



Ombudsman's Determination

Applicant	Mr T
Scheme	Industry Wide Mineworkers' Pension Scheme (the Scheme)
Respondent	Pension Protection Fund (PPF)

Outcome

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

Complaint summary

3. Mr T's complaint is that he has been refused PPF compensation on grounds of ill health.

Background information, including submissions from the parties

4. Mr T is a member of the Scheme, which entered the PPF assessment period on 9 July 2013. The Scheme transferred to the PPF on 1 July 2014.
5. In March 2014 Mr T had an accident at work, suffering an anterior dislocation of his right hip. His employment was subsequently terminated on grounds of capability due to ill health with effect from 1 November 2014.
6. In December 2014 Mr T applied for ill health early retirement. He was then age 44.
7. The Board refused Mr T's application on the grounds that he did not meet the criteria set out in paragraph 25 of Schedule 7 of the Pensions Act 2004 (**the Act**), for the early payment of compensation. He was under age 55 and did not have a terminal illness (with a life expectancy of less than 6 months).
8. Mr T says nowhere in the PPF rules does it state that compensation is not payable to a member if their employment is terminated on grounds of ill health during the assessment period. He says he would like the Ombudsman to assess his case on the

merits that following the accident and termination of his employment he is finding it very difficult to work and his income has fallen considerably.

9. Relevant extracts from the Act and the Pension Protection Fund (Compensation) Regulations 2005 are provided in the 'Appendix'.

Adjudicator's Opinion

10. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by LFEPA. The Adjudicator's findings are summarised briefly below.
 - Paragraph 25 of Schedule 7 of the Act provides that compensation can be paid in certain circumstances before a members' normal pension age. The conditions are set out in regulation 2 (of Part 2) of the Pension Protection Fund (Compensation) Regulations 2005. One condition is that the member has attained age 55 (the normal minimum benefit age) or age 50, where the member has rights to take benefits before age 55. Clearly, Mr T did not meet this condition.
 - Additionally, there is no provision in Schedule 7 of the Act for the payment of compensation on the grounds of ill health, other than terminal illness. Mr T's condition is not terminal.
 - Mr T's employment at the colliery was terminated after the Scheme had transferred to the PPF. Therefore the earliest date his application could have been considered was at the date his employment ceased.
 - The Board's decision was properly made.
11. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T has 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 T for completeness.

Ombudsman's decision

12. Mr T feels he should be compensated because the accident occurred prior to the Scheme's transfer to the PPF. However, the relevant date is when his employment was terminated on grounds of capability due to ill health. He could not be considered for ill health retirement prior to that date. As this date fell after the Scheme had transferred to the PPF he does not satisfy the criteria for compensation in Schedule 7 of the Act and the Pension Protection Fund (Compensation) Regulations 2005.

13. Nevertheless, and for the same reasons, if Mr T's employment had ended during the assessment period his application for ill health retirement would have been unsuccessful, as section 138 of the Act requires that benefits payable to any member under the scheme rules during the assessment period must not exceed the compensation payable to the member if the scheme had transferred to the PPF.
14. I am satisfied that the Board's decision was properly made.
15. Therefore, I do not uphold Mr T's complaint.

Anthony Arter

Pension Protection Fund Ombudsman
7 December 2016

Appendix

The Pensions Act 2004

16. Paragraph 25, Schedule 7, 'Early payment of compensation' says:

"(1) Regulations may prescribe circumstances in which, and conditions subject to which, a person may become entitled to-

(a) periodic compensation under paragraph 11 or 15, or

(b) lump sum compensation under paragraph 14 or 19, before he attains normal pension age (or, in a case to which paragraph 21 or 21A applies, normal benefit age).

(2) The Board must determine the amount of the actuarial reduction to be applied to compensation where a person becomes so entitled by virtue of regulations under this paragraph.

(3) Where, by virtue of this paragraph, periodic compensation is payable to a person under paragraph 11 or 15 before that person attains normal pension age -

(a) paragraph 12(2) applies as if the reference to the date on which the active member attains normal pension age were a reference to the date on which the compensation is payable by virtue of this paragraph, and

(b) paragraph 17(2)(b) applies as if the reference to the date on which the deferred member attains normal pension age were a reference to the date on which the compensation is payable by virtue of this paragraph."

The Pension Protection Fund (Compensation) Regulations 2005

17. As relevant Part 2, 'Early Payment of Compensation' says:

"Circumstances where a person shall be entitled to early payment of compensation

(1) The conditions subject to which a person may become entitled to-

(a) periodic compensation under paragraphs 11 or 15; or

(b) lump sum compensation under paragraphs 14 or 19, of Schedule 7 to the [Pensions Act 2004] before he attains normal pension age are those prescribed in the following paragraphs of this regulation.

(2) Those conditions are-

...

(b) that on the date on which the compensation is to become payable early-

(i) the person has attained the age of 55; or

(ii) paragraph 22 of Schedule 36 to the [Finance] 2004 Act (rights to take benefit before normal minimum benefit age) applies to the person and that person has attained-

(aa) the age of 50; and

(bb) the age referred to in paragraph 22(8) of that Schedule.”