

Ombudsman's Determination

Applicant	Mr A
Scheme	BT Staff Superannuation Scheme (the Scheme)
Respondents	Accenture (the Administrator), BT Group plc (BT)

Outcome

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

Complaint summary

3. Mr A's complaint concerns the calculation of his pension benefits in 1989. He believes an incorrect lower final pensionable salary was used to calculate his pension and, this has resulted in him receiving lower benefits than he is entitled to receive.

Background information, including submissions from the parties

4. Mr A was previously employed by BT and was a member of the Scheme from 30 December 1974 until he was medically retired from active service on 12 December 1988. Whilst employed by BT, Mr A was a managerial grade between 20 September 1985 and 31 December 1987. Subsequent to December 1987, Mr A was on sick leave and he was medically retired in December 1988, because of his ill health.
5. At the time that Mr A was medically retired, his final pensionable salary was calculated as £15,899.83, which provided him with an annual pension of £4,023.97. Mr A became a pensioner member of the Scheme on 13 December 1988.
6. On 24 July 1989, Mr A's wife, on Mr A's behalf, wrote to the Scheme Administrator at the time (not Accenture), to query the salary figures that were used to calculate his pension entitlement. On 17 August 1989, the Scheme Administrator at the time, wrote to Mr A and explained how his pension benefits were calculated.
7. In December 2014, Mr A contacted the Administrator to query what grade his pension was based on. He was informed, on 2 January 2015, that the final grade recorded on the Administrator's system was Technical Officer (**TO**). The Administrator also

informed Mr A that the pensionable salary used to calculate his benefits was £15,899.83. Between 12 January and 29 June 2015, there was further correspondence between Mr A and the Administrator regarding the salary used to calculate his pension benefits.

8. On 30 June 2015, Mr A complained through the Scheme's internal dispute resolution procedure (**IDRP**) about the salary the Administrator used to calculate his benefits.
9. In the first stage IDRP response dated 29 October 2015, the Secretariat to the Scheme Trustee did not uphold Mr A's complaint. It explained the Trustee's fundamental duty was to administer the Scheme in accordance with the Scheme Rules. The Secretariat explained that "The Scheme's rules define how an individual's "pensionable salary" is calculated. Importantly, pensionable salary is not calculated based on an individual's specific employment grade but rather is based on an individual's actual salary..."
10. The Secretariat went on to explain that "Because the definition of pensionable salary in the Scheme's rules only includes specific elements of an individual's pay, this means that a member's gross pay may not be the same as their pensionable salary for the same period (as some elements may be excluded)." The Secretariat explained how Mr A's benefits were calculated.
11. It was further explained that as no further evidence was provided to show that Mr A was in receipt of a higher salary between January and December 1988, there was no evidence to support that his benefits were incorrectly calculated. However, if Mr A provided evidence that he was in receipt of a higher salary for the said period, it would be happy to reconsider his complaint, in light of the additional information.
12. Dissatisfied with the response, Mr A appealed the stage one decision. In the IDRP stage two decision dated 2 February 2017, as well as reiterating what was said in the stage one decision, it was explained that as Mr A did not provide any further evidence to show that he was in receipt of a higher pensionable salary than what was used to calculate his benefits, it could not uphold his complaint.
13. Dissatisfied with the contents of the IDRP responses, Mr A referred his complaint to this Office, and as well as explaining that his mental health prevented him from looking into his financial affairs earlier than 2014, he made the following points:-
 - His pension was calculated using a lower grade and the Administrator has informed him that his basic pay had decreased as his temporary additional duties reverted.
 - His managerial grade was not temporary, and if it were, why was he or his wife not informed of such, even after she had written to the Administrator in 1989? It was unfair that he was placed on a lower grade because he was sick due to his medical condition.

- He never received any payslips after December 1987. He has suffered with stress since being made aware that his pension was incorrectly calculated, and also because of the poor customer service he has received from the Administrator.
 - In 1989 his wife had queried his pension calculations but had received no response. Due to her going through her own personal issues she could not pursue the matter further at that time.
 - He previously complained to BT regarding the salary that was used to calculate his benefits but had not received a response.
14. In response to Mr A's complaint, the Trustee gave a background of the events that led to the complaint and reiterated what was said in the IDRPs responses. It quoted the Scheme Rules that apply to the calculation of Mr A's benefits and provided details of the figures used to calculate his benefits. In addition, the Trustee commented that:-
- The Scheme does not hold records of members' payslips. Any information relating to Mr A's pay was provided by BT contemporaneously and recorded on the Scheme's database. The Scheme's records are limited as Mr A retired over 29 years ago and pay history is only retained by the Scheme for seven years.
 - The Scheme has Mr A's final pensionable salary figure, the original calculations used by the Administrator to calculate the pension, pay history from August 1985 to 1988 used to calculate Mr A's final pensionable salary, and the payslips Mr A provided for September 1985 to December 1987.
 - BT has confirmed that it no longer has pay records for Mr A due to the length of time that has elapsed since his employment ended and, there is no legal requirement for it to keep such records for this length of time.
 - Any complaint that Mr A may have concerning any changes made to his grade, salary or payslips should be referred to his former employer, BT.
 - The Scheme does have a record of Mr A querying his pensionable pay in July 1989. This was in response to an estimate that he had received from his personnel group.
 - A reply was sent to Mr A in August 1989, which explained how his pensionable salary and pensionable service had been calculated by the Scheme and, how the figures were used to calculate his lump sum and pension. Mr A was referred to BT for any queries he had regarding the estimate provided by his personnel group.
 - The Scheme does not have any further correspondence on record for Mr A until his query in 2014. Therefore, there is no evidence that his query was ignored by the Scheme.
 - Regarding the service Mr A received from the Scheme, the Scheme provided Mr A with detailed responses to each of his queries. His complaint has been investigated and taken seriously at every stage of the process.

15. In response to Mr A's complaint BT made the following points:-
16. BT no longer holds information about Mr A's salary between 1 January and 12 December 1988. In accordance with good corporate governance and BT's document retention policy, documentation relating to an employee's period of employment, including records of payment are only kept for six years after employment ceases.
17. BT's practice is to provide relevant salary information to the Administrator for pension purposes and all records held by BT are destroyed after the six year period.
18. Therefore, as Mr A left employment almost 30 years ago, his employment details including records of payments and positions he had with BT are no longer available. Consequently, BT is unable to provide any details regarding what information it provided to the Administrator regarding Mr A's salary details.
19. Without further evidence from Mr A to substantiate his claim that he was entitled to a higher final pensionable salary, BT can only proceed on the basis that accurate salary details were provided by BT to the Administrator. And, that the correct final pensionable salary was used to calculate Mr A's pension benefits in December 1988.

Adjudicator's Opinion

20. Mr A's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Administrator or BT. The Adjudicator's findings are summarised briefly below:-
 - Mr A asserts that his pension benefits were calculated using a lower salary than he was in receipt of because his grade was recorded incorrectly. However, Accenture is the Administrator of the Scheme and as the Administrator, it relies on the information it receives from members' employers to ensure that members are paid correct benefits.
 - The Administrator must ensure that benefits are paid in accordance with the Scheme Rules (**the Rules**). The Rules that prescribe how an individual's pensionable salary is calculated is defined in Section B of the 1983 Trust Deed and Rules (Appendix).
 - Having considered the appropriate Rule, it was the Adjudicator's view that the Administrator correctly interpreted the Rules to pay Mr A his benefits. The information received from the Administrator shows that Mr A's pension benefits were calculated using his highest pensionable salary during a 365 day period.
 - The Adjudicator appreciated that Mr A was disappointed that his salary was reduced between January and December 1988. However, the decision to reduce his salary would not have been made by the Administrator, but would have been made by BT, who was his employer at the time.

- Mr A believes his salary should not have been reduced in 1988. However, without any evidence such as payslips for the period between January and December 1988 to show that he was in receipt of a higher salary, she was unable to conclude that BT provided the Administrator with incorrect salary information for Mr A, and that the incorrect salary was used to calculate his benefits.
- BT has said that it is its policy not to retain past employee records for more than six years. Mr A retired almost 30 years ago. The Adjudicator appreciated the difficulty Mr A experienced in relation to his mental health between 1988 and 2014, which resulted in him being unable to look into his financial affairs prior to 2014. However, she did not consider that I would find it unreasonable that BT no longer holds details of Mr A's salary for the period in dispute, because of the length of time that has elapsed.
- She accepted that in July 1989, Mr A's wife, contacted the Administrator at the time, to query how Mr A's pension had been calculated. However, the Administrator at the time did reply to her and explained how his benefits were calculated. The Adjudicator appreciated that due to Mr and Mrs A's personal circumstances at that time, they did not follow up the response with a further query. However, she did not consider BT or the Administrator could be held accountable for Mr A not making further enquiries at that time, if he believed his benefits had been calculated incorrectly.
- The Adjudicator sympathised with Mr A and the position he now finds himself in. However, in the absence of any evidence to prove that Mr A is not receiving his correct benefits, she did not consider I would uphold his complaint.
- It was therefore her opinion that this complaint should not be upheld.

21. Mr A did not accept the Adjudicator's Opinion and in response made the following points:-

- He cannot produce evidence regarding his salary between January and December 1988 because he was never sent any.
- He needs an explanation from BT as to why his grade was lowered when he was on sick leave.
- He queried how could someone be on temporary duties for a period of two to three years? He also queried if there was a law to downgrade someone without notifying them, while they are on sick leave, without a new contract being issued.
- Through the period in dispute, he suffered from mental health issues. He believes that BT took advantage of his health issues as he was unable to deal effectively with matters at the time and, his mental health issues have continued since.

- His pensionable salary should have been recorded as £16,477 between January and December 1988 and not £13,855. Using the higher figure should produce a higher pensionable pay and lump sum. BT should be asked about the discrepancy.
22. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr A, for completeness.

Ombudsman's decision

23. In his response to the Adjudicator's Opinion Mr A raised a number of points that I find to be outside of my jurisdiction, as it relates to employment law. Consequently, I have not considered them in this determination.
24. Regarding the pensionable pay that was recorded for Mr A between January 1988 and December 1988, I have not been provided with any evidence to confirm that Mr A's pensionable salary in the said period was recorded incorrectly. I appreciate that Mr A has said that he did not receive any payslips during the said period. However, I find that the onus is on Mr A to prove that he is in receipt of incorrect benefits.
25. Mr A commenced receiving his pension almost 30 years ago. There is no legal requirement for BT to keep records of its past employees' pensionable salary for that length of time. Therefore, I do not find it unreasonable that BT no longer has details of Mr A's pensionable salary for the disputed period.
26. I am sympathetic to Mr A's circumstances regarding his mental health and I understand Mr A's disappointment that his pensionable salary for the said period is lower than he believes it should be. However, without evidence to prove that his final pensionable salary was incorrectly recorded, I cannot find that the Administrator or BT has done something wrong.
27. Consequently, I do not uphold this complaint.

Karen Johnston

Deputy Pensions Ombudsman
31 July 2018

Appendix

Schedule 4 section B Rule 1

...

“pensionable salary” means salary (or wages) including London weighting where appropriate and including the pensionable emoluments in Division 1 of the Staff Contract Manual in whichever year of the last three years of reckonable service gives the highest figure. Where it would produce a higher figure, the average annual salary and pensionable emoluments of a member during his best 3 consecutive tax years of reckonable service in the last 10 years of service shall be that member’s pensionable salary. Where the last 3 years of service include leave at a reduced salary, or unpaid leave or absences for which contributions have been made, the full rate of salary will be taken. The full rate will also be taken when salary is temporarily abated in the national interest, and when salary is voluntarily surrendered in whole or in part. Where there is part time service in the last three years of reckonable service the full time rate of pay will be taken; if no full time rate is specified, the full time equivalent will be calculated by multiplying actual pensionable pay by the proportion which full time hours (excluding meal breaks if they are excluded in the member’s terms and conditions of employment) bear to part time hours, over the period in question. For the purpose of this definition “the last 3 years of reckonable service” includes all reckonable service (including reckonable leave or absence) at its actual length, and excludes any non-reckonable service. To determine pensionable salary in “whichever year of the last 3 years of reckonable service gives the highest figure”, salary and pensionable emoluments in the year of reckonable service ending on the last day of reckonable service will be compared with salary and pensionable emoluments in each year of reckonable service ending on a prescribed date, and for this purpose:

- (a) a “prescribed date” is a date 91 reckonable days before the last day of reckonable service, or any multiple of 91 reckonable days before the last day of reckonable service up to a maximum multiple of 8;
- (b) a “year of reckonable service” is a calendar year where reckonable service is continuous, and 365 consecutive reckonable days where reckonable service is discontinuous;
- (c) a “reckonable day” is a day which counts in whole or in part as reckonable service.

Where reckonable service is less than one year, “pensionable salary” will be calculated by multiplying total salary and pensionable emoluments by the proportion which one year bears to the actual length of reckonable service.