

Ombudsman's Determination

Applicant	Mrs Valerie Layfield
Scheme	Johnson Controls UK Pension Scheme (the Scheme)
Respondents	Johnson Controls Ltd (Johnson Controls) The Trustees of the Johnson Controls UK Pension Scheme (the Trustees)

Complaint Summary

1. Mrs Layfield's complaint which is against Johnson Controls and the Trustees is that she has not been granted an unreduced early retirement pension under the Scheme.

Summary of the Ombudsman's Determination and reasons

2. The complaint should not be upheld against Johnson Controls and the Trustees because:
 - 2.1. the Trustees applied the rules of the Scheme correctly in considering Mrs Layfield's complaint; and
 - 2.2. it was not maladministration for Johnson Controls to withhold their consent.

Detailed Determination

The relevant rules

3. Rules 5.1.1 (Benefits on Retirement – General), 5.5.1 (Early Retirement), 5.5.3 (Early Retirement), 9.1 (Termination of Pensionable Service) and 9.3 (Preservation of Benefits in the Scheme) of the Trust Deed and Rules dated 21 January 1997 (the **1997 Rules**) say:

“5.1.1 In respect of a Member who is a Closed Staff Section Member, a Closed Works Section Member or a Closed Senior Section Member...the provisions of Schedule 1 and 2 respectively shall also apply to the calculation of his benefits. Where the provisions of Schedules 1 and 2 differ from the provisos of this Rule 5, the provision of Schedule 1 and 2 shall override.

...

5.5.1 If a Member retires from Service either before Normal Retirement Date but on or after his 50th birthday, or at any time before Normal Retirement Date because he is incapacitated, he shall, *with the consent of the Principal Company* and subject to such satisfactory medical evidence as the Trustees may require, be entitled to an immediate annual pension payable during his lifetime as an alternative to any benefit payable under the provisions of Rule 9 (Termination of Pensionable Service), *[my emphasis]*.

...

5.5.3 Subject to the limits imposed by Rule 14...the immediate annual pension payable to a Member who retires after his 50th birthday and before Normal Retirement Date shall be equal to the pension which would have been payable to him at Normal Retirement Date (but calculated by reference to the Member's Pensionable Service and Final Pensionable Earnings at the date of actual retirement) and reduced by 0.3% for each complete calendar month...”

9.1 A Member whose Pensionable Service terminates before Normal Retirement Date for any reason except his death and in respect of whom retirement benefits are not payable immediately under Rule 5.5...shall receive one or more of the following...

9.3 A Member who, on leaving Pensionable Service, has completed 2 or more years' Qualifying Service shall continue to be entitled to the appropriate benefit or benefits listed below..

9.3.1 a pension payable at Normal Retirement Date (as under Rule 5.3):

Provided that if, after his Service... terminates the Member informs the Trustees in writing that he wishes his retirement benefits to become payable at an earlier date, the provisions of the rules relating to retirement before Normal

Retirement Date shall apply to him in the same manner as they apply to a Member in Pensionable Service retiring from Service.

9.3.2 a lump sum on retirement..."

4. Schedule 1 of the 1997 Rules (**Schedule 1**) applies to Closed Staff and Closed Works Section Members. The early retirement provisions are contained in paragraph 3.1. This states: "*rule 5.5 shall apply to a closed Staff Section member...provided that no actuarial reduction shall be applied if the member retires before Normal Retirement Date and on or after age 60 years or on or after age 55 years on grounds of redundancy,*" [my emphasis].
5. The parties agree that the **1997 Rules** including the provisions of Schedule 1 are the rules which apply to Mrs Layfield.
6. For completeness, the provisions of the JCA Electronics Scheme Trust Deed and Rules dated 21 July 2011 (the **2011 Rules**) are also reproduced below. Rules 6.1 (Eligibility), 6.2 (Amount of pension), 6.3 (Reduction in pension) and 8.5 (Early Retirement for Deferred Pensioners) say:

"6.1(a) Subject to Rule 6.1(b) a Member may, with the consent of the Principal Employer retire from Service on immediate pension at any time after he reaches age 50 (or age 55 from 6 April 2010) and before his Normal Pension Age.

6.2(a) Subject to Rule 6.3 the annual rate of the pension mentioned in General Rule 53.1 shall:

(i) subject to Rule 6.2(a)(ii) be calculated under Rule 4.1 {normal retirement pension} but by reference to Final Pensionable Salary at termination of the Member's Pensionable Service...

6.3(a) Subject to Rule 6.3(b) the pension mentioned in Rule 6.2 will be reduced by 0.3% for each complete calendar month of the period between the date the first instalment of pension falls due and Normal Pension Age.

(b) No actuarial reduction under Rule 6.3(a) shall be applied if:

(i) a Closed Staff Section Member or a Closed Works Section Member retires before Normal Pension Age and on or after age 60 or on or after age 55 on grounds of redundancy; or

(ii) a Closed Senior Section Member retires before Normal Pension Age and on or after age 60 or on or after age 50 on grounds of redundancy.

8.5 A Deferred Pensioner may, by giving written notice to the Trustee, elect to start receiving his pension before Normal Pension Age. The deferred pension will be payable in the circumstances and on the terms set out in Rule 6."

Material facts

Scheme membership history

7. Mrs Layfield was initially a member of the Lucas Pension Scheme, between 6 September 1976 and 31 March 1993.
8. In November 1991 Mrs Layfield's employer announced a package of improvements to the Lucas Pension Scheme. Along with other members, Mrs Layfield was offered the opportunity to reject the improvements and retain the previous benefits. She did not reject the improved benefits. On 22 November 1993 she signed an application form agreeing that she had 'read the Announcement dated 31 March 1993' and elected to transfer her benefits from the Lucas Pension Scheme to the Closed Section of the new scheme.
9. In April 1993 a new venture company, Sagem Lucas (**JV**), was established and Mrs Layfield's employment was transferred to it. A new scheme was established – the Sagem-Lucas Pension Scheme. In January 1997, the **1997 Rules** were executed. In 2001 Johnson Controls acquired JV.
10. In August 2002 Mrs Layfield was made redundant at the age of 47 and became a deferred member. By this time, her deferred benefits were under the JCA Electronics Scheme.
11. In December 2003 the **Scheme** was established.
12. On 1 January 2004 the JCA Electronics Scheme was merged into the **Scheme**.
13. In July 2011, the **2011 Rules** were executed.

Member communications

14. The Lucas Pension Scheme improvements in March 1991 followed an agreement between Lucas Industries, the Pensions Consultative Committee and Trade Unions. The benefit improvements were made to the Lucas Pension Scheme with a refund of £90 million to Lucas Industries. An extract from an announcement from the Lucas Pension Scheme, dated 27 November 1991, (the **1991 Announcement**) summarised the improvements. The retirement date provisions were explained as follows:

"Equalisation (men and women)

- A normal retirement date of 65 years.

...

Early Retirement – Voluntary

Early Retirement pension reduction

- Those who retire on or after age 60 will receive their pension without any reduction for early retirement.
- The pensions for those who retire before age 60 will be reduced by 0.3% for each month they retire before age 60.

...

Early Retirement – Redundancy

Early Retirement pension reduction

- Those who retire on or after age 55 years will receive their pension without any reduction for early retirement.
- The pensions for those who retire before age 55 will be reduced by 0.3% for each month they retire before age 55.

...

Closed Staff section

- Female members with an existing normal retirement age of 57½ can, if they wish, retain that age, and reject all the benefit improvements..."

15. A summary of the benefits for the Closed Sections under the Lucas Pension Scheme, dated July 1992 (the **1992 Booklet**), states that the pensions for members who retire early voluntarily will be reduced by 0.3% for each month the pension is taken before age 60. The same reduction applies to the pension for those members who retire on grounds of redundancy, but the reduction is applied if the pension is taken before age 55.
16. An announcement, dated 31 March 1993 (**the 1993 Announcement**), states that a new scheme, the Sagem Lucas Pension Scheme was established and would mirror the contribution levels and benefits of the Lucas Pension Scheme. There is no mention in this announcement of voluntary early retirement benefits or benefits paid early on grounds of redundancy, but it says that the **1992 Booklet** was attached.
17. The introduction section of a booklet (the **1996 Booklet**) for the Sagem (UK) Pension Scheme states that it is designed to give members the information they want in most circumstances, but that the governing document is the Trust Deed and Rules.
18. On pages 19-21 of the **1996 Booklet**, in section 6, it lists 'Benefits on Leaving with Two or More Years of Contributory Membership'. Under 'What are my pension rights?' it states: "At Normal Pension Date you will receive your Scheme pension... Your pension will be revalued each year until your normal pension date." It then answers a series of questions about the treatment of preserved benefit.
19. On page 23 of the **1996 Booklet**, in Section 8 under the heading of "Early Retirement Benefits", in response to the questions "Can I draw my benefits before 65?" and "How would my pension be calculated?" it states:

“Yes, if at the date of retiring you are over age 50 you may, *with the Company’s consent*, draw your benefits immediately...*[my emphasis]*”

Your pension would be calculated in the same way as your pension at Normal Pension Date...It would then be reduced by 0.3% for each complete month between the date of your retirement and your Normal Pension Date to allow for early payment”

20. There was a separate addendum to the **1996 Booklet** (the **Addendum**) for those members of the **Scheme** who, like Mrs Layfield, were previously in the Closed Section of the Lucas Pension Scheme. This pointed out that ‘certain different provisions apply to you and these are described in this addendum’. It also explained the ‘page numbers refer to the pages in the Member’s Booklet, which should be read alongside this addendum’.

21. Under the heading ‘Benefits on leaving with two or more years of membership (page 21)’ the addendum says:

“If you leave service you may choose to start receiving your pension at any time after age 50. Your pension benefit would be calculated in the same way as for Voluntary Early retirement (see below).”

22. Under the heading ‘Early Retirement Benefits (page 23)’ the **Addendum** says:

“How would my pension be calculated?”

The reduction in your pension would depend on *the reason for your early retirement*, as set out below *[my emphasis]*: -

(a) **Voluntary Early Retirement**

The pension is reduced by 0.3% for each month it is taken before age 60. In addition, an Early Retirement Allowance is paid...

(b) **Redundancy**

The pension is reduced by 0.3% for each month it is taken before age 55...”

23. The application for benefit in late 2011 Mrs Layfield applied for early retirement under the **Scheme**. The Trustees approved her application and she was informed that she would receive an actuarially reduced pension.

24. On 12 March 2012, Mrs Layfield wrote to Hewitt Associates, the administrators of the Scheme (who were later acquired by Aon), about the reduction being applied to her pension. On the same date, Mr Millinship, who was the General Manager in 1993 of JV, wrote to the Trustees in support of Mrs Layfield’s claim saying that under the terms of the Closed Section Scheme, because she was made redundant, she was entitled to a full pension with no reduction as she was over the age of 55 at the date of application.

25. Aon responded to Mrs Layfield quoting the **2011 Rules**. They said:

- 25.1. while they accept that she left the employment of Johnson Controls at the age of 47 on grounds of redundancy, she is now at the age of 57 seeking to draw her deferred pension early without an actuarial reduction;
- 25.2. the Trustees have advised that the redundancy terms applicable under rule 6.3 of the **2011 Rules** only apply to members who actually retired at the time they were made redundant – as her redundancy occurred some years ago, and at an age when she would not qualify, rule 6.3 would not apply to her;
- 25.3. an early retirement factor would be applied to her pension if she elected to retire before her Normal Pension Age;
- 25.4. with regard to her query about the level of actuarial reduction under Rule 6.3, the Trustees have been advised that due to the strain on the fund caused by early retirement in such circumstances, Johnson Controls are not prepared to give their consent to early retirement as required by rule 6.1.

26. Mrs Layfield made a complaint which was dealt with under the Scheme's internal dispute resolution procedures (**IDRP**). The decision under stage one IDRP was as follows:

- 26.1. Her entitlement to benefits is as set out in the **1997 Rules**.
- 26.2. At the point she left service rule 9.1 applied to her and as a result of this she is entitled to preserved benefits under rule 9.3, which included the early retirement provisions of rule 5.5.
- 26.3. Rule 5.5 includes a provision for members to take early retirement before normal retirement date with the consent of the principal company, and for the early retirement pension to be reduced by 0.3% for each complete month of the period between the date of the first instalment of the pension and normal retirement date. However, in her case this is modified by the provisions of **Schedule 1**.
- 26.4. Paragraph 3 of **Schedule 1** states that no actuarial reduction will be applied if the member retires on or after age 55 years on grounds of redundancy. This does not apply to her as she is retiring some years after being made redundant.
- 26.5. The section headed 'Early Retirement Benefits' in the **1996 Booklet** does not apply to her. This section applies to members leaving and taking an immediate pension. Even if the section can be interpreted in the way she argues, the **1996 Booklet** states (on page 3) that the legal position is governed by the Trust Deed and Rules.
- 26.6. She had referred to a document headed 'SAGEM Pension Queries' dated 19 February 2002 from the UK Group Pensions Manager for Johnson Controls,

and states that response 4.5 confirms that members being made redundant under the age 50 will be entitled to take their pension unreduced from age 55. First, this document was issued by the employer and not by the Trustees. The Trustees are obliged to administer the **Scheme** in accordance with the rules. Next, the response 4.5 does state that early retirement will need the employer's consent and this is not currently being given.

26.7. The only change to her benefits was in fact as a result of the **Scheme** introducing a new provision to allow her to retire early on a cost neutral basis without the permission of the employer.

27. Mrs Layfield appealed the stage one IDRPs decision and her complaint was dealt with under stage two IDRPs. The decision under stage two IDRPs was the same as the stage one decision.

Summary of Mrs Layfield's position

28. She does not agree with the Trustees interpretation of rules 9 and 5.5 and paragraph 3.1 of **Schedule 1**. It is absolutely clear from rule 9.3.1 that she can choose to retire by informing the Trustees in writing that she wishes her retirement benefits to become payable. Once she retires her benefit entitlement cannot be withheld and is as set out in paragraph 3 of **Schedule 1**.
29. Her interpretation reflects the wording of the **1996 Booklet**, which governed the **Scheme** at the time the **1997 Rules** were being drafted. It also accords with the operation of the **Scheme** after the **1997 Rules** were executed.
30. The **1991 Announcement** does not state that the employer's consent was needed to retire early. If it intended to impose consent, it is much more likely that it would have expressly stated the requirement.
31. The **1996 Booklet** confirms that her early retirement benefits were transferred to the **Scheme**. She does not have the legal documentation governing the transfer of her benefits from the Lucas Pension Scheme to the **Scheme**. If her benefit entitlement is not replicated in the **Scheme**, where is the documentation that would have been issued to her confirming the differences?
32. The evidence she has provided confirms that employer's consent was not required for Closed Scheme members who retired.
33. Neither the **1991 Announcement** nor the **1992 Booklet** nor the Closed Section Amendment from the **1996 Booklet** mentions employer consent. It is clearly mentioned in the **1996 Booklet** that later entrants to the scheme, who paid a lower contribution rate, would receive a different set of benefits.
34. She considers that Rule 9.3.1 requires equality of treatment of active and deferred members applying for early retirement. The Trustees have failed to properly consider

her complaint. Even now they have rebutted her complaint without any proper consideration of the background to her benefit entitlement in the **Scheme**.

35. The specific changes in respect of her benefit entitlement worsened her benefits, so she could not have been “compensated” for the changes, as suggested by Eversheds (Johnson Controls’ legal representative). Insofar as any acceptance to the changes was given by her failure to reject the changes, this was subject to the understanding that she would be able to retire early in the Lucas Pension Scheme without employer’s consent, and that her benefit entitlement would be unreduced if she were to retire early after the age of 60, or after the age of 55 if she was made redundant.
36. Johnson Controls appear to be implying that the **1991 Announcement** only applied to members retiring early from active service. This is not how the draftsman of the **1996 Booklet** and the **1997 Rules** interpreted the **1991 Announcement**.
37. Everyone agrees that her benefits are governed by the **1997 Rules**. Rule 6.1 from the **1997 Rules**, relates to benefits on death and not early retirement benefits.

Summary of Johnson Controls’ position

38. Mrs Layfield has complained that they withheld consent to her early retirement. She says that she did not and could not agree without consent to give up her right to retire at age 57½ and that this right was transferred from the Lucas Pension Scheme to the JCA Electronics Scheme and subsequently to the **Scheme**. However, she confirms that she accepted the improvements as outlined in the **1991 Announcement**.
39. The **1991 Announcement** states that as a result of equalisation, men and women had a normal retirement age of 65. It states that increased accrual was payable for pensionable service both before and after April 1988 as part of the improved benefit package.
40. Under the Closed Staff Section the 1991 Announcement states that: “Female members with an existing normal retirement age of 57½ can, if they wish, retain that age, and reject all the benefit improvements”. This option was also available to male members of the Closed Staff Section.
41. It appears from the **1991 Announcement** that, by choosing to accept the benefit improvement package, she gave up the entitlement to retire at age 57½ that she had enjoyed at that point. The improved benefit package compensated her for the change in her normal retirement age.
42. The **1991 Announcement** is silent on the issue of whether consent is required for early retirement. This document is a short two-page summary and, necessarily, does not seek to set out in detail every benefit to which members are entitled. They disagree with her interpretation that the absence of any reference to consent means that no consent is required for early retirement.

43. She considers that as a result of her redundancy in 2002 (at which point she was under the age of 55) she falls into the category of members dealt with in the “Early Retirement – Redundancy” section of the **1991 Announcement**. Putting aside the issue of the requirement for consent, it appears that her position is that because of her earlier redundancy she is entitled to retire from the age of 55 without any reduction for early retirement. They consider that this heading applies only to members taking early retirement as a result of redundancy and not members, like her, who seek to take early retirement sometime after redundancy.
44. The **1991 Announcement** does not expressly deal with deferred members. Further, there is nothing in the **1991 Announcement** which suggests that consent is not required for the early retirement members, whether active or deferred.
45. The **1997 Rules** contain the relevant retirement provisions applicable to her and the **1991 Announcement** does not alter its position in this respect. She states that the **Scheme** was initially administered on the basis that consent was not required to members retiring early from the Closed Section of the Scheme. She has provided no evidence to support this claim.
46. They have seen a letter from her to Pensions Partners, dated 17 February 2014, enclosing redacted details of a former colleague in the Closed Section who had taken early retirement following redundancy in 1994 and whose benefits were not reduced. The circumstances of her colleague are different from her own. The person concerned was an active member who took early retirement when made redundant. Paragraph 3.1 of **Schedule 1** applies to those who took early retirement after the age of 55 on the grounds of redundancy.
47. They disagree with her interpretation of paragraph 3.1 of **Schedule 1**. She considers that this provision is applicable to her because of her redundancy in 2002. They consider that it is clear that this provision applies where an active member takes early retirement on their redundancy at the age of 55 or after, but not to a deferred member made redundant before age 55 who seeks to take early retirement sometime later, after they turn 55.
48. She argues that any change to her transferred rights which was introduced by the **1997 Rules** is void. They do not consider that any changes to her transferred rights in respect of early retirement entitlements were introduced by the **1997 Rules**.
49. They confirm that at the time of Mrs Layfield’s application in 2011 for early payment of her deferred pension, they did have a general policy of withholding their consent to early retirement requests under rule 6.1 of the **2011 Rules**. As a consequence of this, they did not give specific consideration to exercising their discretion under rule 6.1 in respect of her application. This was a result of the funding strain such requests placed on the Scheme and their resources. This policy, which has been in place since in or around 2004, relates to all members of the **Scheme** unless they had a specific entitlement or promise relating to early retirement.

Summary of the Trustees' position

50. Mrs Layfield argues that, notwithstanding the provisions of the **1997 Rules**, she is entitled (as a former member of the Closed Section of the Lucas Pension Scheme) to:
(a) an entitlement to retire early without the consent of the employer and with a monthly reduction of 0.3% for periods prior to age 60; and (b) if she had been made redundant at any time by her employer, an unreduced early retirement pension from age 55 as of right. They would argue that: (a) this complaint is about the actions of the then trustees of the JCA Electronics Scheme in 1997, not the actions of the present trustees; (b) from the papers she has provided there is nothing to show that she had a right to retire at age 60 without consent in the Lucas Scheme nor that the right would have transferred; and (c) the actions of the then trustees in 1997 are considerably outside the Ombudsman's time limit.
51. They do not agree that the **Scheme** has been improperly amended. It is common ground that Mrs Layfield's benefits are governed by the provisions of the **1997 Rules**. The only relevant amendment made to the **Scheme** is the amendment made by the 13 February 2012 Deed, which provides for an additional option for members to take an early retirement pension where the employer withholds consent to take early retirement pension under the terms of the **1997 Rules**.
52. As the **1997 Rules** was the first definitive deed for the JCA Electronics Scheme, it does not appear to them that any amendment was made to that scheme.
53. She has based her claim to benefits in the Lucas Pension Scheme on the **1991 Announcement**. They do not agree that the **1991 Announcement** states that she was entitled to the benefits she claims.
54. They agree that the **1991 Announcement** provides that where an early retirement pension is paid it will not be reduced from age 60, but it does not say that members are entitled to such an early retirement pension without consent.

Conclusions

55. Mrs Layfield's complaint is that she should be granted an unreduced early retirement pension.
56. Mrs Layfield left the **Scheme** in 2002 and the rules that applied to the **Scheme** at that time were the **1997 Rules**. There is no dispute that her benefits are governed by the **1997 Rules**.
57. Mrs Layfield was a Closed Section Member and under rule 5.1.1 of the **1997 Rules**, Schedule 1 and 2 would apply to the calculation of her benefits. Paragraph 3 of **Schedule 1** states that, the early retirement provisions under rule 5.5 shall apply to Closed Section Members provided that no actuarial reduction shall be applied *if the member retires* before normal retirement date and on or after age 60 or on or after age 55 *on grounds of redundancy [my emphasis]*.

58. Mrs Layfield left service in 2002 on the grounds of redundancy. However, she was 47 years old at that time and therefore was not entitled, under the **1997 Rules**, to an immediate pension. She would have been entitled at that time to deferred benefits under rule 9.3. She retired later, voluntarily, not on grounds of redundancy.
59. Mrs Layfield says that her interpretation reflects the wording in the **1996 Booklet**, which governed the **Scheme** while the **1997 Rules** were being drafted. The **1996 Booklet** states, in respect of early retirement benefits, that members retiring over the age 50, but before normal retirement date, may, with the consent of the employer, draw their benefits immediately. It also states that the pension would be reduced by 0.3% for each complete month.
60. There is nothing in the **1996 Booklet** regarding the early retirement pension payable if a member leaves on the grounds of redundancy. In addition, it states that the employer has to consent to the benefits being drawn immediately and that the legal position is governed by the Trust Deed and Rules.
61. The **Addendum** applicable to Closed Section members does not mention that employer's consent is needed in order for early retirement benefits to be taken immediately. However, it does state that the reduction to be applied will depend on the reason for early retirement and that a 0.3% reduction will be applied if the pension is taken early on grounds of redundancy.
62. Similarly, the **1992 Booklet** makes no mention that the employer's consent is required for early retirement benefits to be taken immediately. However, the rules that applied at the time Mrs Layfield left the **Scheme** were the **1997 Rules**. Neither the **1992 Booklet** nor the **1996 Booklet** and its **Addendum** override the **1997 Rules**.
63. Mrs Layfield points out that the **1991 Announcement** does not state that the employer's consent was needed to retire early. The **1991 Announcement** was designed to convey to members changes to the scheme that were being implemented at that time. It states, in respect of normal early retirement, that those who retire on or after the age of 60 will receive an unreduced pension, but for those who retire before that age a reduction would be applied. In respect of early retirement on grounds of redundancy, it states that those retiring after age 55 will receive an unreduced pension but for those retiring before that age a reduction would be applied.
64. While I agree that the **1991 Announcement** does not mention that the employer's consent is needed for an early retirement pension to be payable under the **Scheme**, it does not override the **1997 Rules** either. Besides, Mrs Layfield had applied for the early payment of her deferred benefits at the age of 57 and therefore under the **1991 Announcement** a reduction would have been applied.
65. I would also agree that under the **1997 Rules** both active and deferred members who applying for early retirement are treated equally. However, an immediate unreduced early retirement pension would only have been paid if she was 55 years old or more at the time she was made redundant. I do not agree that under the **1997 Rules** she is

entitled to claim an unreduced pension nearly 10 years after she was made redundant.

66. For the reasons given above, I consider that the Trustees have applied the Scheme rules correctly in considering Mrs Layfield's claim for an unreduced early retirement pension from the **Scheme**. Consequently, I do not uphold the complaint against them.
67. It is agreed that the **1997 Rules** apply. In so far as arguments have been raised about the pre-97 position, I can see nothing on the face of the pre-97 member communications which suggests the need for further enquiry into the conduct of trustees at or prior to that point. The member communications emphasise and explain different elements of those rules at different times, but in my view are consistent with them. I therefore see no need to address the arguments about whether the current trustees are responsible for the conduct of previous trustees or the time limits which would apply if they were.
68. I now have to consider whether there has been any breach of duty or maladministration on the part of Johnson Controls in this matter. The issue regarding Johnson Controls is whether or not it was reasonable for them to withhold consent to members wishing to take their benefits early. They have said that they have had a policy since 2004 of withholding consent under rule 6.1 of the **2011 Rules** to early retirement requests. The policy is applied to all members of the **Scheme**. I am satisfied that the discretion which the employer exercises under the **2011 Rules** is no different to that which the employer exercises under the **2007 Rules**.
69. Where the decision maker is an employer exercising a discretionary power, they have an implied duty of good faith to their employees i.e. there is an implied duty of trust and confidence between an employer and its employees. In *Bradbury v BBC* [2012] EWHC 1369 (Ch) and *Prudential Staff Pensions v Prudential Assurance* [2011] EWHC 960 (Ch) the relevant principles were stated as follows:
 - 69.1. the implied duty is not a fiduciary duty, meaning, an employer may take its own interests into account;
 - 69.2. the implied duty is not to be assessed by reference to the concept of reasonableness - for what seems reasonable to an employer may seem unreasonable to an employee and vice versa;
 - 69.3. but a decision by an employer might be irrational or perverse, because it overrode members' expectations or interests, and so might offend the obligation of good faith. There is no duty to take correct considerations into account and exclude from consideration matters which are irrelevant. But the court will look at whether, overall, a decision was irrational or perverse - the manner in which an employer arrived at a decision could be material when deciding whether there has been a breach of the obligation of good faith; and

- 69.4. an employer must not exercise its powers under a pension scheme so as seriously to damage the relationship of confidence between the employer and the employee.
70. It is clear therefore that the employer is entitled to have regards to their own interests when exercising discretion, which includes their own financial interests. Johnson Controls have said that the reason for withholding consent was because it placed a funding strain on the **Scheme** and their resources. I am therefore unable to find that application of the policy constitutes any breach of duty or maladministration on their part causing injustice to Mrs Layfield.

Karen Johnston

Deputy Pensions Ombudsman
22 January 2016