

## Ombudsman's Determination

Applicant	Mrs L
Scheme	Barnardo's Pension Scheme ( <b>the Scheme</b> )
Respondents	The Trustees of the Scheme ( <b>the Trustees</b> ) and Barnardo's as former employer ( <b>Barnardo's</b> )

## Outcome

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

## Complaint summary

3. Mrs L is complaining that when she was made redundant by Barnardo's she should have received an enhanced pension from the Scheme under rule 11.2.2.
4. Rule 11.2.2 had previously allowed for active members of the Scheme that had 15 years or more service, were over age 50, and retired because of redundancy, to receive an immediate pension enhanced by a set formula.
5. She further asserts that not enhancing her pension on redundancy was a breach of the Scheme Trust Deed and Rules, as she had over 15 years' service at the time, and was aged 53.

## Background information, including submissions from the parties

6. Mrs L was employed by Barnardo's for almost 20 years and was an active member of the Scheme for most of her employment.
7. In 2013 it was announced that the Scheme would be closing to new members and to future accrual for current members.
8. The Scheme subsequently closed on 1 May 2013.
9. However, leading up to the closure of the Scheme, the Trustees decided that in certain circumstances enhancements relating to redundancy would be preserved for a transitional period.

10. Accordingly, the Scheme was amended on 30 April 2013 to close the Scheme to future accrual, but also by rule 11.2.3 to allow some members to remain within scope of 11.2.2, if they retired because of redundancy which was notified to the member:
  - “a) on or before 30 June 2013 for any reason; or
  - b) 31 March 2016 in the case of a member who was notified of redundancy as a direct result of the implementation of the Children’s Services Operational Delivery Model as set out in Barnardo’s 2013-2016 strategic plan and at the absolute discretion of Barnardo’s.”
11. Therefore, members that were part of a Children’s Services Operational Delivery Model (**CSODM**), and subject to redundancy, still qualified for the enhancement, even after the Scheme closed.
12. This is because previously members were required to be in active membership of the Scheme to qualify for the enhancements, and once the Scheme closed on 1 May 2013 all members, including those that were part of the CSODM, became deferred members.
13. The CSODM members were chosen by Barnardo’s because their redundancies were known about in 2013, prior to the Scheme closing.
14. This was also a gesture on the part of Barnardo’s in recognition that the Scheme was closing to active membership.
15. Mrs L was made redundant by Barnardo’s in November 2014, but not as part of the CSODM.
16. As Mrs L’s redundancy took place after 30 June 2013, and her redundancy was not part of the CSODM, she was told that she did not qualify for the enhancement under rule 11.2.2.
17. In response, Mrs L states that she joined the Scheme based upon advice from Barnardo’s and they have now breached this contract, or alternatively she may have been mis-sold this arrangement.
18. She said her role was part of the changes to the CSODM and was time limited for two years. As such, she was in the same position as staff affected by the CSODM changes as the future of her role would not be determined until 2015.
19. She asserts that to apply subsequently a different rule for an enhanced pension is unfair treatment, and having undergone five redundancy consultations in five years, she believes her redundancy was engineered to deny her pensionable rights.
20. She says that this could be construed as discrimination, and was designed to avoid responsibilities relating to her pensionable rights.
21. She further says that she agreed to join the Scheme in good faith and she also transferred in other pension funds based on the defined benefits of the Scheme.

22. She says that having now met the criteria for an enhanced pension Barnardo's have, "changed the goal posts", and are using the CSODM as a reason to deny her similar pensionable rights.

### **Adjudicator's Opinion**

23. Mrs L's complaint was considered by one of our Adjudicators who concluded that no further action was required by Barnardo's. The Adjudicator's findings are summarised below:-
- In some circumstances the Pensions Ombudsman can set aside a discretionary decision taken by the trustees of a pension scheme.
  - However, in this case there is no discretion allowed under the Rules, and in the Adjudicator's view the amendment of rule 11.2.3 has been applied correctly.
  - Therefore, the Pensions Ombudsman cannot interfere, or direct that the Mrs L's pension be enhanced, as there is no longer a provision to do so under the Rules of the Scheme.
  - The Adjudicator appreciated that it seemed unfair that Mrs L no longer qualifies for the enhancement because the Scheme closed before she was made redundant, but this will apply to all members in a similar situation, and she has not therefore been discriminated against.
  - An amendment was introduced to cover a certain set of redundancies for a transitional period, but only because they were known about prior to the closure of the Scheme, and it was at the absolute discretion of Barnardo's, not the Trustees.
  - Barnardo's was under no obligation to make this amendment for this group, or any other members of the Scheme.
  - The Trustees can only apply the current Rules of the Scheme, which in the Adjudicator's opinion they have done in this case.
  - Of course, when Mrs L joined the Scheme she could not have known then that she would be subject to redundancy almost 20 years later, only that her normal retirement date (**NRD**) was 65.
  - Therefore, she could not have joined the Scheme on the basis or understanding that she would be entitled to a guaranteed enhanced pension.
  - If Mrs L considers that she has been unfairly treated, and should have qualified for the CSODM, then this would have been for her to take up further with her employer. However, this dispute would be outside the jurisdiction of this office.
  - Mrs L is also now over the age of 55, so she can apply to the Trustees to put her pension into payment before her NRD on a reduced basis.

- The Adjudicator also understood she had now been provided with a retirement quotation, outlining her options, and does not need the permission of her former employer or the Trustee to take her benefits early.
  - However, it has been confirmed that apart from cases of serious ill health there is no other provision to enhance her pension prior to her NRD.
  - If she needs any further information about her options she should contact the Scheme's Pensions Manager directly.
  - It was therefore the Adjudicator's opinion that the complaint should not be upheld.
24. Mrs L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs L provided her further comments, summarised below, which do not change the outcome.
25. In response to the Opinion Mrs L says that she has been denied and blocked from receiving her true entitlement from a pension to which she contributed fully.
26. At no time upon agreeing to join the Scheme was she advised that the trustees had the right to change her pension entitlement.
27. She questions if there were any other members in a similar situation that have been comparatively discriminated against.
28. She made choices to remain at Barnardo's for 20 years because of her pension and knowing that she was entitled to an enhanced pension on redundancy, once she met the criteria.
29. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs L for completeness.

### **Ombudsman's decision**

30. I appreciate that Mrs L considers that her redundancy was engineered to coincide with the closure of the Scheme and to prevent her from receiving an enhanced pension on retirement. However, this aspect of her dispute is outside my jurisdiction and I am unable to rule on what is essentially an employment matter.
31. Barnardo's and the Trustees of the Scheme were entitled to make the amendment to the Rules of the Scheme regarding the award of enhanced pensions on redundancy, and the amended Rule at 11.2.3 has been applied correctly in this case.
32. Consequently, it is irrelevant whether other members have been similarly affected by these changes, as there has been no maladministration on the part of Barnardo's.
33. I also do not accept that Mrs L joined the Scheme on the basis that she would be entitled to an enhanced pension on redundancy more than 20 years later, or that she

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has been disadvantaged by her membership of the Scheme, including the transfer in of other pensions.

34. Therefore, I do not uphold Mrs L's complaint.

**Anthony Arter**

Pensions Ombudsman  
31 July 2018