

## Ombudsman's Determination

Applicant	Mr D
Scheme	Weetabix Group Pension Scheme ( <b>the Scheme</b> )
Respondent	The Trustee Corporation Limited ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

2. Mr D has complained that the Scheme was amended by an undisclosed deed which detrimentally altered the method of calculation of his pension.

## Background information, including submissions from the parties

3. On 1 May 1994, Mr D joined the Hills Biscuits Limited (1981) Retirement Fund (**the Fund**) through his employment with Ryecroft Foods Limited (**Ryecroft**).
4. On 27 January 1998, a deed of admission was executed, resulting in Ryecroft becoming an associated company of the Scheme and the Fund being admitted into the Scheme. At this point, Mr D became a member of the Scheme, but remained entitled to benefits on the same basis that had applied in the Fund. The Deed of Admission states:

“Unless otherwise agreed by the Principal Employer and the Trustees, the employees of the Associated Company [Ryecroft] who become Scheme members shall be entitled by virtue of pensionable service in the Scheme to benefits on the same basis as were available on 1 August 1997 under the Hills Biscuits Limited (1981) Retirement Fund as summarised in the Appendix attached to this Deed.”
5. The Appendix to the Deed of Admission states:

“Specific Terms and Benefits provided by the Hill Biscuits Limited (1981) Retirement Fund

...



Final Pensionable Salary – Average of the three consecutive pensionable salaries in the last thirteen scheme anniversaries preceding 65<sup>th</sup> birthday.”

6. On 15 March 1999, a Deed of Amendment was executed stating that Ryecroft members' benefits would be calculated as summarised in an attached booklet. In relation to Final Pensionable Salary, the booklet stated:

“This will be your highest average Pensionable Earnings over any consecutive three year period in the thirteen years of your Pensionable Service.”

7. On 8 March 2002, a Definitive Trust Deed and Rules was issued, but this did not alter the calculation of Mr D's benefits.
8. On 30 September 2005, a further Definitive Trust Deed and Rules was issued, but again, Mr D's benefits were not changed. Appendix 3 outlined the entitlement of Ryecroft members, and in respect of Final Pensionable Earnings, it said:

“Members employed by Ryecroft Foods limited shall be entitled to benefits in accordance with this Appendix. The Rules contained in the Schedule shall be amended as follows in respect of such Members:-

In Rule 1.1 the definition of “Final Pensionable Earnings” shall not apply and shall be replaced by the following:

“Final Pensionable Earnings means the highest figure produced from averaging any three consecutive Pensionable Earnings figures as notified to the Trustees wholly within the thirteen years (or such shorter period as the Member has been in Pensionable Service) preceding Normal Retirement Date, retirement, death or leaving Pensionable Service whichever is earliest...”

9. In October 2008, a document entitled “A guide to your benefits”, for employees of Ryecroft stated:

“Final Pensionable Earnings – Your highest average Pensionable Earnings over any consecutive three year period in the last thirteen years of your Pensionable Service.”

10. On 30 October 2008, Mr D left the employment of Ryecroft and became a deferred member of the Scheme.
11. On 25 August 2010, a deferred benefits statement was issued to Mr D confirming his Final Pensionable Earnings to be £31,027.99.
12. On 13 June 2011, Mr D raised concerns about the calculation of his Final Pensionable Earnings.
13. On 15 June 2011, the Scheme administrator responded, stating the Final Pensionable Earnings figure given previously and the method of calculating his benefits. This letter invited Mr D to confirm whether he considered that the details on his deferred member statement were incorrect.



14. On 27 June 2011, Mr D wrote to the Scheme administrator to say that the Final Pensionable Earnings figure used in the calculation was wrong.
15. On 28 June 2011, the Scheme administrator confirmed the basis of its calculation of his Final Pensionable Earnings, including the three best years' salary used. This again confirmed that his Final Pensionable Earnings was calculated as £31,027.99.
16. In 2013, Mr D took early retirement from the Scheme, but did not accept the level of benefits offered were correct. Mr D pursued a complaint which was ultimately referred to this Office and resolved by way of an Adjudicator's opinion in May 2017. That complaint dealt with the following concerns:

"Mr D has complained that he was not provided with the correct information when he enquired about taking his benefits early on the grounds of ill health. He has complained that requests for information have been ignored or the incorrect information has been sent to him.

Mr D has complained that he was told that his pension would be increased by the annual increase in the Consumer Price Index (**CPI**) up to 2.5% and that a reduction factor of 4% per annum would apply for early payment. He has complained that a higher reduction factor has been applied.

Mr D has also complained about the length of time taken to deal with his complaints under the Scheme's internal dispute resolution (**IDR**) procedure."

17. On 24 August 2017, Mr D complained under the dispute resolution procedure saying that the Trustees had made undisclosed changes to the Scheme Rules, and specifically concerning the way in which the pension was calculated.
18. On 31 October 2017, The Trustee responded to Mr D's complaint, identifying him as a Ryecroft section member and therefore subject to the definition of Final Pensionable Earnings applicable to Ryecroft employees. This was based on the highest salary from averaging any three consecutive years' salary within the thirteen years prior to retirement or leaving service. The Trustee was satisfied that his benefits were based on the correct Final Pensionable Earnings.
19. On 14 December 2017, Mr D responded, suggesting that the 2005 Deed had cancelled and replaced the previous provisions of the Scheme. He asked which provisions had been cancelled and altered as his understanding was that his pension was always calculated on the basis of his final year's salary and not an average of the best three years.
20. On 9 February 2018, the Trustee responded, outlining the history of the Scheme and the way in which Mr D's pension ought to be calculated. It concluded that his Final Pensionable Earnings had been correctly calculated.



## **Adjudicator's Opinion**

21. Mr D'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:-

- Mr D had previously submitted a complaint to The Pension Ombudsman which was resolved. Those issues could not be reconsidered under this complaint, the consideration of which would therefore be restricted to determining whether the definition of Final Pensionable Earnings was correctly applied by the Trustees.
- Because of his employment with Ryecroft, Mr D was classed as a Ryecroft member. This section of the Scheme shared its main rules with the main section of the Scheme, but there were distinctions, one of which was the definition of Final Pensionable Earnings. This distinction was retained at the point of admission from the Fund, of which Mr D was originally a member. Since Ryecroft became a section of the Scheme, the definition has remained consistent and no amendment made to the definition.
- The 2005 Definitive Trust Deed and Rules mentions an amendment, but that is in the context of the main section rules being amended by the Ryecroft section rules. The definition of Final Pensionable Earnings for Ryecroft members was not altered.
- Annual statements provided by Mr D refer to Pensionable Earnings, which tally with Mr D's understanding of how Final Pensionable Earnings should be calculated. However Pensionable Earnings is a separately defined term from Final Pensionable Earnings and is used for different purposes.
- There is no evidence that the definition of Final Pensionable Earnings has been amended by the Trustee.

22. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D 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 D for completeness.

## **Ombudsman's decision**

23. Mr D has reiterated that the definition of Final Pensionable Earnings was altered in the 2005 Definitive Trust Deed and Rules, however this appears to be a misunderstanding on his part. The 2005 Definitive Trust Deed and Rules was intended to create a single document amalgamating all the relevant Deeds and Rules in effect at that time. One of the irregularities of the admission of the Fund into the Scheme was the different definition of Final Pensionable Earnings. In order for the definitive Trust Deed and Rules to reflect that difference, the distinct rules applicable to Ryecroft members were set out in an appendix.

24. In order for the appendix to be effective and not to contradict the main section rules, it was worded as follows:



“Members employed by Ryecroft Foods limited shall be entitled to benefits in accordance with this Appendix. The Rules contained in the Schedule shall be amended as follows in respect of such Members:-

In Rule 1.1 the definition of “Final Pensionable Earnings” shall not apply and shall be replaced by the following:”

25. This does refer to amendment, but the effect of this was not to amend the Ryecroft section definition of Final Pensionable Earnings, but to replace the main section definition of Final Pensionable Earnings with the distinct Ryecroft section definition. This did not alter the calculation of Mr D's pension or affect his accrued rights, it was merely a rationalisation of the Scheme Rules.
26. Mr D has described himself as a “Member of Staff”, and argued that he should be subject to the Staff Member definition of Final Pensionable Earnings. While I accept Mr D was a member of staff, the Staff Member definition applies to members of the main section of the Scheme. Mr D was a member of the Ryecroft section and that section has a single definition of Final Pensionable Earnings, which applies to Mr D and was used to calculate his pension entitlement.
27. Mr D has referred to a verbal contract to the effect that his pension entitlement would not be subject to an average, as the Trustee asserts. Such a conversation may have occurred, but no context has been provided for the conversation and in any event, the Scheme Rules take precedence over such a conversation. Additionally, all of the definitions of Final Pensionable Earnings provided to me for consideration refer to averaging in order to determine the correct amount. Therefore, regardless of which section of the Scheme Mr D was a member, the calculation of his Final Pensionable Earnings would inevitably include averaging as a part of the calculation, which contradicts his recollections of a verbal contract.
28. Mr D has approached his former employer in order to seek additional evidence to support his position and supplied documentation relating to his pension. However none of the documentation refers to the definition of Final Pensionable Earnings. There is nothing within the new documentation to cause me to reach a different conclusion to that of the Adjudicator.
29. Mr D has provided me with a calculation that he considers supports his position. This is based on a Membership Certificate issued on 27 December 1996. He has argued that his calculations show that this certificate was based on his actual salary, not an average. I have considered Mr D's calculation. I would firstly note that the salary he has used appears to be based on 53 weeks remuneration without justification. In addition to this, the calculation is based on unknown overtime and actual pay increases in 1994 and 1995. Given these unknowns, I do not accept that the calculation supports Mr D's position or overrides the specific definition of Final Pensionable Earnings as set out in the Trust Deed and Rules.
30. Mr D also suggests that the fact that the certificate was calculated and issued after only two years' service demonstrates that it cannot have been calculated on the



average of three years. While I see Mr D's point, if a member had not completed three years service, the Scheme would simply use the earnings accrued in the period of service to determine average Final Pensionable Earnings.

31. Mr D has argued that he was given no option but to join the Scheme at the point that Ryecroft was admitted as an employer, and I accept that may be the case. However, the history of the Trust Deed and Rules show that the Trustee's application of Final Pensionable Earnings is consistent with that of the Fund's pre admission definition. Therefore, even if the admission had not occurred, as Mr D suggests he would have preferred, his Final Pensionable Earnings would not have been calculated differently.
32. I appreciate Mr D is unhappy with the situation, however I am satisfied that the definition of Final Pensionable Earnings has been consistent since Mr D joined the Fund and the Trustee has made no error in applying this definition to the calculation of his pension.
33. I do not uphold Mr D's complaint.

**Anthony Arter**

Pensions Ombudsman  
30 January 2020