

Ombudsman's Determination

Applicant	Mrs S
Scheme	HSBC Bank (UK) Pension Scheme (the Scheme)
Respondents	HSBC Bank Pension Trust (UK) Limited (the Trustee) Willis Towers Watson (WTW)

Outcome

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

Complaint summary

2. Mrs S complained that she received a married woman's gratuity (**the gratuity**) in 1972 which extinguished her accrued pension benefits. Mrs S said that she was not informed at the time that there would be an impact on her future pension.
3. Mrs S has been offered an Equivalent Pension Benefit (**EPB**) rather than a deferred pension. Mrs S said that this is unfair and is indirect discrimination under the Equality Act 2010.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
5. In January 1960, Mrs S began working for the Midland Bank (**the Bank**) and she joined the Scheme which was a defined benefit arrangement.
6. In December 1972, Mrs S opted to take the gratuity. This was a lump sum payable upon marriage which was in respect of any entitlement to pension benefits that had accrued before the marriage. Payment of the gratuity extinguished any accrued pension benefits.
7. In November 1975, Mrs S left employment at the Bank.

8. In September 2019, WTW wrote to Mrs S to say it had conducted a tracing exercise to find members who were entitled to benefits under the Scheme. The letter provided information about the benefits payable to Mrs S:
 - At the time of ceasing membership in the Scheme Mrs S qualified for an EPB as for some or all her service between 1972 and 1975 she was contracted out.
 - The annual EPB payable was £8.73. In lieu of this the Trustee would pay a one-off lump sum of £312.71.
 - The EPB had been adjusted for a retirement date of 1 September 2019. As the EPB was being paid after Normal Retirement Age the one-off sum had been uplifted to consider the late payment.
 - Following payment of the one-off lump sum Mrs S would have no further entitlement under the Scheme for her period of membership.
9. Mrs S contacted WTW to ask for further information about the EPB and why she was not due a deferred pension for her service between 1972 and 1975.
10. On 24 June 2020, WTW wrote to Mrs S stating: -
 - In 1972 she had taken the gratuity. The payment of this lump sum to female members of the Scheme upon their marriage negated any further entitlement to accrued pension benefits up to that point. It therefore meant that effectively the accrual started again after this date.
 - To be eligible for a deferred pension Mrs S had to meet the legislative requirements that were in place when she left the Bank which, it claimed, were:
 - To have completed a minimum of 10 years' service.
 - To have given a minimum of 3 months' notice in writing of her intention to leave the Bank's employment.
 - To have attained a minimum age of 30.
 - Mrs S was employed by the Bank for more than 10 years and gave the required notice of her intention to leave. However, she had not attained a minimum age of 30 at the point she left employment with the Bank. This meant that, irrespective of her taking the gratuity, she was still not entitled to a full pension from the Scheme.
11. On 8 September 2020, Mrs S emailed WTW and raised a complaint under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). Mrs S stated that she met all the criteria for a deferred pension. She had reached the age of 30 before she took the gratuity in 1972 and so a deferred pension should be payable for the period December 1972 to November 1975.

12. On 2 October 2020, the Trustee responded to Mrs S. In summary it said:

- Under the Rules of the Scheme dated 25 July 1972, in the definition of “Pensionable Service” under Rule 2 it states that:

“Service before the marriage of a female member on the occasion whereof or in connection wherewith a marriage gratuity is paid to her shall not be pensionable service.”

In accordance with this Rule Mrs S’ pensionable service prior to the date of her marriage was extinguished upon payment of the gratuity.

- Mrs S left active service in November 1975 and had just under three years’ pensionable service following her marriage. Section 1 Rule 5 of the Trust Deed and Rules dated 31 December 1974 which was in force at the time she left service states:

“A member who, having 5 years’ pensionable service retires in accordance with [rule] 2 will be entitled to a pension”.¹

- A booklet from 1 January 1975 also set out the basis on which female members qualified for a deferred pension. On page 7 it summarised the qualification criteria:

“5 completed years of pensionable service including service before age 17 but excluding service which has resulted in the payment of a marriage gratuity”.

- All the information from the time was therefore consistent in making clear that service for which a member had taken the gratuity would not count towards any qualification period to be eligible for a deferred pension.
- WTW did state that to qualify for a deferred pension Mrs S was required to have completed a minimum of 10 years’ service. However, at the time Mrs S left employment with the Bank, the minimum pensionable service requirement was five years, as reflected in the above Rule. The Trustee apologised that WTW did not properly explain the criteria in their recent correspondence.

¹ In fact, this extract appears to be from Section 1 Rule 3 (Retirement pensions). However, Section 1 Rule 5 does deal with a member’s preserved pension on leaving pensionable service with the Scheme, and similarly provides that “*A member who ceases to be in service, having completed 5 years’ pensionable service and attained age 26, will be entitled to a deferred pension beginning at retirement age, the amount being calculated as in [rule] 3...*”.

- The Trustee must administer the Scheme in line with the Rules and under the Rules the period of employment for which Mrs S received the gratuity did not count as pensionable service. As such Mrs S only had three years' pensionable service and when she left employment, she did not meet the criteria to qualify for a pension.
13. On 9 October 2020, Mrs S emailed the Trustee to state that she was not informed of the future impact on her pension when she took the gratuity. She also stated that the payment of the gratuity was indirect discrimination under the Equality Act 2010.
14. On 17 December 2020, the Trustee issued its response which reiterated its previous points and in addition stated: -
- The Scheme Rules and Member guide clearly set out the conditions under which the gratuity was offered, and these documents were available to all members.
 - It was not a legal requirement for female employees of the Bank to take the gratuity upon marriage. It was open to these members to decline the gratuity in favour of retaining the pensionable service they had accrued before their marriage. The Trustee was therefore satisfied that the practice was not discriminatory.

Mrs S' position

15. At the time she got married in 1972 management expected and encouraged female staff to take the gratuity.
16. She was not informed of the significance and consequence that taking the gratuity would have on the number of years of necessary service relevant to her pension. There was a lack of clear information so she could not make an informed decision.
17. Marriage gratuities were grossly unfair to female staff, and this was recognised by the Bank who ceased the practice in 1975. The Scheme rules issued in 1974 and referred to by the Trustees, including the "5-year rule", were no longer applicable when she left the Bank.
18. She reached 60 in 2002 but WTW did not contact her until 2019.

Adjudicator's Opinion

19. Mrs S' complaint was considered by one of our Adjudicators who concluded that no action was required by the Trustee or WTW. The Adjudicator's findings are summarised below:-
- The Scheme rules stated that taking the gratuity was in exchange for the pension benefits that had been accrued up to that point. In Mrs S' case this was

the pensionable benefits she had accrued for the period January 1960 to December 1972.

- The Trustee said that there was information available at the time that set out the impact of taking the gratuity. The Adjudicator's opinion was that she would expect that Mrs S would have been aware that there would be an impact on her pension if she took a lump sum that was based on the pension benefits that she had previously built up in the Scheme.
- The Adjudicator was unable to comment on Mrs S' point that she was encouraged to take the gratuity by the Bank's management. However, the gratuity was not mandatory, and Mrs S did decide voluntarily to take the lump sum. The Scheme rules had been followed by the Trustees regarding extinguishing Mrs S' pensionable service prior to her marriage and in the Adjudicator's opinion there had been no maladministration.
- Mrs S had three years' pensionable service following her marriage and this means under the Scheme rules in force at the time she left the Bank she does not qualify for a deferred pension. The fact that these rules were changed later does not impact on Mrs S' entitlement.
- The EPB arose as the Scheme had contracted out of the State Graduated Pension Scheme which was an additional State Pension payment on top of the basic pension. Mrs S was included in a tracing exercise in 2019 and informed she was eligible for an EPB. The Adjudicator agreed with Mrs S that this was some time after her normal retirement age. However, Mrs S did receive an uplift to the lump sum in respect of the late payment of the EPB and so in the Adjudicator's opinion she was not disadvantaged by the delay.
- Mrs S also stated that she has suffered indirect discrimination under the Equality Act 2010 as she has lost the right to a deferred pension as a result of taking the gratuity. As it was not mandatory to take the gratuity, the Adjudicator did not find that the practice was discriminatory.

20. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided some additional comments which are summarised below:-

- She has lived at her current address for 42 years and has been receiving her state pension for 20 years and so she finds it difficult to understand why it took the Trustee so many years to trace her.
- Section 1 Rule 5 of the Trust Deed and Rules was introduced on 31 December 1974 and should not be applied in her situation, and she should be awarded a deferred pension.

21. I have considered these points, but they do not change the outcome, I agree with the Adjudicator's Opinion, I will respond to the points made by Mrs S for completeness.

Ombudsman's decision

22. Mrs S complained that she received a married woman's gratuity in 1972 and was not informed at the time that there would be an impact on her future pension.
23. Mrs S has now been offered an EPB rather than a deferred pension. Mrs S said that this is unfair and is indirect discrimination under the Equality Act 2010.
24. The relevant Scheme Rules at the time she took the gratuity were clear that she was giving up pension benefits in exchange for a lump sum, and I find it implausible that an explanation was not given, setting out the implications of taking the gratuity. As such, I agree with the Adjudicator that Mrs S should have been aware that taking a lump sum that was linked to her service between January 1960 and December 1972 would have an impact on her pension benefits.
25. Mrs S said that the fact that the gratuity option was withdrawn in 1975 indicated that it was an inappropriate practice. However, it was not mandatory to take the gratuity and while I note that Mrs S has commented that she was encouraged to take the gratuity by the Bank's management there is no evidence to support this. I am satisfied that the Scheme rules have been correctly followed. Mrs S no longer benefits from the pensionable service she accrued before her marriage having received a one-off lump sum. I do not uphold this part of Mrs S' complaint.
26. Mrs S has said that the Scheme rules in place from 31 December 1974 should not apply to her. However, Mrs S was subject to the provisions of the Scheme rules in force at the time she left the Bank, which was November 1975, which were indeed those dated 31 December 1974. Therefore, as Mrs S had accrued three years' pensionable service following her marriage, she does not qualify for a deferred pension under the relevant provisions of the Scheme Rules in place at the time.
27. Following the tracing exercise in 2019 Mrs S was informed that she was eligible for an EPB as the Scheme had contracted out of the State Graduated Retirement Benefit. An EPB is typically a nominal amount, and it does not increase in deferment. Due to the small nature of EPB only rights HM Revenue and Customs have said that where a pension scheme member has only EPB rights these can be commuted to a lump sum.
28. Mrs S has said that she has lived at her address for 42 years and so the Trustee should not have taken so long to find her. While I accept that the tracing exercise could have been carried out at an earlier date Mrs S has received an uplift due to the late payment and so, although there was a delay in the Trustee informing her that she was entitled to this benefit, I do not find that this had a significant impact on Mrs S.

CAS-56218-Q3X8

29. I do not uphold Mrs S' complaint.

Dominic Harris

Pensions Ombudsman
17 February 2023