

Ombudsman's Determination

Applicant	Mr Y
Scheme	The BAA Pension Scheme (the Scheme)
Respondents	The Trustee of BAA Pension Scheme (the Trustee)

Outcome

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

Complaint summary

3. Mr Y complains he has received conflicting information from the Trustee as to whether his transferred-in service would be included in calculating whether he qualifies for unreduced, early retirement from the Scheme.

Background information, including submissions from the parties

4. On 2 April 1979, Mr Y joined the Scheme.
5. On 6 November 1980, Mr Y completed a transfer in to the Scheme. It equated to an additional 1 year and 87 days of pensionable service.
6. On 12 December 2013, Equiniti, the Scheme's administrator, wrote to Mr Y stating he would reach 36 years' pensionable service in the Scheme and cease paying contributions on 4 January 2014. Mr Y's accrual was capped at 36 years' service under the Scheme Rules.
7. On 1 April 2014, in response to a query from Mr Y, Equiniti wrote to him stating if he attained 40 years' service he could retire without reduction before the Scheme's Normal Retirement Date (**the 40 Year Rule**). Equiniti said Mr Y's transfer-in would count towards meeting this requirement.
8. In 2016, Mr Y's Annual Benefit Statement (**ABS**), stated he would be entitled to a pension of £31,052.47 per year, projected to his Normal Retirement Date (**NRD**), on 20 March 2021. This incorrectly over-stated Mr Y's service beyond the 36-year accrual cap.

9. In June 2017, Mr Y was offered Voluntary Severance (**VS**) from Heathrow Airport Limited (**HAL**), his employer, with a view to being made redundant in February 2018.
10. On 29 June 2017, Equiniti sent Mr Y a retirement quote (**the 2017 Quote**), calculated as at 30 January 2018. It stated he was entitled to a pension of £27,902.71 per year. The quote was calculated using the correct accrual cap of 36 years and stated Mr Y would reach 40 years' service in January 2018.
11. On 11 October 2017, following an exchange of correspondence with Equiniti, a representative of HAL emailed Mr Y stating that only his service with HAL would count towards meeting the 40 Year Rule. The representative said Mr Y's transferred-in service would not be included in the calculation.
12. In November 2017, Mr Y says he declined HAL's VS offer because Equiniti had not clarified if he was eligible to retire under the 40 Year Rule in January 2018.
13. On 6 March 2018, Mr Y made a complaint via the Scheme's Internal Dispute Resolution Procedure (**IDRP**). Mr Y said the information he received from HAL was contrary to that provided by Equiniti and queried which was correct. He also queried why the 2017 Quote was £2,500 a year lower than the previous year's ABS.
14. On 12 July 2018, the Trustee provided its IDRP Stage 1 response. The Trustee said Mr Y's entitlement could only be calculated in accordance with the Trust Deed and Rules. It also said Rule 6.6 stated that a member must 'complete' 40 years' service working for HAL to retire under the 40 Year Rule. The Trustee argued this was defined and calculated differently to pensionable service. It stated Mr Y was not eligible to retire under the 40 Year Rule until April 2019. The Trustee noted Mr Y's 2014 and 2016 ABS' were overstated. It offered Mr Y an award of £800 in acknowledgement of the distress and inconvenience the delays and misinformation had caused him.
15. On 12 August 2018, Mr Y asked for his complaint to be considered under Stage 2 of the IDRP. Mr Y accepted that his Scheme entitlement would be calculated based on the 36-year service limit. However, Mr Y disputed the Trustee's interpretation of Rule 6.6. He argued his transferred in service should be included in meeting the 40 Year Rule. Mr Y also said the distinction drawn by the Trustee was not explained in the Rules.
16. On 2 January 2019, the Trustee provided its Stage 2 IDRP response. The Trustee stated it had taken legal advice on interpreting the Trust Deed and Rules and did not uphold Mr Y's complaint. The Trustee agreed that the definitions the Secretary had referred to in its Stage 1 response were not explicitly laid out in the Rules. It said the Secretary "had used these 'ad hoc' definitions" to make its response more "accessible" to Mr Y. The Trustee maintained pensionable service had 2 purposes under the Rules and this level of detail would not typically be set out in a formal document like the Trust Deed and Rules. It stated Rule 6.6 was drafted to reflect the

40 Year Rule's intention to reward long service with an Employer and not benefit members transferring large amounts of service into the Scheme.

17. The Trustee argued Mr Y could not reasonably expect his transferred-in service to count towards the 40 Year Rule because the rule did not exist at the time he transferred. The Trustee also said it had not provided Mr Y with information that would lead him to that expectation in 1980. In consideration of the misinformation provided to Mr Y by Equiniti subsequently, the Trustee offered Mr Y a higher award of £1,500 in full settlement of his complaint.

Adjudicator's Opinion

18. Mr Y' 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:-

- The Trust Deed and Rules defined pensionable service as; "the period of service (not exceeding 36 years at Normal Retirement Date) which is credited to the Member under these Rules for the purpose of calculating his benefits". The Adjudicator did not agree that Mr Y's transfer in should count towards satisfying the 40 Year Rule. The exact wording of Rule 6.6 states that:

"Any Member who has attained Minimum Pension Age and who leaves Pensionable Service otherwise than at Normal Retirement Date, because of ill-health or at the request of the Employer under Rule 6.5 may retire. On retirement he shall receive a pension in accordance with Rule 6.2 (Retirement at Normal Retirement Date), but his pension will be reduced to take account of his age at retirement...but no such reduction shall be made to the pension of a Member who has completed 40 years' Pensionable Service".

- The Adjudicator said Rule 6.6 made a clear distinction from the other definition of pensionable service used in the Rules. It contains the additional qualifying criteria that pensionable service must be 'completed'.
- Mr Y was misinformed about his eligibility to meet the criteria of the 40 Year Rule by Equiniti in April 2014. However, the provision of that incorrect information does not entitle Mr Y to receive a higher, incorrect entitlement. His pension entitlement must still be calculated in accordance with the Trust Deed and Rules.
- Mr Y suffered a loss of expectation about his eligibility to retire without reduction that started with Equiniti's letter in December 2013. The Adjudicator said he had seen no evidence that the Trustee misinformed Mr Y of his entitlement prior to that date.

- The Trustee agreed the responses Mr Y received from Equiniti were 'not satisfactory' in the IDRPs correspondence. Equiniti incorrectly stated Mr Y's transfer would qualify for the 40 Year Rule and overstated his entitlement in the ABS.
 - The Trustee offered Mr Y an award of £1,500 in acknowledgement of the serious distress and inconvenience it had caused him and this was an adequate award, based on the facts.
19. 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

20. In his comments, Mr Y disputes the Trustee's interpretation of Rule 6.6 and its definitions of service and pensionable service. Mr Y maintains that because his transfer counts towards calculating his Scheme entitlement, it should also count towards his eligibility to retire under the 40 Year Rule. However, I do not agree that Mr Y's interpretation of the Rules is correct. As noted by the Adjudicator, Rule 6.6 states that pensionable service needs to be 'completed' for Mr Y to be eligible to retire under the 40 Year Rule. This is an additional stipulation, on top of the existing Scheme definition of pensionable service (which includes 'credited' transferred in accruals). I find that Mr Y would need to remain in HAL's employment (whilst remaining a Scheme member) for 40 years in order to retire unreduced before NRD.
21. The 40 Year Rule was only incorporated into the Rules after Mr Y transferred to the Scheme. Consequently, Mr Y could not have expected his transfer to count towards meeting the 40 Year Rule in 1980 and did not complete the transfer in reliance on that understanding. The Trustee acknowledged that Mr Y was subsequently misinformed of his eligibility to retire by Equiniti in April 2014 and that he also received an over-stated ABS.
22. The Trustee has offered Mr Y £1,500 in acknowledgement of the serious distress and inconvenience he has experienced. I agree with the Adjudicator's view that this award is appropriate, based on the facts. If Mr Y would like to accept the Trustee's offer he should contact the Trustee directly.
23. I do not uphold Mr Y' complaint.

Karen Johnston

Deputy Pensions Ombudsman
18 September 2019