

Ombudsman's Determination

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| Applicant | Mr S |
| Scheme | Western United Group Pension Scheme (the Scheme) |
| Respondents | Trustees of the Western United Group Pension Scheme (the Trustees), Vestey Foods UK Ltd (Vestey). |

Outcome

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

Complaint summary

3. Mr S has complained that he was promised a full pension at age 60 but the Trustees have said that he can only have a reduced pension at age 60 as the normal retirement age under the Scheme is age 65.

Background information, including submissions from the parties

4. Mr S was employed by Cresswell Foods Ltd which was part of the Vestey Group of companies from October 1989 to July 2005.
5. Mr S has provided copies of his last two employment contracts.
6. The latter contract is for service from 1 January 2004. It says under the heading 'Pension scheme' that Mr S would remain a member of the Scheme, Plan B "in accordance with the terms and conditions as set out in the Trust Deed and Rules". Under the heading 'Retirement age' the contract says Your normal retirement age shall be 60 and your employment will end automatically when you reach your 60th birthday. The Scheme rules say that the normal retirement date for a Plan B member is the 65th birthday. Mr S says that Vestey and the Trustees should honour the contractual terms spelt out in his contract and give him an unreduced pension from age 60.
7. The Trustees say that the Scheme documents in place at the time of Mr S's membership and all documents sent to Mr S from the Scheme confirm that his

Normal Retirement Date under the terms and conditions of the Trust Deed and Rules is his 65th birthday. They have not found any evidence from the Scheme to show that Mr S has a normal retirement date other than age 65. The Trustees have provided a copy of a benefit statement issued to Mr S whilst working and the statement of benefits issued to him when he left the company. Both of these show the normal retirement age as age 65.

8. Vestey say that Mr S is only entitled to a full pension from age 65, although he could request a reduced pension before that age. There is nothing in the documents that governed Mr S's employment relationship that altered the position under the Scheme rules. Although a person might expect their retirement age to be the same for employment and pension purposes, there is no requirement for them to be the same and they are different in Mr S's case. Mr S has been correctly categorised as a Plan B member and his Service Agreement and Statement of Terms are both consistent with that. The retirement age of 60 was in respect of his service with the company and not for his pension scheme membership.
9. Vestey recognises that the different retirement age may have led Mr S to misunderstand the position but he did on at least four occasions between 2005 and 2010 receive documents which stipulated that his Normal Retirement Age was 65. He would therefore have been aware of the position since 2005 and is therefore raising a complaint of which he has had knowledge for at least 10 years.
10. Mr S says that although his contract stated he was a Plan B member he had no knowledge of the rules governing this. Furthermore, he had queried the anomaly on the benefit statements annually, and on other occasions, but he was informed that the normal retirement age would be applied and to trust his employer, which he did in the firm knowledge that the position would be rectified and that the pension would be paid in line with the contract.

Adjudicator's Opinion

11. Mr S's complaint was considered by one of our Adjudicators who concluded that no further/further action was required by the Trustees or Vestey. The Adjudicator's findings are summarised briefly below:
 - The Trustees have said that they have no evidence of a different retirement age for Mr S. The Trustees can only pay benefits in accordance with the Scheme rules and thus any pension paid before age 65 would be reduced for early payment. An unreduced pension before age 65 could only be paid with the agreement of Vestey.
 - It is unusual to have different retirement ages in the employment contract and the Scheme. Mr S has provided a statement from a fellow ex-director of Cresswell Foods who says that the retirement age was negotiated specifically for the directors in October 2000. There is no reason to dispute that statement and indeed

Mr S's contract of employment at the time does show a retirement age of 60. But the contract of employment does not override the Scheme rules and the contract is quite clear that Mr S's pension was subject to the Scheme's terms and conditions.

- Vestey have also raised the point that the Scheme documents that Mr S received all showed the normal retirement age as age 65 and that he would have been aware of the position since 2005.

12. 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, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.

Ombudsman's decision

13. Mr S says that it is quite clear to him that his previous employers are in breach of his contract. But although Mr S's contract of employment said that he had a retirement age of 60 it also said that he remained a member of the Scheme, Plan B "in accordance with the terms and conditions as set out in the Trust Deed and Rules".
14. The normal retirement age for a Plan B member under the Scheme rules is age 65. If Mr S wanted to take his Scheme pension benefits at age 60 then these would be reduced for early payment in accordance with the terms and conditions of the rules. I do not find that there has been a breach of Mr S's contract of employment as there was no mention in the contract that an unreduced pension would be paid from age 60.
15. Mr S may have been expecting to receive an unreduced pension from age 60 but all the documentation he received from the Scheme showed that the normal retirement age under the Scheme was aged 65.
16. Therefore, I do not uphold Mr S's complaint.

Karen Johnston

Deputy Pensions Ombudsman
18 August 2016