

Ombudsman's Determination

Applicant	Dr D
Scheme	Universities Superannuation Scheme (the Scheme)
Respondents	Universities Superannuation Scheme Limited (USS)

Outcome

1. I do not uphold Dr D's complaint and no further action is required by USS.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Dr D is unhappy because, as a re-employed retired member, he has to pay higher contributions into the Scheme. As the Scheme is a defined benefit scheme, he will not receive additional benefits for his higher contributions. He is therefore unhappy that he is paying more into the Scheme than others, yet will not derive any additional benefit from it.

Background information, including submissions from the parties

4. Dr D began receiving a pension from USS under a previous redundancy deal. Dr D was re-employed by the University of Bath, but as he had already retired he could not re-join the Scheme. As a concession, University of Bath agreed to set up a stakeholder pension for Dr D, and contribute into the stakeholder pension instead of the Scheme.
5. In March 2013, following the new auto-enrolment provisions, USS changed its rules. As such, Dr D was now eligible to join the Scheme. This meant there was no longer any need for University of Bath to contribute into the stakeholder pension. Instead, it enrolled Dr D into the Scheme and he was classed as a re-employed retired member.
6. Dr D raised a complaint with both University of Bath and USS. He complained that University of Bath had moved him from the stakeholder pension scheme, and he complained that USS were charging him an unfair contribution rate. However, he confirmed on 26 February 2016, that he had reached a settlement with University of Bath. He therefore withdrew this part of his complaint. This leaves only the complaint against USS to consider.

7. Dr D is unhappy because USS have deducted a contribution rate of 18.1%, whereas other members who are at a similar age contribute just 6.5% - regardless of when they joined. He believes this is discriminatory and he notes that in real terms he is paying an extra £485 a month in pension contributions.
8. USS had said that the Scheme rules allow it to apply a different contribute rate for different groups of members. In particular, it highlights Rule 6.2 which says:

“Instead of [normal] contributions...the trustee company may require or permit a member to make contributions to the fund at a different rate if...:

...

6.2.2 the trustee company considers that special circumstances apply”.
9. USS has argued that special circumstances apply for re-employed retired members as they have already received benefits. This distinguishes them from other members, who have yet to retire but are contributing into the Scheme. It explained this to an email to Dr D dated 3 June 2013.
10. USS has also evidenced that the rates for different members were advised by actuaries, and reflect the fact that the Scheme is already paying a pension to those retired members returning to work.
11. USS has provided a copy of the report received from the actuary. This report evidences that two proposals were put forward to USS, in relation to how the contribution rates should be calculated for re-employed retired pensioners.
12. The first proposal was the “Proposal with a step-change in April 2017”. This proposal recommends that a pensioner re-joiner pays an additional rate of 1.7% until April 2017, and then 4.8% thereafter. This applies to all pensioner re-joiners regardless of their age, and as such the report suggests there may be issues around “fairness” to individuals and different cohorts on pensioner re-joiners. These are further explained in Appendix B; however, USS has stated that Appendix B is commercially sensitive and as such it has not been provided to our Office. Whilst Dr D has requested to see a copy of this, he has not been provided with one as it was not relied upon as part of the Adjudicator’s Opinion.
13. There are also some suggestions to the first proposal in relation to reviewing the rate triennially.
14. The second proposal was the “Proposal without a step-change in April 2017”. Under the proposal, pensioner re-joiners pay an additional contribution rate based on the age they re-join the scheme. The contribution rates under this proposal are higher, they are intended to be maintained on a more long-term basis. However, the actuary states this addresses the issues of fairness across different cohorts and has the benefit of administrative ease.

15. USS opted for the second proposal. However, Dr D feels that USS ought not to have followed this advice, as it was not a suitable proposal. In particular, he references Equality Act (Age Exceptions for Pension Schemes) Order 2010, Schedule 1 para 5, which states that:

“Contributions under defined benefits arrangements

5. Under a defined benefits arrangement, different rates of member or employer contributions according to the age of the members by or in respect of whom contributions are made, to the extent that—

(a) each year of pensionable service entitles members in a comparable situation to accrue a right to defined benefits based on the same fraction of pensionable pay, and

(b) the aim in setting the different rates is to reflect the increasing cost of providing the defined benefits in respect of members as they get older.”

16. Dr D highlights that USS can only discriminate based on age, to the extent that the different contribution rate reflects the cost of providing the benefit. As the actuarial advice presented an option where the contribution rate could be lower, he feels USS cannot justify asking him to pay a higher contribution rate.
17. Dr D has also added that USS did not allow him to re-join the Scheme when he was originally re-employed. He points out that when he was allowed to join again he fell into a group of members who had to pay a higher contribution rate than other members of his age.
18. Lastly, Dr D has highlighted that he now pays the same contribution rate as other Scheme members in his age category. He believes this is further evidence that the higher contribution rate was not fair in the first place.

Adjudicator’s Opinion

19. Dr D’s complaint was considered by one of our Adjudicators who concluded that no further action was required by USS. The Adjudicator’s findings are summarised briefly below:
- USS is entitled to apply a different contribution rate to different members under the Scheme rules and the Equality Act.
 - USS has exercised due diligence by obtaining actuarial advice about what that rate should be before reaching its decision.
 - The actuary presented two ways of calculating the cost of providing benefits and therefore contribution rates. Both proposals have positive and negative aspects, and it was therefore, deemed reasonable for USS to favour one over the other.

- The fact that the rate in question has now dropped is not evidence that it was unfair to begin with. There are a number of reasons the rate may have dropped. The Adjudicator confirmed that her role was to look at the decision made on the basis of the information available to USS at the time.
20. Dr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr D 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 Dr D for completeness.

Ombudsman's decision

21. Unfortunately, Dr D has experienced a relatively unique set of circumstances, whereby he was only able to re-join the Scheme following his retirement, once he had reached an age with a much higher contribution rate. However, before auto-enrolment, USS was not obliged to allow Dr D to re-join the Scheme. I therefore cannot say it has acted unreasonably by only allowing him to re-join when it did.
22. I am also satisfied that USS has acted in line with the Scheme rules and relevant statute. I agree that any discrimination based on age must align with an evidenced difference in cost of providing benefit. However, I believe USS has done this as far as practicably possible.
23. The actuary has proposed two different ways of assessing the cost of providing benefits. Both could arguably be said to contain issues of fairness, and neither offer a rate which will be fair for every Scheme member. Furthermore, I would not reasonably expect USS to project or be able to calculate the actual cost of providing benefits to each individual. Instead, I believe it has acted reasonably by choosing one of two proposals put forward by the actuary, and that it made a reasonable decision based on the information it had at the time.
24. Therefore, I do not find there has been maladministration, I do not uphold Dr D's complaint.

Anthony Arter

Pensions Ombudsman
24 April 2017