

Ombudsman's Determination

Applicant	Mr S
Scheme	Ultra Electronics Pension Scheme (the Scheme)
Respondents	Ultra Electronics Pension Trustee Company Limited (the Trustee) Ultra Electronics Limited (the Employer)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by the Trustee or the Employer.

Complaint summary

2. Mr S' complaint is that he was not informed of the impact of compulsory redundancy on his pension. He argues that he would have appealed against redundancy, if he had known that he would lose the option of claiming an unreduced pension at age 60. Mr S disagrees with the Trustee's decision to deny him an unreduced pension before age 65.

Background information, including submissions from the parties

3. Mr S says that he should be allowed to claim an unreduced pension at age 60 in accordance with the 1998 Scheme Booklet (**the Scheme Booklet**) which he says indicates that members who retire from employment may do so. Mr S argues that, although the Scheme Booklet stipulates that employees who leave mid-career will incur a reduction for early retirement before age 65, this provision should not apply to him, because he was made compulsorily redundant and did not leave voluntarily.
4. The Scheme Booklet includes the following points on early retirement:

"Your early retirement pension will be calculated as 1/60th of your final pensionable earnings for each year of pensionable service to your early retirement date, reduced by a factor to reflect early payment. The reduction factor is currently 4% a year and will be applied as follows.

Where retirement from the company takes place at age 60 or above, no reduction will be applied.

Where retirement from the company takes place below age 60 (with company consent between ages 50 and 58) the reduction factor will apply for the period between your early retirement date and age 60.

Where retirement from the company takes place between age 50 and 58 without the consent of the company the reduction factor will apply for the period between your early retirement date and age 65.

Where retirement is not from company service (when you leave the Employer mid-career and apply to draw your pension before age 65) the reduction factor will apply for the period between your early retirement date and age 65.”

5. The Scheme is governed by Ultra Electronics Pension Scheme Third Definitive Trust Deed and Rules, 4 February 2010 (**the Scheme Rules**), and it states in summary:

“Schedule 1: Interpretation

Minimum Pension Age means:

Prior to 6 April 2010, age 50

On or after 6 April 2010:

- (i) In the case of any member who retains a right to start receiving his pension at age 50 in accordance with paragraph 22 of Schedule 36 to the Finance Act 2004 following a block transfer into the Scheme, age 50; or
- (ii) In the case of any other member, age 55.”

“3.4 Early retirement of active members who remain in Service

3.4.1 Where a member has reached minimum pension age but has not reached normal retirement date, he may, with the consent of the Principal Employer, request payment of his accrued rights under the Scheme even where he remains in Service. The pension payable will be an amount determined by the Trustees in accordance with Rule 3.3 (Early retirement of Active Members who leave Service other than for ill-health). On or after 6 April 2010, the provisions of this Rule can only apply after a Member reaches age 55.”

“4.4 Early payment of Deferred Benefits

A member entitled to deferred benefits who has reached minimum pension age may, if the Trustees and Principal Employer agree, receive early payment of his deferred benefits...Where a member takes early payment of his benefits under this rule, his deferred benefits shall be reduced to reflect early payment

to such extent as the Trustee and Principal Employer consider appropriate...Any such reduction need not be the same as applies to active members..."

6. The Scheme Rules Deed of Amendment dated 31 March 2016 (**The Deed of Amendment**), included changes in summary that:

"3.3A Early retirement of employed deferred members who leave Service other than for ill-health

3.3A.1 This Rule 3.3A shall apply to any employed deferred Member who either:

(i) reaches minimum pension age and leaves service prior to normal retirement date other than on the grounds of ill-health and receives an immediate pension from the Scheme in the five-year period from 6 April 2016 to 5 April 2021; or

(ii) reaches the age of 58 on or before 5 April 2021 and who leaves Service at any time after 5 April 2021 but before reaching their Normal Retirement Date other than on the grounds of ill-health and receives an immediate pension from the Scheme.

3.3A.2 With effect from 6 April 2021, the early retirement of any employed deferred member who leaves Service other than for ill-health but who has not satisfied either limb (i) or limb (ii) in Rule 3.3A.7 shall be governed by Rule 4.4 (Early payment of Deferred Benefits)."

7. On 19 August 2014, Mr S attended a consultation meeting with the Employer to discuss issues related to proposed redundancies. At this meeting, he queried if early retirement was a possibility and the Employer said it was not an option for him. Mr S was below the minimum pension age of 55 at the time.
8. In September 2014, the Employer wrote to Mr S confirming that, following a consultation process, he had been selected for redundancy. Mr S was told that Xafinity Consulting (**Xafinity**), the Scheme's administrator, would contact him to provide detailed pension options. Alternatively, Mr S could raise immediate enquiries with Xafinity.
9. On 24 September 2014, Mr S was made compulsorily redundant. He was aged 54 and unable to claim early retirement benefits, due to being below the minimum retirement age of 55.
10. On 17 September 2015, a Trustee meeting was held at which closure of the Scheme and amendments to the early retirement provisions were discussed.
11. On 5 April 2016, the Scheme closed, and all members were deemed to have left service for pension purposes, whether they remained employed or not.

12. In March 2018, Mr S emailed Xafinity to query whether his pension would be subject to a 4% reduction if he took his benefits at age 60.
13. Xafinity replied that, until the Scheme closed on 5 April 2016, active members could have requested an unreduced pension at age 60. After April 2016, these terms only apply to members who remain employed, with deferred benefits, until 5 April 2021, when the entitlement will end. Mr S, who had left through compulsory redundancy before the Scheme closed, could not claim an unreduced pension until age 65.

Mr S' Position

14. Mr S says:

- The Employer did not act in good faith by disadvantaging compulsorily redundant employees in comparison to those remaining employed after the Scheme closed.
- The Employer knew that making him compulsorily redundant would make him ineligible to claim an unreduced pension before age 65.
- The Employer knew that Mr S' redundancy would reduce its commitment to make company contributions to his pension fund and subsequently pay retirement benefits.
- He did not appeal his compulsory redundancy due to receiving thirteen weeks' pay in lieu of notice plus 26.5 weeks of full pay as a severance package. However, he had not previously been informed that his pension would reduce by approximately 50% more than the severance package.
- Due to his compulsory redundancy, the 4% early retirement reduction will apply up to age 65. The Scheme Booklet says that when a member leaves service mid-career and applies to draw their pension before age 65, the 4% reduction will apply for the period between the early retirement date and age 65. However, he did not voluntarily leave service mid-career, it had been through compulsory redundancy.
- He was not informed of the impact of compulsory redundancy on his pension during his pre-redundancy consultation meetings nor via the Scheme Booklet.
- He had worked for the Employer for 36 years but was made compulsorily redundant just before the Scheme's minimum retirement age of 55, yet his pension status was not discussed during the redundancy period.
- He received guidance from The Pensions Advisory Service that "The factor of 4% per annum reduced before age 60 is the sort of enhancement that many schemes make for current employees. Although it is becoming less common it is a concession that usually benefits longer serving employees." According to Mr S, he was a longer serving employee.

- At the time of the Scheme's closure, the Employer said that Company consent for retirement between ages 55 and 58 (without the 4% reduction) would only be granted in exceptional circumstances, such as non-voluntary redundancy.

15. The Employer responded by saying in summary that:-

- Mr S was made compulsorily redundant on 24 September 2014, when he was ineligible to take immediate retirement benefits.
- Mr S had individual consultation meetings on 19 August and 3 September 2014. These meetings followed a standard format regarding employment, but pensions would have been discussed, if raised by the employee.
- At the consultation meeting on 19 August 2014, Mr S asked if he could take early retirement. He was informed that this was not an option, as he was below the minimum retirement age at the time.
- Mr S was provided with a guide to the Employer's benefits and redundancy, which included a contact number for enquiries on the Scheme.
- During the consultation process, Mr S raised a number of questions to the Employer's HR Director, which prompted replies. None of these questions were about pensions.
- The Employer's redundancy confirmation letter to Mr S of 18 September 2014, invited him to contact Xafinity with any immediate enquiries. Xafinity has no record of Mr S making contact after this letter and the statement of deferred benefits, which had been issued to him.
- Mr S has not provided any evidence to support his claim that at the time he was made compulsorily redundant, the Employer had already made plans regarding the future of the Scheme which may reduce his benefits. The Employer also denies that this is the case.
- Mr S has been treated in the same way as the other employees who were made redundant in 2014.
- Only members still employed after the Scheme closed in April 2016 could benefit from retiring at age 60 with an unreduced pension. If any of these employees leave without taking their pension, they will be treated in the same way as Mr S regarding the early retirement factor being applied.

16. The Trustee responded to Mr S' complaint by saying that:-

- The Trustee has a duty to ensure that the Scheme is run correctly and fairly in accordance with the Scheme Rules.
- The benefits and terms offered to Mr S are in line with the provisions of the Scheme Rules.

- The Trustee considers that Mr S' complaint is against the terms of his redundancy and that he does not have a valid complaint against the Trustee.

17. In summary, Mr S has further complained that:-

- When he was made compulsorily redundant in September 2014, he was not informed that he would lose the option of retiring at age 60, without a 4% reduction being applied to his pension.
- Had he known about the 4% pension reduction for early retirement after leaving, he would have appealed against the compulsory redundancy.
- Both the Employer and the Trustee confirmed to him in writing that the early retirement benefits outlined in the Scheme Booklet were available to all active members, until the Scheme closed in April 2016 and remain available to employed deferred members until April 2021.
- Neither the Scheme Booklet nor the Scheme Rules address the issue of redundancy.
- The subject of early retirement appeared in the Scheme Booklet but was removed from subsequent issues, which Mr S says is despite the fact that those provisions continue unchanged.

18. In response to Mr S complaint, the Employer said that at the time of Mr S' redundancy in 2014, it had no plans to close the Scheme and amend the early retirement provisions. According to the Employer it was during a meeting on 17 September 2015, that an agreement in principle was reached with the Trustee that these changes would be made, but they did not come into effect until 31 March 2016.

Adjudicator's Opinion

19. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or the Employer. The Adjudicator's findings are summarised below:-

- The Employer informed Mr S that he was ineligible for early retirement during his consultation meeting on 19 August 2014. This shows that retirement was considered at the time and ruled out as an option for immediate benefits.
- Mr S has not provided any evidence that at the time of his consultancy meetings and redundancy in 2014, the Employer already knew about the subsequent changes which affect how redundant members' pensions are calculated. These changes were implemented in March 2016. And the Scheme Booklet may not address every possible scenario affecting members. Further, the terms of the redundancy were an employment issue that fell outside the scope of the Scheme Rules and the Scheme Booklet.

- The Scheme Rules override the Scheme Booklet or any supplementary correspondence. Neither the Scheme Rules nor the Scheme Booklet stipulate that compulsory redundancy is not considered to be leaving service. So, Mr S was deemed to be a deferred member after his redundancy. Consequently, the Trustee and the Employer have acted correctly in deciding that Mr S may not claim an unreduced pension before age 65 under the Scheme Rules, which stipulate that the application of early retirement factors for deferred members differs to those of active members.
- Mr S was made compulsorily redundant and became a deferred member prior to the date of the Scheme closure. And at the date of his redundancy, Mr S was 54 years old. So, the statement made by the Employer that redundancy may be treated as exceptional circumstances, allowing immediate retirement with an unreduced pension, would not have applied to Mr S.

20. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S 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 points made by Mr S for completeness.

Summary of Mr S' position

21. The Employer failed to disclose the impact of redundancy on his pension. He was reassured that there was no need to contact Xafinity regarding changes to his pension because an extract in a guide to the Employer's benefits and redundancy stated that members may consider their pension to be held safe and secure until they get further information on their options, and financial advice.
22. Xafinity contacted him after his opportunity to appeal his redundancy had passed, and even then, he was not provided with clarification on early retirement benefits.
23. The 2008 Scheme Booklet states that a member's early retirement pension will be calculated as $1/60^{\text{th}}$ of their final pensionable earnings for each year and that the reduction depends on the period between their actual retirement and their normal retirement date. This information is false, because it only applies to members who leave the company before retiring and not those who remain in employment. The relevant information was also made clear in the 1998 Scheme Booklet and remained in place throughout the existence of the Scheme. The Employer has failed to explain why the detailed description of early retirement benefits that appeared in the first edition of the pension booklet in 1998 was omitted from all subsequent versions.
24. Pensions should have been discussed in his consultation meeting when he asked about early retirement. He was not informed that early retirement was not an option, as he was below the minimum retirement age at that time.
25. The Employer provided him with a guide to the Employer's benefits and redundancy during the consultation period, which included a contact number for enquiries on the Scheme. But this did not excuse the Employer from acting in good faith by providing the information that they must have known about the subsequent changes in the retirement benefits for redundant members, which he needed in order to make an

informed decision about appealing against redundancy.

26. The 4% reduction for early retirement, that is applicable to members who have left employment, is not set out in the Scheme Rules. The fact that neither the Scheme Rules nor the Scheme Booklet stipulate that compulsory redundancy is not considered to be leaving service is meaningless, because redundancy and leaving do not have the same meaning.
27. There were no Scheme changes in March 2016, concerning the retirement provisions specifically for his circumstances, having been made redundant. No such changes were specified anywhere in writing and he was not advised of them at the time of his redundancy.
28. If compulsory redundancy was considered an exceptional circumstance in April 2016 when the Scheme closed, under which he could retire early with no reduction from age 60, it would also have been so at the time of his redundancy. And since the Employer knew that it was denying him the opportunity to take early retirement at the time of his redundancy, it should have informed him of the impact of compulsory redundancy. There is documentary evidence in writing of the Employer's statement regarding early retirement with no reduction after redundancy.

Ombudsman's decision

29. Mr S says that he was reassured that there was no need to contact Xafinity regarding changes to his pension, by an extract in a guide to the Employer's benefits and redundancy. In my view, that extract was not a guarantee from the Employer that there would not be any subsequent changes to the retirement benefits for members regarding compulsory redundancy. It was meant to reassure Mr S that he retained benefits under the Scheme, and that he had time to assess his options or seek financial advice.
30. Mr S says that Xafinity contacted him to provide information about his pension, after his opportunity to appeal against his redundancy had passed. But Mr S accepts that the Employer had no plans at the time of his redundancy to amend the terms under which members would receive an unreduced pension. Consequently, I find that it was reasonable for Xafinity not to provide clarification on this subject, before the time allowed for Mr S to appeal against compulsory redundancy had expired.
31. Mr S says early retirement should have been discussed during his consultation meetings in 2014; instead the Employer told him and noted that there was no such thing. But as Mr S was below the Scheme's minimum pension age of 55 at the time of his consultation meeting, Mr S would not have been entitled to early retirement then. Mr S did not reach the minimum pension age until 2 June 2015. The brief notes made by the Employer, during Mr S' consultation meeting on 19 August 2014, are not a full transcript of that conversation, so, it is possible that the Employer gave some context to the question from Mr S. The Employer's note that there was "no such thing" is open to interpretation and could simply have meant that early retirement was not applicable in Mr S' circumstances. Mr S was not entitled to early retirement at the time of the

consultation meeting in August 2014, and I have not seen any evidence that the Employer misinformed Mr S.

32. Mr S says that the Scheme Booklet and the 2008 Scheme Booklet falsely state that, for early retirement, a reduction applies that depends on the period between a member's actual retirement and their normal retirement date. I do not agree. Mr S accepts that this was the case for members who left before retirement. I appreciate that the situation was different for members who retired from active service. In any event, a scheme booklet is only a summary of some of the rules governing a scheme and will not include complete details. Also, it should be noted that the details have been changed by the Scheme Rules and the Deed of Amendment. Consequently, only members still employed, after the Scheme closed in April 2016, could benefit from retiring at age 60 with an unreduced pension. Or benefit from an unreduced pension from age 55 with the Employer's consent. I do not agree that the information provided in the Scheme Booklet, or the later version was false; it has merely been overridden by Scheme amendment.
33. Mr S says there were no Scheme changes implemented in March 2016, concerning the retirement provisions for members in his circumstances who had accepted compulsory redundancy in 2014. The Scheme Booklet and later versions of it were not intended to provide full details of the Scheme's provisions. There would also have been no requirement for them to all include the same level of information. And even though the Scheme Rules do not specifically address those members who have been made redundant, the Trustee and the Employer reasonably consider such members to have left employment. There is no overriding requirement for the Trustee or the Employer to categorise and treat members who had been made redundant, under Mr S' circumstances, separately to those who leave for other reasons.
34. I am not persuaded that the Trustee or the Employer failed to act in good faith by not providing information to Mr S about the impact of compulsory retirement on his pension, before he was made compulsorily redundant. The Scheme Rules were clear regarding Mr S' circumstances and he could have asked for clarification if he was unsure about it.
35. I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
14 February 2020