

Ombudsman's Determination

Applicant	Mrs S
Scheme	Nationwide Pension Fund (the Scheme)
Respondents	Nationwide Building Society (Nationwide) Nationwide Building Society Trustee Limited (the Trustee)

Outcome

1. I do not uphold Mrs S' complaint and no further action is required by Nationwide or the Trustee.

Complaint summary

2. Mrs S complained that she was not fully informed about the implications of purchasing a deferred pension following a period of reduced working hours in 2017. This purchase resulted in her pension benefits being calculated as two periods of service as opposed to one, which meant that her projected pension benefits at retirement are lower than she expected.
3. Mrs S estimates that her lump sum would be £17,000 less and she would also receive £2,500 less pension per annum. She would like the Trustee to adjust her retirement benefits within the Scheme to reflect one continuous period of membership so that she would not suffer a financial loss.

Background information, including submissions from the parties

4. On 10 September 1979, Mrs S commenced employment with Nationwide. She joined the Scheme on 1 January 1984, when she became eligible under the Scheme Rules (**the Rules**) at the time.
5. From 26 March 1988 to 4 September 1988, Mrs S took a period of maternity leave. As Mrs S had accrued less than five years' service in the Scheme, under the Rules, the only option she had was to receive a refund of the contributions she had paid into the Scheme or transfer her benefits to an alternative pension scheme. Mrs S was not entitled to a deferred pension from the Scheme.

6. Mrs S returned to work after her period of maternity leave on a part-time basis. At that time her hours were below the hours required to join the Scheme, so she did not re-join the Scheme until 1 May 1993.
7. On 14 August 2017, Mrs S wrote to Nationwide about her decision to receive a refund of her contributions in 1988. She said that she had not appreciated the impact this would have on her retirement benefits. Mrs S said that she would not have requested a refund of her contributions had she been aware of the consequences.
8. On 20 September 2017, the Trustee replied to Mrs S. It offered her a deferred pension dated from the 1 January 1984 to 1 January 1990, excluding the period of maternity leave (**the 2017 Agreement**). Mrs S accepted the 2017 Agreement and made a payment of £3,809 (**the Lump Sum**), in respect of pension contributions which would have been due over that period.
9. On 25 January 2018, Mrs S wrote to Nationwide to request retirement benefit projections at ages 60, 61 and 66.
10. On 6 February 2018, Nationwide provided the requested figures on behalf of the Trustee. In its response, Nationwide provided retirement figures for two separate periods of pensionable service.
11. Subsequently, there were further exchanges between Mrs S and the Trustee concerning Mrs S' pensionable service.
12. On 18 December 2019, Mrs S complained to the Trustee. In summary she said:-
 - She had not properly understood the 2017 Agreement, or the meaning of the word deferred.
 - It was not made clear that she would have two separate pension benefits in the Scheme.
 - She would like her pension benefits adjusted to reflect one continuous period of membership in the Scheme.
13. On 14 February 2020, the disputes sub-committee of the Trustee (**the Committee**) responded to Mrs S' complaint under stage two of the Scheme's Internal Dispute Resolution Procedure. The Committee did not uphold Mrs S' complaint. It said in summary:-
 - There was no reference within the 2017 Agreement to offer a continuous period of membership in the Scheme or to linking the re-instated pension to Mrs S' final pensionable salary.
 - The 2017 Agreement was clear in that it was for a deferred pension separate from her second period of pensionable service.
 - It had complied with its legal duties to administer Mrs S' benefits correctly.

Adjudicator's Opinion

14. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Nationwide or the Trustee. The Adjudicator's findings are summarised below:-
15. Mrs S' pension record shows that she holds two pensions within the Scheme arising from two separate periods of membership. These periods are:-
 - 1 January 1984 to 1 January 1990, as agreed following correspondence with Mrs S in 2017; and
 - 2 January 1990 to 31 March 2021.
16. Mrs S asserts that she did not understand the term deferred in the 2017 Agreement. In the Adjudicator's view, given that Mrs S had previously misunderstood the implications of accepting a refund of her contributions in 1988, it would have been reasonable for her to have contacted the Trustee, to confirm her understanding of the 2017 Agreement prior to accepting it. Particularly, as this agreement would have had an impact on the benefits Mrs S would receive from the Scheme at retirement.
17. The Adjudicator appreciated that Mrs S was disappointed that her membership in the Scheme was not being treated as continuous. However, the Adjudicator's view was that Mrs S had suffered a loss of expectation and not an actual financial loss. This was because Mrs S had accepted the 2017 Agreement and the Trustee had not agreed to treat her membership as continuous in that Agreement.
18. It was the Adjudicator's view that there was no maladministration by the Trustee in not agreeing to adjust Mrs S' service record to treat her membership in the Scheme as one continuous membership as opposed to separating it into two separate periods of membership.
19. Mrs S did not accept the Adjudicator's Opinion. Subsequently, there were further exchanges between Mrs S, the Adjudicator and the Trustee.

Mrs S' post Opinion comments

20. The only option she was given during her maternity leave in 1988 was to withdraw her contributions. Transferring to another pension scheme was not discussed. She would have preferred to remain in the Scheme until such time that she had increased her working hours again and the Rules allowed her to recommence contributions. Like many people, especially at that time, she had no experience of pension schemes, how they worked, implications or what questions to ask.
21. She had requested projections of her pension on a number of occasions after she had paid the Lump Sum. Each time she telephoned Nationwide's Pensions Team or used the Ask HR system she queried why she had two pensions in the Scheme as she believed she should have only had one. She was informed this was how it had to be done. When she asked why, no explanation was given.

22. She attended a retirement seminar in June 2018, which although run by an outside company, a representative from Nationwide was present. She enquired about her pension being split into two and again received the same response.
23. She did not receive an explanation of why her pension was showing as two separate benefits until 2019, following a face to face encounter with the Head of Pensions who then forwarded her query to a Senior Manager.
24. The Adjudicator stated, in her findings, that she would have expected her to contact the Trustee to confirm her understanding of the 2017 Agreement. She did contact Nationwide and was assured that the matter had been dealt with on generous terms.
25. Nationwide had a higher duty of care to ensure her understanding, especially given the history. It seems unreasonable that she should be solely responsible for this situation, given that Nationwide and the Trustee held all the expertise in this area. Nationwide did not recommend that she take independent financial advice in relation to the 2017 Agreement.
26. She agrees that she has suffered a loss of expectation however, this is inextricably linked to the actual financial loss she has incurred.
27. She appreciates that it is the Trustee's right to determine how a person may re-join the Scheme. However, the implications of the various events and decisions were not explained to her by Nationwide who was her main point of contact to the Trustee. If Nationwide had ensured she fully understood the situation, she might have decided to make other provision for her retirement at a time when she was in employment and had income to invest or make other choices. Given Nationwide's failure in this regard, she believes that the Trustee should exercise discretion.
28. The Adjudicator's emphasis appears to focus on maladministration. However, she feels that Nationwide had failed in its duty of care to her. The Trustee also failed to ensure that the advice given to her by Nationwide was such that she had a full understanding of what she could expect in retirement.
29. She did not believe she needed to make alternative provisions for her retirement outside of the Scheme. She had always implicitly trusted Nationwide to do the best for her. For many years she had made additional contributions to her benefits in the Scheme via her salary. She would not have done so had she not trusted the system.

The Trustee's and Nationwide's post Opinion comments

30. Nationwide denies it failed in its duty of care to Mrs S and the Trustee denies that Nationwide failed to inform her of the correct position at the time of 2017 Agreement.
31. The terms of that agreement were clear in that it was only about offering her a deferred pension referable to a particular period of time. The Trustee never mentioned joining, or that it had intended to join, Mrs S' two periods of pensionable service.

32. As a result, any misunderstanding was on Mrs S' part and there is no requirement for the Trustee to exercise discretion now, to allow her to join her two periods of membership. Furthermore, there is no evidence that, had Mrs S appreciated what was agreed in 2017, she would have made some other provision for her retirement or made other choices.
33. As Mrs S did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. I have considered the additional comments made by Mrs S, Nationwide and the Trustee, but I agree with the Adjudicator's Opinion,.

Ombudsman's decision

34. Mrs S complained that she was not fully informed about the implications of accepting the 2017 Agreement. She asserts that she has suffered a financial loss as the Trustee has treated her membership in the Scheme as two separate periods instead of one continuous period.
35. I consider that the wording of the 2017 Agreement made it clear that the Trustee had offered Mrs S the opportunity to repay the Lump Sum to enable her to purchase a deferred pension from the Scheme from 1 January 1984 to 31 January 1990 (excluding the period that she was on maternity leave).
36. There is no evidence that Nationwide or the Trustee provided Mrs S with misleading information, prior to her accepting the 2017 Agreement, that would have led her to believe that her membership in the Scheme would be treated as continuous.
37. I do not find that Nationwide and the Trustee failed in their duty of care to Mrs S, to ensure she understood the 2017 Agreement before she signed it. It was Mrs S' responsibility to ensure that she understood the Agreement before she accepted it. She could have confirmed her understanding by obtaining independent financial advice or by making enquiries with Nationwide, prior to signing the Agreement. I have not seen any evidence that Mrs S did so.
38. I do not find that there has been any maladministration by the Trustee or Nationwide in relation to how Mrs S' benefits in the Scheme have been calculated or the way in which the 2017 Agreement was handled. Mrs S' misunderstanding of the 2017 Agreement does not confer an obligation on the Trustee, to exercise its discretion to allow her membership in the Scheme to be treated as continuous.
39. I do not uphold Mrs S' complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
26 May 2023