asked itself the following questions:-
- What was Mr Y's financial situation?
 - Was there evidence that ill-health or disability prevented Mr Y from working?
 - Did Mr Y have dependents who relied on him for financial support?
 - Would paying Mr Y's Scheme pension before his NPA using preferential early retirement reduction factors, as compared with cost-neutral rates, make a meaningful difference to his needs?
23. In light of this, I am satisfied that the Committee asked itself the correct questions, as laid out in its own guidance notes.
24. Furthermore, the Committee referred to the letters and supporting evidence which Mr Y had submitted with his application and subsequent appeals. The Committee discussed the degree to which this evidence established that Mr Y met the criteria for early payment of his Scheme pension at preferential early retirement reduction factors and gave reasons as to why it did not.
25. As a result, I am satisfied that the Committee asked the relevant questions and took all the relevant available evidence into account. It cannot reasonably be said that there was any misunderstanding of the guidance notes, or that the decision arrived at was perverse. Accordingly, I find that the decision was properly reached. There is no evidence of maladministration by the Committee.
26. Therefore, I do not uphold Mr Y's complaint.

Karen Johnston

Deputy Pensions Ombudsman
31 October 2017

Appendix 1

The Railways Pension Scheme (1994 section)

27. Rule 11A (“Other Choices for Early Leavers”) provides:-

“(1) A Member entitled to deferred benefits (see Rule 9 - Early Leavers) may elect to receive his benefits on a date earlier than Pension Age (but not earlier than Normal Minimum Pension Age). If a Member does not make a choice under this Rule 11 (Other Choices for Early Leavers) immediately on leaving Pensionable Service, the agreement of the Trustee is required.

(2) The benefits shall be reduced:

(i) if the Trustee should then so decide, on such basis as is determined by the Trustee having considered the advice of the Actuary (due regard being had to sub-paragraph (4) below); and

(ii) subject to any such decision under sub-paragraph (2) (i), as set out in Schedule 8.

(3) If an election under this Rule would result in the pension payable to the Member being less than the aggregate of:

(i) the State Graduated Retirement Benefit; and

(ii) whichever is the lesser on the date the pension would become payable of the Contracted-out Pension and the Forecast GMP,

the election shall not be permitted.

(4) The Trustee must be reasonably satisfied that the reduced benefits are at least equal in value to the deferred benefits (including future increases) that would otherwise have been provided under Rule 9 (Early Leavers”).

28. Appendix 5 (“Model Scheme of Delegation”) states:-

“Clause 2B

The following powers and duties or any of them shall be delegated by the Trustee to the Pensions Committee (“PC”), subject to and in accordance with Clause 2B (Delegation)

...

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Part 2

RULES

...

DELEGATION TO PC ...

Early Benefits (Rule 11A)

agreeing to early benefits and determining the basis on which benefits should be reduced; satisfying value for money test".

Appendix 2

Minutes of the Committee meeting held on 23 August 2016

29. This document notes:-

“The Committee reviewed Mr Y’s case as if it were receiving a fresh application. The Committee noted that its policy for the generality of members was to agree to the early payment of deferred benefits on a basis that was cost-neutral to the Section, and this was reflected in the Section’s actuarial valuation. However, Mr Y had the right to apply for his benefits to be calculated using the more generous early retirement reduction factors set out in Schedule 8 of the BR Section rules, as appended to the rules of the Section. The Committee had received legal advice, which was included in the agenda, on how such applications should be considered and the factors that might be relevant in determining if a member’s circumstances were exceptional.

The evidence provided to the Committee included:

The case papers presented to the Committee with Mr Y’s application at its meeting on 16 February 2016, which had included email correspondence between Mr Y and RPMI between October 2015 and January 2016; the minute of that meeting; and a letter dated 23 February 2016 advising Mr Y of the Committee’s decision;

A letter from Mr Y dated 21 March 2016 invoking stage 1 of the Internal Disputes Resolution Procedure, enclosing copies of the email correspondence between himself and RPMI from November 2015 to January 2016, and RPMI’s responses dated 31 March 2016 and 18 May 2016 confirming the decision of the Director of Administration not to uphold his dispute at stage 1;

A letter from Mr Y dated 14 June 2016 asking the Committee to review his application again under stage 2 of the Internal Disputes Resolution Procedure;

Letters and attachments from Mr Y dated 13 February 2015 and 24 June 2015, to which he referred in his most recent correspondence but which were not included in the original papers considered by the Committee on 16 February 2016.

The Committee considered Mr Y’s application carefully, taking into account both his personal financial circumstances and the funding position of the Section overall, in accordance with the legal advice provided. It was noted that

Mr Y had transferred his BRASS funds out of the Scheme, but it was not known whether or not he had taken payment of some or all of these funds. The Committee acknowledged Mr Y's financial circumstances, as described in his correspondence. It was noted Mr Y acknowledged in his letter of 8 November 2015 that he was physically and mentally capable of work, but that he had been unable to secure employment for a significant period of years. No evidence had been given to suggest that Mr Y had dependents requiring his financial support.

Having considered all the evidence provided, the Committee was of the view that a compelling case had not been made that Mr Y's circumstances were so exceptional that he should be treated differently from the vast majority of other applicants, so as to warrant early payment of his deferred benefits using Schedule 8 factors, and therefore DECLINED to uphold his dispute. The Committee confirmed again that his benefits, comprising a lump sum of £18,000 and an annual pension until State Pension Age of £6,647.54, could be paid immediately using cost-neutral early retirement factors".