

Ombudsman's Determination

Applicant	Mrs S
Scheme	The National Grid Electricity Group of the Electricity Supply Pension Scheme (the Scheme)
Respondents	National Grid plc (National Grid)

Outcome

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

Complaint summary

3. Mrs S's complaint against National Grid is that she says she left employment with a compromise agreement (**the Agreement**) that she could take an unreduced pension from age 50. However, she has now been told that she is not able to.

Background information, including submissions from the parties

4. On 18 April 2005, Mrs S left employment with National Grid under the Agreement. It stated that, on an unreduced basis:

"the Company will procure that the Employee shall be entitled to a pension under the Electricity Supply Pension Scheme (**ESPS**) which will come into payment on and from the date (which shall be on or after the Employees 50th birthday) on which the Employee makes a request in writing for it to come into payment provided that if the trust deed and rules of the ESPS and/or any applicable law do not permit the Employee's pension to come into payment on the date of such request, it shall come into payment on and from the earliest date after such request is permissible."

5. The Agreement further included an accompanying note (**the Note**) from a Human Relations Director at National Grid which stated that Mrs S should be 'treated in a similar way to those whose employment had ended by reason of redundancy or reorganisation and that accordingly she receive an unreduced pension from the ESPS at the age of 50'. The Note also contained the caveat that if this was not

permitted by the Scheme rules then this provision would apply from the earliest date it was permissible under the rules.

6. On 1 July 2016, Mrs S wrote to National Grid seeking to claim her deferred pension from age 50.
7. On 31 August 2016, National Grid refused Mrs S's request. It argued that the earliest Mrs S's pension could be paid was now age 55. It said that this had been reflected in the Scheme rules since 6 April 2010, in line with the changes introduced in the Finance Act (2004). The only exception to this, it argued, was if an employee had left National Grid on the grounds of redundancy.
8. On 2 September 2016, Mrs S complained to National Grid and argued that she should be treated in line with the terms of the Agreement and allowed to retire at 50.
9. On 14 October 2016, National Grid responded to Mrs S's complaint. It argued that while the Agreement's original intention had been to treat Mrs S in a similar way to a redundancy leaver, she did not actually leave on grounds of redundancy. Consequently, National Grid argued that Mrs S's pension could only be paid at age 50 if the Scheme rules allowed it. As this was not the case, her pension could only be paid from age 55.
10. On 27 March 2017, Mrs S's representative wrote back to National Grid and raised a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). The representative argued that National Grid had committed to 'procure' Mrs S's pension from age 50. The representative argued that it should meet that onerous obligation, in line with the Agreement and the law, as it stood, in 2005.
11. On 21 December 2017, National Grid sent Mrs S its Stage 2 decision and did not uphold her complaint. National Grid maintained that Mrs S had not been made redundant and that there were only very limited circumstances that it could pay pensions before age 55. It further argued that these conditions did not apply in Mrs S's case and it could not pay her pension at age 50 as this would be classed as an unauthorised payment.

Adjudicator's Opinion

12. Mrs S's complaint was considered by one of our Adjudicators who concluded that no further action was required by National Grid. The Adjudicator's findings are summarised below:-
 - The Adjudicator appreciated the reasons why Mrs S believed that her pension would be payable from age 50. However, the Adjudicator considered that the undertaking in the Agreement is not an absolute promise to Mrs S and that her entitlement to a pension at age 50 had a clear and robust caveat upon it. The Adjudicator said that paragraph 14 of the Agreement states that Mrs S's pension is

payable at age 50 unless the Scheme rules and legislation in force at the time do not allow this.

- The Adjudicator referred to the Finance Act (2004) (**the Act**) which re-defined normal minimum pension age for most people as age 55, with effect from 6 April 2010. The Adjudicator also said that pensions can only be paid before age 55 in limited circumstances such as ill health or, as National Grid acknowledge, under redundancy in some cases. In the Adjudicator's opinion, Mrs S was not made redundant from National Grid and so this option would not apply.
 - The Adjudicator considered that the Agreement makes no reference to Mrs S being made redundant and National Grid maintains that this is correct. The Note appended to the Agreement only says that Mrs S should "be treated in a similar way to those whose employment had ended by reason of redundancy". In the Adjudicator's view, the only conclusion that could be drawn from this statement is that it must be predicated on the fact Mrs S was not made redundant. Otherwise, if Mrs S had been made redundant, stipulating a further intention to treat her in a 'similar' way would be superfluous. Furthermore, the Note also reiterates the same caveat about payment of pensions as the Agreement.
 - The Adjudicator fully understood the reasons why Mrs S believed that her pension would be payable at age 50 but, in the Adjudicator's opinion, Mrs S cannot receive her pension before age 55 as this is the earliest date permissible under the Agreement and current legislation.
13. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her 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 Mrs S for completeness.

Ombudsman's decision

14. Mrs S argues that the Note was specifically drafted to ensure that she could have access to her pension at age 50. She argues that it set out the intent of both parties to prevent ambiguity and was a key consideration in her decision to accept the terms of the Agreement. She further argues that she would not have accepted the terms of the Agreement without the Note's inclusion, as in her view it guaranteed access to a valuable pension benefit. I fully appreciate the reasons why Mrs S believes the Note confirms her entitlement. However, it is worded using the same language as the Agreement. Consequently, it does not support a different conclusion from the Agreement and I do not find that Mrs S is eligible to receive her pension any earlier than the terms of the Agreement.
15. In her comments, Mrs S agrees that she was not made redundant. However, she argues that she did not resign from her role and the main reason she cannot receive

her pension is that she was incorrectly recorded as a resignation by National Grid. Leaving a job under a compromise agreement is a rare, if not unique situation. So, it is not unreasonable that National Grid could not accurately record Mrs S's situation succinctly on its administration system. Evidently it has kept a copy of the Agreement on Mrs S's record and is aware of the Agreement's provisions. I further find that National Grid is abiding by those provisions in respect of Mrs S retiring.

16. Mrs S argues that National Grid is exercising a discretion it should not have in denying her pension. However, I do not find that to be the case. The Agreement does not allow for payment of Mrs S' pension at National Grid's discretion. The exact wording dictates that:

“the Employee shall be entitled to a pension under the ESPS which will come into payment on and from the date (which shall be on or after the Employees 50th birthday) on which the Employee makes a request in writing for it to come into payment provided that the trust deed and rules of the ESPS and or any applicable law do not permit the Employee's pension to come into payment on the date of such request, it shall come into payment on and from the earliest date after such request is permissible.”

17. Consequently, the only limitation on payment of Mrs S's pension is the Scheme rules and legislation. In this case, the Scheme rules were amended after the Act received Royal Assent and while this remains in force Mrs S will not be able to receive her pension before she reaches age 55.
18. Therefore, I do not uphold Mrs S's complaint.

Anthony Arter

Pensions Ombudsman
30 January 2019