

Ombudsman's Determination

Applicant	Mr N
Scheme	Nortel Networks UK Pension Plan (the Plan)
Respondents	Nortel Networks UK Pension Trust Limited (the Trustee)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Trustee.

Complaint summary

2. Mr N has complained that he is not currently receiving any pension benefits for his first period of employment with Standard Telephone & Cables (**STC**) and the Trustee has disputed his membership for this period of time.
3. He has also said the Trustee took too long and, on occasion, failed to respond to his queries and also to the complaint.

Background information, including submissions from the parties

4. In September 1966, Mr N was employed by STC as an apprentice. He completed his apprenticeship in September 1970 and then worked as a Quality Assurance Engineer. He was made redundant in 1976 (the **first period of employment**).
5. In 1979, Mr N was reemployed by STC and worked for it until 1986. During this period, he was a member of the Plan which was a defined benefit arrangement (the **second period of employment**).
6. In 1991, Nortel Networks (**Nortel**) took over STC.
7. In January 2009, Nortel went into administration and the Plan entered the Pension Protection Fund (**the PPF**).
8. In May 2015, Mr N reached age 65 and began taking his pension benefits from the Plan.
9. In October 2018, Mr N received a letter from the Trustee advising him that the Plan had left the PPF assessment stage following an insurance buyout by Legal and General.

10. In October 2018, Mr N received a letter from Willis Towers Watson (**WTW**) the administrators of the Plan, regarding his pension benefits. It advised him of the amount he would now receive for his employment with STC from 16 January 1979 to 31 July 1986.
11. On 11 November 2018, Mr N wrote to WTW and said he had also been a member of the Plan from September 1966 to March 1976. He had been made redundant in 1976. He did not have any reference details but hoped it could provide him with full details of the current value of his pension for this period of employment.
12. On 25 July 2019, Legal and General sent a letter to Mr N which said the following:-
 - Prior to 6 April 1978, STC offered a non-contributory plan (**the Pre 1978 Plan**) which provided a pension only after 20 years' membership.
 - From 6 April 1978 to 5 April 1988, a contributory plan was offered which provided a pension after five years' membership.
 - As he was not employed for 20 years in his first period of employment this service was not pensionable.
 - Based on this information Mr N would not have been a member of the Pre 1978 Plan for the first period of employment. However, he would have been enrolled in the Plan for the second period.
13. On 16 September 2019, Mr N sent a letter to the Trustee care of Legal and General. He said in summary:-
 - He sent a letter to the Trustee on 11 November 2018 asking about his membership of the Pre 1978 Plan between 5 September 1966 and 1 June 1976.
 - Unfortunately, he gave the wrong dates of employment in the November letter as he said he left STC in March 1976. This should have been June 1976.
 - He had telephoned the Trustee on 15 March 2019 because he had not received a response. He spoke to a gentleman who said he would look into the matter of his previous pension for him.
 - As he received no response, he telephoned again on 3 and 26 June and 3 July 2019 but did not receive a call back as promised.
 - When the Social Security Act 1973 (**SSA73**), was introduced on 6 April 1975, it allowed for the preservation of a member's pension rights, known as preserved benefits of service, and would include both employee and employer contributions. Between 1975 and 1988 it was compulsory for employees aged over 26 who had contributed to a scheme for five years to be given a "preserved pension" if they moved job.

- A non-contributory pension was a “perk” of the job. Even if the Pre 1978 Plan had a minimum age of 21, he completed a full five years after age 21. He was also over 26 when he was made redundant, so he had therefore complied with pension legislation.
 - It was stated in Legal and General’s previous response that STC offered the Pre 1978 Plan which provided a pension after 20 years’ membership. By not preserving his pension after five years, the Trustee was in contravention of the legislation in place at the time.
14. On 4 October 2019, the Trustee wrote to Mr N and acknowledged his complaint.
15. On 17 January 2020, the Trustee issued a stage one response under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**). It said in summary:-
- The preservation requirements were in force from April 1975 but would only have applied if he was a member of, and contributing to, a pension scheme at that time, or if he had joined a scheme from that date.
 - It recognised that Mr N was employed by STC between 1979 and 1986. However, in relation to his membership of the Pre 1978 Plan during the period from September 1966 to June 1976, WTW had thoroughly reviewed its records and had not been able to locate any record of entitlement in respect of this period.
 - In order for the complaint to be considered further it would require some form of satisfactory evidence as to Mr N’s membership of the Pre 1978 Plan during this period, for example:-
 - Payslips that he received during this period of service which may demonstrate any contributions that Mr N made to a pension scheme.
 - Any contract of employment relating to this employment with STC and/or any paperwork that he may have received relating to the pension scheme that he was enrolled in at the time.
 - Without any evidence that Mr N made any contributions to the Pre 1978 Plan during his first period of employment with STC or membership in the Pre 1978 Plan, it was unable to identify any further entitlement to pension benefits.
 - It apologised for the delays Mr N had faced and the difficulties he had communicating with the Trustee.
16. On 21 January 2020, Mr N sent a letter to the Trustee. He said in summary:-
- His first period of employment with STC was from 5 September 1966 to 11 June 1976. He disagreed with WTW that this employment was non-pensionable. His apprenticeship lasted for four years. He would have definitely become a member of the Pre 1978 Plan on a non-contributory basis following full time employment

from September 1970 until his redundancy in June 1976 (five years and nine months).

- Unfortunately, 43 plus years after his first period of employment with STC, he was unable to supply clear written evidence to demonstrate his membership of the Pre 1978 Plan.
- The points raised in his letter dated 16 September 2019 had not been fully addressed.
- He was not made aware that his complaint needed to be submitted under the Plan's IDRPs when he sent his first letter of 11 November 2018. It took 10 months before this information was supplied to him.

17. On 17 April 2020, the Trustee sent a letter to Mr N. It said in summary:-

- It appreciated the point he had made regarding the passage of time. The position remained that it did not have any record that Mr N joined the Pre 1978 Plan during the relevant period.
- If Mr N could provide evidence that he elected to join the Pre 1978 Plan in 1970 or of membership of the Pre 1978 Plan during the period 1970 to 1976 it could revisit the matter further. As well as potentially revisiting the question of whether preservation under the SSA73 would apply to any such membership. However, without evidence of membership of the Pre 1978 Plan in the first place, the question of preservation did not arise.

18. On 22 April 2020, Mr N sent a letter to WTW and provided the following details:-

- When he joined STC he was aware that the company provided a non-contributory pension plan. It was a well-known "perk" for being a STC employee.
- When he was made redundant from STC in 1976 he always knew that he could rely on a deferred pension for his employment up until that time.
- It had always been his understanding that the Pre 1978 Plan was non-contributory, hence a request (or election) to join the Pre 1978 Plan would not have been required as it should have been done automatically.
- The same applied to his second period of employment with STC Greenwich from 16 January 1979 to 31 July 1986 for which he was currently receiving pension payments. He had no recollection of "electing to join" the Plan at that time.
- The complaint process had been delayed since he formally began it on 16 September 2019. It had taken seven months so far and the issues were not resolved. The last letter was the first and only time the original complaint of November 2018 was acknowledged.

19. On 28 September 2020, the Trustee sent a letter to Mr N and said in summary:-

- Mr N had stated that he was employed by STC from 5 September 1966 until 11 June 1976. The Trustee and the administrators had been unable to locate any records which confirmed his employment for this period.
- There was no documentary evidence of Mr N's membership of any STC pension arrangements for any time between 1966 and 1976. The Trustee would require there to be at least some form of evidence from which an assessment of membership could then be made.
- Mr N had suggested that the pension scheme would have been non-contributory at the time and that this should suffice as evidence of his membership. Even assuming that Mr N met the eligible criteria to join the relevant STC Plan, some form of election on his part to actually join the Pre 1978 Plan would still have been required. Furthermore, the Trustee is not aware that any STC pension arrangements would have been operated simply on an auto-enrolment basis.
- The Trustee was under a duty to provide and secure benefits for the Plan members. It could only do that where there was appropriate evidence that an individual was a member of the Plan (or any predecessor scheme) and as such had accrued benefits.
- There was no evidence to confirm Mr N's membership of the Pre 1978 Plan at any time between 1966 and 1976. The Trustee had not considered whether the preservation of benefits legislation applied to provide Mr N with a deferred pension from such membership.

20. The Trustee also considered whether the IDRPs had been followed correctly and said in summary:-

- The Trustee noted that there was a delay in the response Mr N received at the outset of the process. It added its apologies to those previously offered.
- The Trustee aimed to respond as quickly as it could to complaints and certainly within four months. In Mr N's case:-
 - On 16 September 2019, Mr N wrote to the Trustee care of Legal and General but to the address of WTW. He requested details of the IDRPs in order to make a formal complaint.
 - On 4 October 2019, the Plan administrators responded acknowledging Mr N's 16 September 2019 letter. It confirmed that his complaint would be dealt with under IDRPs stage one and had been passed to the Trustee.
 - On 17 January 2020, the IDRPs stage one decision was sent to Mr N.

- While this was on the outer limits of the four-month period, the Trustee did not regard it as being excessively so. Due to the historic nature of the matter the process of checking for the existence of information took some time.
21. On 1 July 2022, Mr N obtained information from Her Majesty's Revenue and Customs (**HMRC**) regarding his national insurance contributions. Mr N's record showed that from 16 January 1979 to 31 July 1986 the Plan was contracted out of the State Earnings Related Pension Scheme (**SERPS**) and Mr N paid reduced contributions as a result.
 22. On 11 January 2023, Mr N obtained information from HMRC regarding his employment from 1966 to 1976. HMRC stated that it could not supply exact dates of employment due to the age of its records. The information provided did show that Mr N had paid tax and national insurance contributions with regard to employment by STC from the year 1966/67 up until the tax year 1976/77.
 23. The record for this period also showed that Mr N had paid graduated contributions. Graduated contributions being payments towards the State Graduated Pension which topped up basic state pension payments. This arrangement ran until 5 April 1975 and was then replaced by SERPS in 1978.

Adjudicator's Opinion

24. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-
 - STC operated two pension schemes for the time that Mr N was employed by it. The Pre 1978 Plan and the Plan. Mr N's membership of the Plan was not in dispute. However, there was no record for Mr N being a member of the Pre 1978 Plan for his earlier period of employment which was from 1966 to 1976.
 - Mr N argued that, as the Pre 1978 Plan was non-contributory, then he did not have to elect to join it and also that he should have preserved benefits under SSA73. The Trustee has said that it was not aware that the Pre 1978 Plan would have allowed for auto enrolment. However, if it did there would still be a record that Mr N was a member. In the circumstances, it was the Adjudicator's opinion that simply because the Pre 1978 Plan was non-contributory did not evidence on its own that Mr N would have been a member.
 - Mr N was correct in that SSA73 was introduced on 6 April 1975. However, because of the requirement to complete five years of pensionable service from 6 April 1975, the change had no practical effect before 6 April 1980. As Mr N cannot evidence that he was a member of the Pre 1978 Plan on 6 April 1975, the legislation did not apply. In addition, Mr N left employment with STC before

he had completed an additional five years' service from 6 April 1975 and so there was no entitlement granted to Mr N by the introduction of SSA73.

- The Adjudicator reviewed the information Mr N provided regarding his national insurance record and it did confirm that he was employed by STC from the 1966/1967 tax year to the 1976/1977 tax year. During this period Mr N paid graduated contributions. In the Adjudicator's opinion the information provided by Mr N did not evidence that Mr N was a member of the Pre 1978 Plan. In the Adjudicator's view there was no maladministration by the Trustee in not paying pension benefits with regard to his first period of employment.
- The Adjudicator reviewed the information that Mr N provided regarding his initial complaint in November 2018 and the follow up telephone calls he made. In the Adjudicator's opinion Mr N could have been provided with the information regarding the Plan's IDRPs at an earlier stage and this would have reduced the delays he encountered. However, in the Adjudicator's view this was poor administration rather than maladministration and once the IDRPs had started Mr N was provided with responses within appropriate timescales.

25. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided detailed comments as to what was not dealt with in the Adjudicator's Opinion. I have considered Mr N's comments in full, but they do not change the outcome, I agree with the Adjudicator's Opinion.

26. Mr N's further complaint points were provided under the following headings which are taken from the Pensions Ombudsman (**TPO**) website as examples of the type of complaint TPO can deal with:-

- Taking too long to do something without a reason.
 - Failing to do something.
 - Not following the rules and the Law.
 - Breaking a promise.
 - Giving incorrect or misleading information.
 - Not making a decision in the right way.
- In summary, Mr N also provided the following additional information:-
 - He had not received a response to his queries regarding the value of his pension and why it had not increased significantly since it was put into payment in May 2015. The Trustee had also not apologised for the cumulative delay in dealing with his complaint issues and the stress and sleepless nights this has caused.
 - In the letter of 17 January 2020, the Trustee did not respond to all the points raised in his complaint letter and did not mention the relevant legislation even though it should have done. He could not provide clear written evidence that

he was made redundant in 1976 due to the passage of time but as he was paid redundancy money STC should have a record of this.

- He has had health problems that have been caused by the delays in dealing with his complaint. He has had to visit his doctor due to the level of anxiety he was suffering, and he now has the additional worry that his partner is suffering from cancer. He is finding it difficult to deal with his anxiety while trying to support his partner as much as he can.
- The Trustee did not make contact with any of his colleagues from the first period of employment. He provided a list of colleagues who the Trustee could contact, and he asserted that these colleagues all had a pension. The Trustee had also not looked into the archives properly.
- Mr N also stated that maladministration implies dishonesty or unlawfulness, but the word also means inefficiency and incompetence. Similarly poor administration refers to poor performance and handling so why had this distinction been drawn regarding the Trustee's handling of his complaint.

Ombudsman's decision

27. Neither Mr N nor the Trustee have been able to find any evidence that Mr N was a member of the Pre 1978 Plan for the first period of employment. The fact that the Pre 1978 Plan was non-contributory does not mean that Mr N automatically became a member, and he did not have to elect to join when his apprenticeship ended.
28. Mr N has said he has not received a response to his queries concerning the value of his pension and why it had not increased since it was put into payment. This issue has not been put forward previously as a complaint and I note that the Plan was in the PPF assessment period when Mr N started taking his pension benefits. The Adjudicator has provided Mr N with information about the PPF so that he can follow up this point.
29. I would not have expected the Trustee to have contacted Mr N's former colleagues to discuss Mr N's pension and there is no indication that there is evidence of Mr N's redundancy which has not been considered. In addition, Mr N's national insurance record does not show that he was a member of the Pre 1978 Plan. I understand that it is frustrating for Mr N that he cannot prove his membership of the Pre 1978 Plan, but the fact remains that the Trustee cannot pay pension benefits without a record of membership, and I am satisfied that appropriate steps have been taken to check the Plan's archives.
30. Mr N has said that the Trustee has not properly applied the SSA73 that was introduced in April 1975. However, the preservation of benefits does not apply here as there is no evidence of Mr N's membership of the Pre 1978 Plan. The legislation does not convey any greater right where membership of a scheme has not been proven. For the SSA73 to apply, in the way Mr N has described, he would need to

provide some evidence to support his assertion that he was a member of the Pre 1978 Plan.

31. Mr N is unhappy with the length of time that the Trustee took to respond to his complaint and the quality of the responses he received. I have reviewed the information provided and agree with the Adjudicator that Mr N could have been provided with information of the Plan's IDRPs at an earlier stage. The Trustee has apologised for this initial delay.
32. However, once the IDRPs were invoked Mr N received responses within an appropriate time frame and in line with expected timescales. In the circumstances I do not expect the Trustee to provide a further apology regarding the cumulative length of the complaint process. I find that the Trustee did respond within an acceptable timescale to Mr N once the IDRPs were initiated and while I acknowledge that Mr N has found the process stressful this is not the fault of the Trustee. I do not find that there has been any maladministration regarding the complaint handling, but I do acknowledge that the process should have begun at an earlier date.
33. Mr N has asked what the difference between maladministration and poor administration, is as he is of the view that there has been maladministration by the Trustee. There is no definition of maladministration in law and the examples Mr N has cited from the TPO website are provided as guidance as the types of issues which could be considered as maladministration. The fact that Mr N has allocated his complaint points to the headings given on the TPO website does not however mean that a finding of maladministration is appropriate.
34. The Adjudicator has given an opinion that the delay in starting the formal complaint process was poor administration. I agree with the Adjudicator, as there is not a clear indication of error by the Trustee, but it should have been able to draw together the enquires made to the different parties by Mr N and provided a suitable response. It is also important to note that even if a finding of maladministration is made this will not always lead to an award being made to the applicant.
35. I appreciate Mr N will be unhappy with the outcome of this complaint but without evidence to suggest that he was a member of the Pre 1978 Plan the Trustee cannot be compelled to pay him a benefit to which there is no evidence of entitlement.
36. I do not uphold Mr N's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
17 October 2023