

Ombudsman's Determination

Applicant	Mr E
Scheme	The Institute of Cancer Research Pension Scheme (the Scheme)
Respondents	The Trustees of the Institute of Cancer Research Pension Scheme (the Trustees) Punter Southall (the Administrator)

Outcome

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

Complaint summary

3. Mr E's complaint is that he was not paid an enhanced pension when he took early retirement on the grounds of ill health. Mr E also says the Trustees failed to make provision for protecting ill health enhancement when members were transferred from the Scheme into the Universities Superannuation Scheme (**USS**).

Background information, including submissions from the parties

4. Mr E was employed as a maintenance technician for the Institute of Cancer Research **(the Employer)**. He was an active member of the Scheme from 2002. On 31 July 2008, the Scheme closed to future accrual and Mr E became a deferred member of the Scheme. From 1 August 2008, Mr E became a member of the USS. He, however, still remained with the same employer.
5. Mr E's employment was terminated in 2009 due to ill health. The Employer asked the Scheme's Pension Manager to liaise with him about applying for ill health retirement pension. In 2010, the USS wrote to Mr E with the available options on what he could do with the pension he had accrued.
6. In order to qualify for ill health retirement, referred to as incapacity retirement by the USS, the member required at least two years of qualifying membership within the

USS. When Mr E's employment ended, he only had 16 months of qualifying membership, therefore, he was not eligible for incapacity retirement from the USS.

7. The Employer considered the ill health retirement pension that Mr E could have received from the USS had he completed two years of qualifying membership. The Employer instructed the Trustees to pay an unreduced pension through the Scheme based on the length of service which Mr E had accrued within the USS. The Trustees agreed to provide the pension after the Scheme had received the appropriate transfer value from the USS; which indeed was subsequently transferred.
8. Before the pension was transferred, the USS determined that Mr E would have been entitled to a 'Partial incapacity pension', if he had two years or more qualifying membership. Within the USS, a partial incapacity pension pays an unreduced pension based on length of service accrued but it does not include an enhancement. An enhancement is paid by the USS for those members who qualify for total incapacity retirement.
9. The partial incapacity pension for Mr E amounted to around £600 a year. The Trustees agreed to augment this amount to the Scheme pension that they were about to pay Mr E.
10. In regard to the pension which Mr E was due to receive from the Scheme, the Trustees calculated Mr E's ill health retirement pension based on his Scheme membership between 2002 and 2008. This was from the date he joined to when the Scheme stopped future accrual. They paid an unreduced and unenhanced pension based on his deferred membership of the Scheme.
11. Mr E complained to the Trustees and the Administrator that he was entitled to an enhanced ill health pension from the Scheme. He based this on the 2002 Scheme booklet (**the booklet**), which outlined in its, 'Retiring early on medical grounds' section, that members who had completed 5 or more years' of pension scheme membership could retire with an immediate pension. For scheme membership of five to ten years, it said:

"Your service will be doubled, subject to a maximum of the years which could have been completed up to your Normal Retirement Date."
12. The Trustees did not uphold his complaint. In summary, they said:
 - Mr E had relied on information from the booklet, which described a pension for active members. Mr E was now a deferred member and the section he referred to did not apply to him.
 - Mr E's benefits had been paid in line with Rule 17(a)(i) and (ii) of the Institute of Cancer Research Pension Scheme Trust Deed and Rules 2006 (**the Scheme Rules**); this related to deferred members. The relevant section is set out in the Appendix below.

- Mr E did not agree with the response from the Scheme. He referred his complaint to us for an independent review.

Adjudicator's Opinion

13. The complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees or the Administrator. The Adjudicator's findings are summarised briefly below:
 - Mr E had not completed two years of service within the USS, which was the minimum length of service required to be eligible for an ill health pension.
 - The Institute of Cancer Research Pension Scheme booklet does make reference to an enhanced pension where members retire on medical grounds. However, these rules related to active members of the Scheme. Mr E became a deferred member, therefore he cannot rely on information in the booklet and Scheme Rules which relates to active members.
 - Mr E had transferred his USS pension into the Scheme in return for the pension which he could have received had he met the USS's ill health criteria. According to USS criteria, a partial incapacity pension does not include a pension with an enhancement, therefore Mr E was not entitled to an enhanced pension from the USS.
 - The pension paid out from the Scheme by the Trustees was in line with the criteria for deferred members retiring on the grounds of ill health. This is based on Rule 17(a)(ii) of the Scheme Rules. According to this, ill health retirement for a deferred member does not include an enhancement, therefore Mr E's benefits had been paid correctly.
 - Mr E had concerns that the Trustees had not bought the appropriate level of insurance required to secure members' benefits when transferring between the Scheme and the USS. The Trustees were not required to do this. Notwithstanding this, Mr E would not have been entitled to an enhanced ill health pension.
14. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr E for completeness.

Ombudsman's decision

15. Mr E says that he disagrees with the opinion reached by the Adjudicator. He has referred to the Scheme booklet in question and said that the sections which refer to retirement and leaving the Scheme do not say that ill health pension enhancement

does not apply to deferred members. He feels that the information in the booklet, which has not been updated, should apply.

16. Mr E has provided annual benefit statements which in the notes sections, say:

“This statement should be read in conjunction with the Scheme Booklet which sets out how the benefits are calculated. It also provides further details of the benefits including increases, restrictions and alternative options.”

17. I appreciate that Mr E relied on the information in this booklet as a guide on the benefits he would receive in retirement. However, Scheme Rules always take precedent over any ancillary information guides. I note that the booklet itself alludes to this:

“This guide provides a summary of the Scheme and does not cover all the Scheme’s detailed provisions which are set out in the formal Trust Deed and Rules.”

18. I do not dispute that the booklet was a valuable reference point. However, the circumstances which applied to Mr E at retirement are fully addressed by the Scheme Rules, not the booklet. The Trustees must follow the Scheme Rules and in this instance, this is what they have done. As such, I am unable to make a finding of maladministration against the Trustees or the Administrators.

19. Therefore, I do not uphold Mr E’s complaint.

Anthony Arter

Deputy Pensions Ombudsman
25 January 2017

Appendix

Third Definitive Trust Deed and Rules 2006 (as relevant)

20. As relevant, rule 17 (Members who cease to be in service – qualifying leavers) says:

Preserved Pension

(a)(i) A member who ceases to be a current Member and who is a Qualifying Leaver at the cessation of Pensionable Service shall be entitled to a pension commencing from Normal Pension Date calculated in accordance with Rule 5 (Members Pensions on Retirement at Normal Pension Date) or, in the case of a Member who was in Pensionable Service on 31st July 2003, commencing from the Member's 60th birthday and calculated in accordance with Rule 6 (Members' Pensions on Retirement Before Normal Pension Date in Normal Health) as if the Member's pension had commenced at age 60 under that Rule, but in each case with reference to Pensionable Remuneration, Salary and Pensionable Service at the date of such cessation of Pensionable Service.

In the case of a Member who was in Pensionable Service on 31st July 2003 who ceases to be a current member after his 60th birthday and does not immediately commence to receive a pension, the Pension shall commence from his Normal Pension Date or any earlier date which he selects.

Early Retirement

(ii) A member who ceases to be a Current Member and who is a Qualifying Leaver at the date of cessation of Pensionable Service shall be entitled at his request to a pension commencing at or after his 50th birthday, or earlier if he is retiring because of Incapacity, such pension to be calculated as in Rule 17(a)(i) above but adjusted (if the pension commences other than at Normal Pension Date or, for a Member who was in Pensionable Service on 31st July 2003, the Member's 60th birthday) by such amount as the Trustees shall determine with the advice of the Actuary, provided that no reduction will apply if the retirement is on grounds of incapacity.