

Ombudsman's Determination

Applicant	Ms E
Scheme	Firefighters' Pension Scheme (FPS)
Respondents	West Yorkshire Pension Fund (WYPF)

Outcome

1. I do not uphold Ms E's complaint and no further action is required by West Yorkshire Pension Fund
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms E has complained that WYPF has declined to pay her pension credit benefits early on the grounds of serious ill health.

Background information

4. Ms E is a pension credit member of the FPS. In 2016, she was diagnosed with inoperable ovarian cancer. She has been told she has less than 12 months to live. Ms E applied to WYPS for the early payment of her pension credit benefits. WYPF said it was unable to pay Ms W's benefits before her 60th birthday.
5. Ms E appealed this decision and raised the following points:
 - She has no income other than Statutory Sick Pay.
 - WYPF was in possession of significant funds which were intended to provide for her retirement but it would not allow her access to them at a time of need.
 - Her former husband had been allowed to access his benefits early on the grounds of ill health but she was being denied access on the same grounds.
 - The majority of firefighters in the UK are men. It follows that the rule which was preventing her from accessing her benefits was likely to apply mainly to women. The application of this rule constituted indirect discrimination on the grounds of gender under the Equality Act 2010.

6. WYPF responded saying there was no provision under the FPS rules for the early or late payment of pension credit benefits. It said the date on which the firefighter (from whose benefits the credit was derived) took his/her benefits did not affect the pension credit member's entitlement. WYPF has referred to regulations IA1, IA2, IA3 and IA4 of the Firemen's Pension Scheme Order 1992 (see appendix).

Adjudicator's Opinion

7. Ms E's complaint was considered by one of our Adjudicators who concluded that no further action was required by WYPF. The Adjudicator's findings are summarised briefly below:-
 - Ms E is a pension credit member of the FPS. The payment of her benefits is governed by the provisions set out in Part IA of the Firemen's Pension Scheme Order 1992. WYPF must pay the benefits in accordance with those provisions. Unfortunately, there is no provision for the payment of pension credit benefits before the member reaches normal benefit age (60) on any grounds; ill health or compassionate. WYPF has no discretion to pay the benefits any earlier.
 - Ms E has suggested that the way in which the FPS provides for pension credit members may be discriminatory. She has made the point that the relevant regulation is far more likely to apply to women than to men. Under the Equality Act 2010, an occupational pension scheme, such as the FPS, must be taken to include a non-discrimination rule. However, section 61(5) of the Equality Act (see appendix) specifically provides that "a non-discrimination rule does not apply in relation to a person who is a pension credit member of a scheme". It is understood that this is because the pension credit member's rights are derived from a court order and do not arise through an employment relationship. The provisions of the Equality Act 2010 do not, therefore, help Ms E's case.
 - The role of the Ombudsman is to consider whether there has been maladministration on the part of WYPF and, if so, whether this has resulted in an injustice to Ms E. Put simply, the question for the Ombudsman to decide is whether or not WYPF has done anything wrong. In deciding that question, the regulations and the law as it stands must apply. WYPF's decision not to pay Ms E her pension credit benefits does not amount to maladministration on its part. Its hands were tied by the terms of the regulations. It is hugely regrettable that the regulations do not provide for someone in Ms E's position but there was nothing WYPF could do about this.
8. Ms E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion, summarised above. My further comments follow.

Ombudsman's decision

9. As has been explained previously, WYPF's authority to pay any benefits under the FPS is derived from the regulations set out in the Firemen's Pension Scheme Order 1992. It does not have authority to pay Ms E her pension except as provided for in Part IA. That Part specifically provides that Ms E is entitled to the pension when she attains normal benefit age. There is no provision for the pension to be paid any earlier than this.
10. The Pension Sharing (Pension Credit Benefit) Regulations 2000 (SI2000/1054) (as amended) do allow schemes to pay pension credit benefits before normal benefit age if the pension credit member meets the ill health condition set out in the Finance Act 2004. However, schemes are not required to do so and, for the FPS to allow this, it would have to be specifically provided for in the relevant regulations.
11. Ms E raised the question of discrimination. She, quite rightly, points out that this FPS provision is far more likely to apply to women than to men. However, Section 61(5) of the Equality Act 2010 specifically states that the non-discrimination rule, which every occupational pension scheme is deemed to include, does not apply to a pension credit member, such as Ms E.
12. I am acutely conscious that Ms E is in a dreadful position, but I am unable to uphold her complaint.

Anthony Arter

Pensions Ombudsman
16 March 2017

Appendix

The Firemen's Pension Scheme Order 1992 (SI1992/129) (as amended)

13. Part IA contains the provisions for pension credit members. It provides,

"IA1 Pension credit member's entitlement to pension

(1) Subject to rule IA2, a pension credit member is entitled to a pension for life which becomes payable -

(a) when he attains normal benefit age, or

(b) if it is later, when the pension sharing order under which he is entitled to the pension credit takes effect.

(2) ...

1A2 Commutation of the pension credit benefits

...

IA3 Death grants where pension credit member dies before pension credit benefits payable

...

IA4 Application of general rules

(1) ... apart from where provision is made by this Part or a contrary intention is otherwise indicated -

(a) this Scheme shall not apply to pension credit members and benefits payable to or in respect of them, except if and to the extent that they are also members of another description or dependants of a member, and

..."

14. "Normal benefit age" is defined as age 60.

The Equality Act 2010

15. Section 61 provides,

“61 Non-discrimination rule

- (1) An occupational pension scheme must be taken to include a non-discrimination rule.
- (2) A non-discrimination rule is a provision by virtue of which a responsible person (A) -
 - (a) must not discriminate against another person (B) in carrying out any of A's functions in relation to the scheme;
 - (b) must not, in relation to the scheme, harass B;
 - (c) must not, in relation to the scheme, victimise B.
- (3) The provisions of an occupational pension scheme have effect subject to the non-discrimination rule.

...

- (5) A non-discrimination rule does not apply in relation to a person who is a pension credit member of a scheme.

...”