

Ombudsman's Determination

Applicant	Mr E
Scheme	BAE Systems Pension Scheme (the Scheme)
Respondents	BAE Systems plc (BAE), BAE Systems Pension Fund Trustees Limited (the Trustee)

Outcome

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

Complaint summary

3. Mr E's complaint against BAE and the Trustee is that when the Scheme was divided into two sections in 2016 he was allocated to the Airbus Section instead of the BAE Section. He considers that this compromises the long-term security of his retirement pension and the contingent widow's pension under the Scheme.

Background information, including submissions from the parties

4. Mr E worked for BAE (and its predecessor companies) from 1952 to 1996. He became a pensioner member of the Scheme on his retirement in May 1996, having worked since 1985 at Filton near Bristol, which later became part of Airbus.
5. Airbus formed part of BAE until 2000. From 2000 to 2007 Airbus was a company partly owned by BAE. In 2007, Airbus became a completely separate company, operating independently, but its employees still participated in the Scheme.
6. On 11 February 2016 BAE, the Trustee and Airbus issued a joint letter to all members of the Scheme, with a Question & Answer document (**Q&A**), regarding the proposed restructuring of the Scheme with effect from 1 April 2016. These explained that two sections would be established within the Scheme, namely the BAE Systems Section and the Airbus Section; the existing assets and liabilities of the Scheme would be divided between the two sections: all members would be allocated to one or other of those two Sections, in accordance with a methodology agreed between BAE, the

Trustee and Airbus after the Trustees had taken “extensive advice from their advisers”.

7. The Q&A said: “your benefits will not change in any way when sectionalisation takes place” and explained that the Airbus Section would comprise the following categories:
 - “(a) current Airbus Operations Ltd employees;
 - (b) pensioners and deferred members who were employed by Airbus after it was incorporated in 2000 (and did not subsequently work for another Scheme employer);
 - (c) a number of pensioners who retired after working in the Airbus business before 2000; and
 - (d) surviving spouses and dependants of members who would have been in (a) (b) or (c) if they were still living.”
8. The Q&A document also said that “the Trustee has taken independent advice to ensure that the security of the Scheme is not affected by sectionalisation and will continue to be supported by strong funding commitments from BAE Systems or Airbus...the Trustee’s actuarial and legal advisors met the Pensions Regulator along with corporate representatives. The Pensions Regulator expressed no issues or concern with sectionalisation.”
9. The covering letter said that Mr E would be allocated to the Airbus Section.
10. The Trustee approved the proposed sectionalisation in a meeting held on 2 March 2016.
11. On 3 March 2016 Mr E complained about the sectionalisation, saying that he had never been employed by Airbus. He was concerned that Airbus, which had French and German investors, was a financially weaker company than BAE.
12. In its reply dated 17 March 2016, BAE said that Mr E had been identified as a pensioner who last worked at a site that became part of Airbus; his allocation to the Airbus Section was logical because if a pension scheme demerger had taken place when Airbus was incorporated, Airbus would have been expected to take on the past service liabilities of members who worked in the BAE Systems businesses that became Airbus; under Regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991, the transfer to the Airbus Section did not require members’ consents because the Scheme actuary had certified that member benefits would be unchanged by the sectionalisation.
13. In a letter dated 7 April 2016, Mr E said that there were too many unquantified monetary risks with a move to Airbus, and asked for his pension liability to be retained by BAE.

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14. In its reply dated 22 April 2016, BAE confirmed to Mr E that Airbus was a UK company and the Trustees' administrator would continue to pay benefits in Sterling; there were no changes to Scheme terms and conditions.
15. As Mr E was still unhappy he complained under the Scheme's internal dispute resolution procedure (**IDRP**).
16. At stage 1 of the IDRP, two members of the Trustee's Discretionary Committee rejected Mr E's complaint. In a letter dated 4 October 2016, the BAE Pensions Director said that the Trustee had received advice from its professional advisers that its methodology was logical and appropriate to use; Mr E had retired after working in the Airbus business before 2000, and Mr E had been correctly identified as a person who should be allocated to the Airbus Section; the parent company Airbus Group SE, had provided a full guarantee for the liabilities of Airbus Operations Ltd which sponsored the Airbus Section.
17. In a letter dated 6 June 2017, BAE's Pensions Director informed Mr E that the full board of the Trustee's discretionary committee had dismissed Mr E's appeal under stage 2 of the IDRP, saying that the Trustees concluded that Mr E's pension benefits would be no less secure post-sectionalisation, as they were unchanged.
18. Mr E then contacted us, complaining that he should have been allocated to the BAE Systems Section, and that he had been financially disadvantaged by his allocation to the Airbus Section.

Adjudicator's Opinion

19. Mr E's complaint was considered by one of our Adjudicators, who concluded that no further action was required by BAE and the Trustee. The Adjudicator's findings are summarised briefly below:-
 - The sectionalisation of the Scheme was a valid amendment, as it was implemented by BAE and the Trustee pursuant to the Scheme's powers of amendment. Before agreeing to the proposed amendment the Trustee took professional advice, as was appropriate. Mr E was then allocated to the Airbus Section, following the principles set out in the letter dated 11 February 2016.
 - The sectionalisation had not caused any change in Mr E's pension benefits or contingent death benefits for his widow, and therefore he had not suffered a financial loss as a consequence of the sectionalisation. For those reasons the Adjudicator concluded that I would not uphold the complaint, if it were to be referred to me for determination.
 - Mr E was concerned mainly about the future security of the benefits for and in respect of him under the Scheme, due to the Airbus Section having a different sponsoring company, but that concern was not one on which I could uphold a complaint because Mr E was worried about an eventuality that had not yet occurred, and indeed might never occur, so at present he had not incurred any financial loss.

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- In a determination issued in 2017 [PO-18131] the Deputy Pensions Ombudsman considered a complaint about the sectionalisation of the National Grid UK Pension Scheme, and did not uphold it. There were sufficient similarities between that case and Mr E's complaint, and there were no grounds for me to reach a different conclusion in Mr E's case.
 - If the Airbus Section ever needed to be transferred to the Pension Protection Fund (PPF) in future because the Airbus group could not meet its financial liabilities under the Scheme, Mr E's pension would, under the current law, be fully protected because he had already reached the Scheme's normal retirement date.
 - It was therefore the Adjudicator's opinion that this complaint should not be upheld.
20. 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 and I will therefore only respond to the key points made by Mr E for completeness.
21. Mr E said that the Opinion did not comment sufficiently on the long-term evaluation of pensions under the Scheme, and that the PPF had several unacceptable features, especially restrictions on annual pension increases.

Ombudsman's decision

22. Mr E is worried about the long-term security of his benefits under the Scheme now that he has been allocated to the Airbus Section. However, my statutory role is restricted to considering whether there has been any actual financial loss caused to him by the acts or omissions of the respondents amounting to maladministration. Following the sectionalisation of the Scheme, which is not prohibited by legislation, Mr E has suffered no reduction in the retirement pension being paid to him under the Scheme, so therefore he has suffered no financial loss. I can see no evidence of a breach of law or maladministration arising out of the sectionalisation.
23. I cannot uphold Mr E's complaint on the basis that something might go wrong in future that would not have gone wrong had he been allocated to the BAE Section instead of the Airbus Section. That is hypothetical.
24. I accept Mr E's comment that the PPF imposes restrictions on annual pension increases. However, the Scheme has not been transferred to the PPF and it is not currently in a PPF assessment period, as it is still being funded by BAE and Airbus, so Mr E's concern relates to something that has not yet happened, and may never happen.

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25. Therefore, I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
31 July 2018