

Ombudsman's Determination

Applicant	Mr S
Scheme	Rolls-Royce and Bentley Pension Fund (RRBPF)
Respondents	Bentley Motors Ltd (the Company) Trustees of the Rolls-Royce & Bentley Pension Fund (the Trustees)

Outcome

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

Complaint summary

3. Mr S' complaint concerns the Company's and Trustees' failure to properly consider his circumstances when considering whether to grant consent to an early retirement pension.

Background information, including submissions from the parties

4. In 1986, Mr S became an employee of the Company and a member of the RRBPF.
5. Under the RRBPF, members are entitled to an early retirement pension, provided the Company consents. The relevant parts of the RRBPF rules (**the Rules**) are 3.4.1 and 4.2.1 (see Appendix).
6. In 2009, Mr S left the Company under what was termed the Company Release Scheme and became a deferred RRBPF member. He was 47 years old. Around the same time, he received quotations for a pension at age 55 and 57. He says his intention was to take benefits between these ages.
7. In November 2016, Mr S applied for early retirement. As part of his application, he completed a special circumstances questionnaire (**the Questionnaire**) in which he provided details of his circumstances for the Company to consider. He made the following points, in summary: -

- He worked for the Company for 22 years, his career was successful with “remarkable” annual reviews and he made significant contributions to various areas of the Company in a “stressful and demanding” environment.
 - In 2009, he took advantage of the Company Release Scheme. As a result, there was no need for the Company to decide how reductions in his department would be made.
 - It was his intention to take a break then work elsewhere but retire at 55. In discussions with the Company, he made clear he intended to retire at 55. Quotations were provided to him on this basis and he was “given the distinct impression” it would be possible.
 - Instead of returning to work, mental fatigue meant he decided to concentrate on looking after his family, which came with a large financial burden. He had three sons - aged 11, 13 and 20 - and an elderly parent with dementia; all required his support.
 - He hoped the Company would consider his request for early retirement, taking into account his personal circumstances and the “huge” contribution he had made for many years. The quotation he received would not be a huge burden on the Company but would transform his quality of life and allow him to support his family.
8. On 30 November 2016, the Company wrote back to Mr S. The main points were:-
- Company consent was required for payment of a deferred pension before normal retirement age (**NRA**), i.e. 65.
 - The main factors considered were: the funding position of the RRBPF and the extra cost associated with providing consent; it also considered members’ circumstances.
 - The most recent actuarial valuation showed a funding deficit of £241 million. The Company had agreed to increase its contributions by £27 million to address this.
 - Early payment of a deferred pension before NRA would result in a further funding cost to the RRBPF, and a further contribution obligation to the Company.
 - Having reviewed his questionnaire, it had decided it was unable to consent to early payment of his pension, but he could reapply in future if his circumstances changed.
9. On 16 January 2017, Mr S wrote to the Company again. He made the following points:-
- In the past, when the Company was doing well, it had taken “payment holidays”, i.e. it did not contribute to the RRBPF.
 - The most recent Trustee report stated that the Company agreed to make additional contributions to the RRBPF to fund “any early retirements that were granted”.
 - He knew of cases where early retirement had been granted, and said consent should be given on an “equal and equitable basis to deferred members.”

- In the past, enhancements were made to early retirement terms where pay rises were not possible, and he regarded them as part of his employment terms and conditions.
 - Since current board members were unaware of his contribution to the Company, he would be willing to have a meeting to outline and present his case.
 - He had also requested a cash equivalent transfer value (**CETV**), but saw transferring-out as a last resort.
10. In March 2017, Mr S spoke with a Company representative, Mr B, in relation to his application. They also discussed: the funding state of the RRBPF and a contribution increase in 2011/12; the introduction at the same time of the Questionnaire; and, the fact that, prior to that, applications were “routinely processed”.
11. On 5 May 2017, the Company responded to Mr S and said:-
- It had reviewed his further submissions but was standing by its original decision. While early payment of deferred pensions was a possibility, this had always been subject to Company consent, which could not be “unreasonably withheld”.
 - If consent were to be granted, Mr S’s deferred pension would be paid from age 55 without an actuarial reduction between age 57 and 65. That meant, if the Company gave consent, it would have to make a further contribution to the RRBPF of £352,000.
 - The main factor considered was the additional cost to the Company. However, due to the particular circumstances of members, it had decided it might be appropriate to give consent in some cases, so the Company provided the Questionnaire to give members the chance to outline their case.
 - After considering everything, it had decided it did not need a meeting with Mr S in order to make its decision.
 - It believed its decision was taken properly in this case, and its process for considering applications for early retirement had been complied with; it was unable to comment on other cases Mr S had mentioned, where consent was granted.
 - Granting consent to early retirement was not part of Mr S’ terms and conditions; under the Rules, it was clear that Company consent had always been required.
12. On 23 April 2018, Mr S wrote to the Trustees. He said, in summary:-
- He requested that his complaint be considered under the RRBPF’s Internal Dispute Resolution Procedure (**IDRP**).
 - His main concerns were: full consideration had not been given to his circumstances, or his contribution to the Company; and, his request had been unreasonably turned down.
 - Granting consent might place a financial burden on the Company. However, that was agreed in the past and routinely granted.

- The current board members had little knowledge of his contribution to the Company, hence his suggestion of a meeting to make his case; however, this was turned down.
- His Questionnaire mentioned the fact that he left the Company voluntarily, which meant staff reductions were avoided; there was no mention of this on his file.
- When he left the Company, he requested retirement quotations to ages 55 and 57; it had always been his intention to retire sometime between 55 and 57.
- Many of his colleagues were granted early retirement. Most were 57, but some were younger. In his view, the Board should represent all members equally. He welcomed “compromise” about when his benefits would be paid, but could not wait beyond 57.

13. On 4 June 2018, the Trustees responded to Mr S and said:-

- The IDRPF did not apply to disputes between RRBPF members and the Company; and, his complaint was about the Company’s failure to fully consider his circumstances and grant an early retirement pension.
- Its duty was to act in the interests of all members by following the Rules. Under the Rules the Trustees had no role in deciding whether an early pension could be paid.

14. Dissatisfied with the responses, Mr S referred his complaint to this Office.

Adjudicator’s Opinion

15. Mr S’s complaint was considered by one of our Adjudicators, who concluded that no further action was required by the Company or the Trustees. The Adjudicator’s findings are summarised below:-

- Under the Rules, early payment of a deferred pension required the consent of the Company; the Trustees had no role in this. So, there was no maladministration on the part of the Trustees and the complaint could not be upheld against them.
- In discretionary cases, the Pensions Ombudsman would consider if the discretionary power had been applied consistently with the rules and regulations; and, whether a correct process had been followed. This meant that the decision-maker was required to take into account only relevant factors and ignore any irrelevant ones. However, it was entitled to take into account its own interests (including financial interests).
- Mr S said that when he left the Company, he spoke with representatives about plans to retire at age 55/57 and was given the impression that this was possible. However, the Adjudicator said there was no sign that the Company made any clear verbal or written representations to the effect that Mr S could receive an early pension as of right, that is, without the need for consent.
- The Company had explained that, as at April 2007, the RRBPF had a deficit of £45 million. In April 2010, the deficit was £159 million. The last two triennial valuations

showed deficits of £241 and £319 million. In this context, the Company had stopped granting consent to early pensions without investigating members' circumstances.

- Further, the Company was entitled to take its own financial interests, and those of other members, into account, when deciding against giving consent to Mr S. The Company's consideration of the additional funding contribution it would have to make, was neither irrelevant nor irrational; it was reasonable in the circumstances.
- The evidence indicated that, before making its decision, the Company was able to consider Mr S's Questionnaire, in which he explained why consent should be given. So, the Company was able to consider: his career with it, including his departure and reasons, which was specifically referenced in the sheet attached to the Questionnaire; and his family situation, including care responsibilities. These were clearly mentioned in the attached sheet, and there was no sign that they had been lost or omitted.
- The Adjudicator considered that the Company had applied the Rules properly and that it had followed a correct process in reaching its decision. It was free to agree to Mr S's request for a meeting, but there was no administrative error in not acceding to this.
- Mr S also said that in the past, when pay rises were difficult to fund, enhancements were made to the terms of early retirement, therefore he regarded them as part of his terms and conditions. However, the Adjudicator said there was insufficient evidence that the Company operated a policy of enhancing members' retirement benefits in lieu of increasing their salaries. Nor was there evidence that the Company considered that consenting to early pensions was part of Mr S's terms and conditions.
- In November 2018, Mr S provided further arguments. First, he said he was aware of a similar complaint decided by this Office in August 2018, where the Company seemed to "hide behind the state of the [RRBPF] and use of its so called case by case review". Second, the parent company had committed to addressing the RRBPF deficit, which had been improving since 2009. Third, this Office should establish how many early retirements had been granted (with or without considering employees' circumstances).
- However, the Adjudicator could not consider how many RRBPF members had been granted consent to an early pension; this Office's remit is the consideration of individual complaints, and each complaint turns on its own facts. Nor did he think the Company was hiding behind the Questionnaire; he said it was a proportional way of trying to be fair to all members in the context of RRBPF's deficit.
- While Mr S considered his contribution to the Company was not being appropriately recognised, the evidence indicated that it had considered all his submissions, including the Questionnaire. Therefore, it did not act incorrectly or unfairly when it decided against giving consent in his particular case.

16. Neither the Company nor the Trustees commented further. Mr S did not accept the Adjudicator's Opinion and provided the following comments:-
17. "...I accept that the company have followed a procedure. However, I remain unhappy that the company are [not] applying this in a fair and consistent manner. I think they are unreasonably withholding payment of my pension and are not applying the procedure in good faith. I am reliably informed that the company are currently offering redundancy terms to a large number of employees that have attained age 57 which includes early retirement. I would therefore request that this aspect of [sic] process should be challenged further."
18. As Mr S did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and will therefore only respond to the key points made by Mr S for completeness.

Ombudsman's decision

19. Based on all the evidence, the Company correctly considered Mr N's submissions, including the Questionnaire, which covered his history with the Company, departure from it and his personal circumstances, before deciding not to grant consent in his particular case. Therefore, there was no administrative error in its decision-making process. The Company could have acceded to Mr S' request for a meeting to allow him to make his case, but it was not obliged to, therefore, there was no administrative error here either.
20. I sympathise with Mr S, and can understand why he is unhappy that other employees are apparently being awarded the benefits which he has claimed. However, there is insufficient evidence that the Company is treating him unfairly in this regard; I can only consider the merits of Mr S' individual complaint.
21. Both sides accept that the RRBPF is currently in deficit. In that context, I find it was not unreasonable to withhold consent in Mr S' case, since giving consent would have required the Company to make a significant additional funding contribution to the RRBPF.
22. Accordingly, I find that the Company did not make an administrative error when it did not consent to the payment of an early pension in Mr S' case.
23. I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
24 January 2019

Appendix

“A Member who has reached age 50 (or, after 5 April 2010, age 55) may retire from Service before Normal Retirement Age with the Employer’s consent (which will not be unreasonably withheld). No consent is required where a Member has reached age 50 (notwithstanding the early retirement is after 5 April 2010) and is dismissed by or leaves Service at the request of the Employer (except, in either case, as a consequence of fraud or misconduct). A Member who retires under this Rule 3.4 is entitled to immediate payment of the Scale Pension reduced by such percentage for retirements before age 60 as the Trustees with the consent of the Principal Company and after consultation with the Actuary shall from time to time decide except that the percentage reduction factor applied shall not be greater than the corresponding percentage set out in the 1989 Deed. The percentage reduction factors will be recorded and notified in writing to the Members.”
[Early Retirement - 3.4.1]

“A Member entitled to a deferred pension may instead, with the consent of the Principal Company, take a reduced pension from an earlier date. The earlier date may not be before the Member reaches age 50 (or, age 55, after 5 April 2010) unless he suffers from ill-health. The pension will be the Scale Pension (with pension increases granted before such date) reduced in the manner set out in Rule 3.4 above, but at the rates in force at the Member’s Exit Date.”
[Early payment - 4.2.1]