

Ombudsman's Determination

Applicant	Mr E
Scheme	British Steel Pension Scheme (the New Scheme)
Respondent	BS Pension Fund Trustee Limited (the Trustee)

Outcome

1. I do not uphold Mr E's complaint and no further action is required by the Trustee.

Complaint summary

2. Mr E has complained about the information that he feels he should have been provided with prior to taking his pension in January 2016 and regarding the subsequent changes to the transfer terms in April 2017 which he has not been able to take advantage of.

Background information, including submissions from the parties

3. Mr E was made redundant from his employment with Tata Steel UK Limited (**TSUK**) on 31 December 2015. As he was over age 55 at that date, he was entitled to receive immediate payment of his pension benefits on favourable early retirement terms. Only the pension accrued after 6 April 2010 was subject to an actuarial reduction for early payment. Mr E's pensionable service from 1976 to 2010 was not subject to any actuarial reduction for early payment. Mr E elected to take his pension immediately from January 2016.
4. In September 2017, TSUK was separated from the Scheme (now called the Old British Steel Pension Scheme (**OBSPS**)) by a Regulated Apportionment Scheme. As part of the terms of the separation, members of the OBSPS were given the option of transferring to the New Scheme and Mr E chose to transfer to the New Scheme.
5. On 1 April 2017, the Trustee revised the transfer terms applicable under the OBSPS, following a material change to the investment strategy, and this resulted in increases to the transfer value entitlements of many deferred members. At the same time, the factors used by the OBSPS to calculate deferred pensions on early retirement were also revised and these were generally more favourable than the factors applied on early retirement prior to April 2017.

6. Mr E says that one of his main areas of complaint relates to the lack of suitable information available to Scheme members before having to make important decisions. He repeatedly asked the pension office for information about the pension scheme rules. He was promised information would be posted out to him, but he never received anything. He was directed to the internet which gave basic information and no specific details about the questions he had. When he asked questions verbally to the pension office no one could give him a definitive answer. This meant that he could never make a reasoned decision as he did not have all the facts.
7. Mr E says that in the 1990's the pension scheme had a pension holiday. In recompense for this, an extra year of pensionable service was given for every seven years of actual service. In his case this equated to four years and three months of extra pensionable service. When he queried why the extra years were not shown on his pension statements, he was told that they were banked and added at age 60 if he was still contributing to the pension scheme. This fitted in with his original plans to leave work just after age 60. However, as the company closed the pension scheme before he reached age 60, he was informed that the extra '1 for 7' years did not have to be honoured. He feels that this was not in the spirit of the original agreement. If the '1 for 7' rule been implemented when the scheme closed it would have given him a higher number of years of pensionable service and a larger retirement pension.
8. Mr E says that his complaint also concerns the transfer value of approximately £300,000 that he was quoted in respect of his annual pension. At the time there was a lot of information in the press regarding transfer values for people leaving defined benefit schemes. He knew of people from other organisations who received transfer values far in excess of the figure quoted to him for a promised pension of half the value of his pension. As a single man there are benefits in a defined benefit scheme that are not of use or value to him. When he asked the pension scheme administrators why the transfer value was so low, they could not tell him. He believes that the transfer value was financially unrealistic and meant that he was denied the chance to have more flexibility over his money.
9. Finally, Mr E says that he had always intended to work to age 60 and receive his '1 for 7' benefit and retire on a full pension. He feels that he was rushed into making a life changing decision about leaving his job and into drawing his pension without having full access to all of the facts about the pension scheme, the intention to revalue the transfer basis and the changes to the scheme rules.
10. The Trustee says that the changes to the transfer value and early retirement factors were made in April 2017, some 16 months after Mr E had elected to take his pension. At the time that Mr E was making his retirement decisions the Trustee had not even begun to consider taking the sorts of decisions in relation to the Scheme's investment that would lead to the changes in the transfer and early retirement factors. Similarly, at the time of Mr E's retirement there were no ongoing discussions between the Trustee and any other party about the separation of the Scheme from TSUK.

11. The Trustee says that it never requested a pension holiday. Contribution rates are set by agreement between the Trustee and the Company. The Company did propose a period of nil contribution rates between 2003 and 2006 when the Scheme was sufficiently well funded, and the Trustee agreed to that proposal.
12. Prior to 31 March 2006, employee members who retired early with the Employer's consent at or after age 60 would receive an additional one year's pensionable service for each completed seven years of continuous service. This was subject to a maximum of 5 years or the period remaining to NPA if less.
13. As part of a package of benefit revisions agreed between the Company and the Trades Unions designed to ensure that the Scheme remained affordable and sustainable, no further accrual of added years could be earned from 1 April 2006. The Trustee was not party to the agreement, its role was simply to amend Scheme benefits in line with the Company's instructions. Members' past position was nevertheless protected for subsequent early retirement in these circumstances; that is, a notional additional period of pensionable service (based on continuous service to 31 March 2006) was added to each member record which would become payable in the event the member subsequently retired with the Employer's consent on or after age 60.
14. As at 31 March 2006, Mr E therefore acquired a notional entitlement to four years and three months of additional pensionable service. However, this was conditional on his retiring in the correct circumstances; that is, with the Company's consent at or after the age of 60. In fact, Mr E was made redundant at the age of 55 and was not, therefore, entitled to receive his added years. That would have been the case even if accrual of added years had continued beyond March 2006.
15. Mr E received counselling from his employer's HR department at the time of his redundancy and the Scheme was thereafter instructed on how to put his benefits into payment. The Scheme has no record of Mr Tate subsequently having requested any information in relation to his retirement benefits.
16. The Trustee appreciates that it could be a source of frustration to Mr E that other members, who did not take retirement benefits when he did, have been able to benefit from, in particular, better transfer terms. However, the Trustee has acted entirely properly at all times in putting Mr E's benefits into payment when requested.

Adjudicator's Opinion

17. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below.
18. Mr E's complaint is concerned with the level of information he believes he should have been provided with when deciding to take his retirement benefits at the end part

of 2015. To some extent the information that Mr E believes he should have been provided with has been formulated with hindsight.

19. Mr E believes the Trustee should have informed him of the future changes to the early retirement and transfer value factors in April 2017. These would have been more favourable to him, if they had been available when his pension commenced in January 2016. But, as the Trustee has pointed out, the improvements to the early retirement and transfer terms were not even being considered at the end of 2015. In the Adjudicator's view the Trustee cannot be held accountable for something that was not foreseeable at the time of Mr E's retirement.
20. The Trustee has provided an explanation of how the '1 for 7' service operated and how this applied to Mr E's position. The Adjudicator was of the view that the Trustee had applied the rules for this particular benefit correctly.
21. The Trustee's role is to administer the Scheme in accordance with the rules and underlying terms (early retirement and transfer value factors) in force at the time of a member's retirement. The Trustee is not authorised to give advice or to make speculative guesses as to what may happen in the future.
22. It was for Mr E to decide whether to take his retirement benefits in January 2016. Mr E made his decision to retire and draw his benefits in January 2016 based on the Scheme's terms at the time. The subsequent changes to the early retirement and transfer terms in April 2017 does not necessarily make that a bad decision and Mr E will have to abide by that decision. It cannot now be changed.
23. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion.
24. Mr E says he notes the points made by the Adjudicator and is obviously disappointed with the decision. The main point of his complaint is the total lack of information and also contradictory information which he was not given but the Adjudicator has now received. This is particularly true in respect of the 1 for 7 rule.
25. He had always intended to retire just after his 60th birthday using the 1 for 7 rule to give him a full unreduced pension. When he was approached in December 2015 to see if he was willing to take voluntary redundancy he initially stated that it was a 'little too early' for him, as he wanted to leave at age 60 on the equivalent of a full pension including his 4 years 3 months added years. He was told that if he did not go on 31 December 2015 he would have to wait until age 65 to receive a full pension. He was told that the 1 for 7 rule would only apply while he was contributing to the Scheme. The Scheme was closing and therefore he would not be contributing to it and his 4 years 3 months would be lost.
26. According to the response that the Adjudicator received from the Scheme, this appears not to be the case - the 4 years 3 months was not accrued because he took

his pension at age 55. This misinformation was a massive factor in his decision making process.

27. He was also told that, if he did not take voluntary redundancy and continued in his role and then wished to retire at age 60 (as had always been his plan), he would have to take a reduction on his pension benefits and would not be entitled to the added years under the 1 for 7 rule.
28. He tried to get information from both the HR department and from the Scheme. Nobody could give him definitive answers as to what was happening with the Scheme itself, whether it was going into the Pension Protection Fund and whether there would be enough money to pay what had always been promised.
29. There were a lot of rumours going around at the time that the Scheme was going to collapse, and no one could give him any factual answers to his questions. The fact that the Scheme has no record of his calls does not surprise him, maladministration has been a factor of the administrators all through this complaint process; from not replying on time to his initial complaint to misfiling it.
30. He never intended to take the full Pension Commencement lump sum on retirement as he is fortunate to not have any debt or mortgage and his requirement was for a higher monthly income rather than a one off tax free lump sum. While he appreciates that this was his choice and that the scheme acted on his instructions, in making his decision he was relying on trying to get more information about the financial security of the pension fund which nobody could give him.
31. The Adjudicator does not appear to have addressed the fact that his pre 1995 pensionable service is not entitled to annual pension increases. This was part of his original complaint.
32. This again goes against the original promises made to employees about what the pension would deliver and is another example of the rules altering, what was promised originally is altered at a later date to the detriment of longer serving members.
33. He feels that he has missed out on approximately £1,700 a year of pension based on the loss of the 4 years 3 months of additional pensionable service and the extra years of service he would have completed; he would like recompense for this.

Ombudsman's decision

34. Mr E has raised a number of issues regarding the decision he took to accept an early retirement/redundancy package in December 2015. I can understand that Mr E may now feel, with hindsight, that he took the wrong decision at the time. But that is not enough for me to say that the process followed by the Scheme was wrong. As the Trustee has explained Mr E received counselling from his employer's HR department to help him make a decision whether to accept the redundancy/ early retirement package on offer and Mr E decided to accept that package.

35. The terms of the 1 for 7 policy changed in 2006 following a package of benefit revisions agreed between the Company and the Trade Unions at that time. Mr E's additional notional entitlement of 4 years and 3 months of additional pensionable service was conditional on his retiring, with the Company's consent, at or after the age of 60. As Mr E accepted the early retirement/redundancy package at age 55 this notional additional service was no longer available to him. I find, on the balance of probabilities, that this would have been explained to Mr E as part of the counselling he would have received from the HR department when making his decision to accept the early retirement terms in December 2015.
36. Mr E said that the Adjudicator had not addressed the point that his pre 1995 pensionable service is not entitled to annual pension increases. I have checked the content of Mr E's original complaint. Mr E mentioned the terms of the Time to Choose exercise; that is, either to stay in the Old Scheme and transfer to the PPF, or transfer to the New Scheme and accept that he will not get any pension increases on about 25 years of his 40 years of pensionable service. Although, Mr E mentioned the terms of the Time to Choose exercise, he has not specifically raised this as one of the issues he is complaining about.
37. I have previously found in Determination PO-16970, that there was not any maladministration on the part of the Trustee when it communicated with members in respect of the Time to Choose exercise. The communications were reasonable and sufficient to allow members to make informed choices on which option to choose. Mr E has chosen to transfer to the New Scheme and accepted the terms outlined in the Time to Choose pack. I do not find that this matter needs to be readdressed here.
38. I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
14 December 2020