

Ombudsman's Determination

Applicant	Mr Y
Scheme	Philips Pension Fund (the Fund)
Respondents	Philips Electronics UK Limited (Philips) Philips Pension Trustees Limited (the Trustee)

Outcome

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

Complaint summary

3. Mr Y has complained that Philips failed to inform him that he was eligible to receive an unreduced pension from the age of 58 and are now not willing to back date payment to his 58th birthday.

Background information, including submissions from the parties

4. Mr Y was employed by A&M Records in October 1985.
5. In October 1989, A&M was taken over by Polygram, a subsidiary of Philips.
6. As part of this takeover Mr Y became eligible to join the Fund, which he elected to do, becoming a member on 1 April 1993.
7. As a member of the Fund, Mr Y's Normal Retirement Age (**NRA**) was set as age 63 (21 March 2017).
8. In late 1992, prior to Mr Y becoming a member of the Fund, the Trustees amended the Fund rules. A "Special Notice To Members – Improvements to the Fund" (**the Notice**) was issued in 1992 and among other things confirmed that:

“If your normal pension age is 63 or 60 you will not have the early retirement reduction factors applied from age 58 or 55 respectively, so long as you were in the Company’s employment at 31 December 1990.

If you entered service on or after 1 January 1991 the above will apply only with the consent of the Company.”

...

“A new booklet incorporating all these changes is being prepared and will be issued to you in 1993.”

9. The updated scheme booklet was subsequently issued to all members in June 1993 (**the 1993 booklet**), informing each individual of the changes to the Fund. Under the heading ‘May I retire early with a pension?’ the booklet stated:

“You may retire at any time on or after age 50 subject to the approval of the Company (or earlier due to incapacity) and you will be paid an immediate pension. Retirement within five years at NORMAL PENSION AGE will not be subject to Company approval if you were an employee at 31 December 1990.”

...

“Your early retirement pension will be calculated in the same way as it would for retirement at NORMAL PENSION AGE (using PENSIONABLE SERVICE completed to the date of your early retirement) and will normally be reduced because you will receive a pension for a longer period. The reduction factor amounts to 4% for each year you retire early, except that no reduction will apply in respect of the five years preceding your NORMAL PENSION AGE unless you entered employment on or after 1st January 1991 when the consent of the Company to waive the factors will be required.”

10. On 3 February 1995, Mr Y ceased pensionable employment and became a deferred member of the Fund.
11. Philips wrote to Mr Y on 6 July 1995 providing information about his accrued ‘Paid-Up Benefits’. This letter explained that:

“The paid-up pension is payable from your Normal Retirement Date, although on application, payment of an early retirement pension may commence at any time on or after your 50th birthday.”

...

“If you are interested in transferring your pension benefits, taking an early retirement pension, or merely require further information concerning your pension benefits, please write to the Philips Pension Fund...”

12. In 2015, the Fund administrators provided Mr Y with an “enhanced transfer value offer” which also confirmed his “special pension age” (**SPA**) as being 58.

13. My Y subsequently elected to transfer out of the Fund, on enhanced terms in 2015, but felt that he should have been notified sooner that he could have taken his benefits unreduced from age 58.

Adjudicator's Opinion

14. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further was required by Philips or the Trustees. The Adjudicator's findings are summarised briefly below:-
 - As Mr Y was employed before 30 December 1990, he was eligible to take unreduced pension benefits at age 58.
 - There was no maladministration as 58 was Mr Y's enhanced or special retirement age and not his NRA so there was no requirement for the Trustees to write to Mr Y in advance of his SPA.
 - The regulations regarding what information a Trustee must provide to a deferred member, and when this needed to be done, changed on 6 April 1997 after Mr Y had already become a deferred member.
 - There is no evidence to suggest that Mr Y would have taken the benefits at age 58 or that he has taken any steps to his detriment as a result of not being explicitly told his benefits could be paid from age 58.
 - The Trustee was not under any particular obligation to notify Mr Y six months prior to his SPA.
 - Sufficient information was available to allow Mr Y to have known he had a SPA.
15. 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.

Ombudsman's decision

16. The rules that govern this Fund, as amended in 1992, make it clear that as Mr Y was employed before 1 January 1991, his NPA was 63.
17. The same rules, also state a member with a NPA of 63, in employment before 1 January 1991, could receive their unreduced pension benefits earlier than NPA, at age 58. Mr Y satisfies both criteria.
18. Mr Y has suggested that had he been informed that he could have taken his pension benefits without reduction, from age 58, then he would undoubtedly have done so.

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19. The complaint turns on whether or not the Trustee gave Mr Y sufficient information about his option aged 58. It is significant that Mr Y joined the scheme in 1993 and left it in 1995. In 1993 there was a general obligation on Trustees to provide members with relevant scheme information upon commencement of pension membership.
20. The Trustee says that the Notice and the 1993 booklet were issued to all members as a result of the changes to the Fund. Although he now has no recollection of being told about the option, Mr Y does not dispute receiving basic information about the scheme at date of joining. I find it more likely than not that the information was sent in the form which the Trustee says was standard at the time.
21. The Notice made it clear that if a member was “in the Company’s employment at 31 December 1990” those members will “not have the early retirement reduction factors applied from age 58”. This is a categoric and clear statement.
22. The 1993 booklet, while not making as clear a declaration does however explain that “no reduction will apply in respect of the five years preceding your NORMAL PENSION AGE unless you entered employment on or after 1st January 1991”. Mr Y would of course have been aware of his employment commencement date.
23. Therefore I therefore conclude that the Trustee informed Mr Y sufficiently about the option when he joined the scheme.
24. On leaving in 1995, Mr Y was provided with a leaver’s statement. The Regulations which are now in force require members to be told about their rights and options at that point, but in 1995, they did not. Consequently I cannot fault the information which was given to Mr Y in 1995.
25. The Trustee of the fund was also required by law to write to Mr Y at least four months before his NRA. However, it was not under an obligation to write to Mr Y in advance of him reaching age 58 because that was not his NRA. Consequently, there has been no maladministration in this case and therefore I do not uphold Mr Y’s complaint.

Karen Johnston

Deputy Pensions Ombudsman
30 April 2018