

## Ombudsman's Determination

Applicant	Mr D
Scheme	NatWest Group Pension Fund ( <b>the Fund</b> )
Respondents	NatWest Pension Trustee Ltd ( <b>the Trustee</b> ) Willis Towers Watson ( <b>WTW</b> )

## Outcome

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

## Complaint summary

2. Mr D's complaint is that he has been incorrectly designated as a Category B member of the Fund instead of a Category A member. As a result of this there stands to be a significant financial loss to his long term partner if he predeceases her.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. In 1975 Mr D was employed by the National Westminster Bank Group (**the Bank**). Mr D was employed within the NatWest Markets division and became a member of the NatWest Bank (Final Salary) Pension Fund (**the Bank Final Salary Fund**).
5. In 1994, following a reorganisation at the Bank, Mr D was invited to join the NatWest Markets Pension Fund (**the NWM Fund**).
6. On 31 December 1997, Mr D left his employment with the Bank and became a deferred member of the NWM Fund.
7. On 13 March 1998, Mr D received a letter from the Bank which said that he had a preserved pension of £9,790.71 per annum which commenced on his 60th birthday. The letter set out the annual increases that were applicable to his preserved pension prior to and after his retirement date. It also set out the following information:

“In the event of your death after your normal retirement date, a spouse’s pension of 50% of your pension in payment at the date of death **and** 50% of the pension calculated as though you had not elected to commute any part of your pension on retirement for a tax free lump sum, will be payable to your spouse.”

**[My emphasis]**

8. In March 1999, the NWM Fund transferred into the Fund.
9. In early 2015, Mr D became eligible to draw his pension.
10. On 15 February 2019, following a telephone enquiry from Mr D, WTW sent him an email which said it had attached a factsheet relevant to his pension benefits (**the Factsheet**). The Factsheet was for former NWM Fund members who became members of the Fund on 1 April 1999 and were a Director, Associate Director, Assistant Director, Manager, Executive or Executive Trainee which was sometimes referred to as a Category A member. The information provided in the Factsheet said:

“Spouses pension on Death after retirement.

50% of the pension you are receiving at the date of death

or

if you gave up pension for lump sum, the pension you would have received if you had not done so.”
11. In May 2020, Mr D accessed a personal quotation for his spouse’s pension benefit through the WTW website. He noted that he had been designated as a Category B member.
12. In June and July 2020, Mr D sent a number of emails to WTW stating that he had been incorrectly categorised as a Category B member of the Fund. He said in summary:-
  - He had historically been a NatWest Markets employee. In 1993 and 1994 the Bank wanted to transfer NatWest Markets employees to its employment terms and conditions. In order to do so, legacy Bank employees such as himself were handed several documents explaining how those new terms and conditions offered by the Bank would affect them; this included the preservation of existing pension rights.
  - He had a document from that time for members of the Bank’s Final Salary Fund that contained a section covering the choice of cash instead of pension (**the Bank Final Salary Fund Booklet**). The information provided said:

“Commutation lump sums are tax free under present legislation and only reduce your own pension. They do not reduce your spouse’s pension.”

- He also received a supporting document entitled - NatWest Markets Pension Arrangements. A summary (**the NWM summary**) in that document under the heading - Death in Retirement - said:

“Spouse’s pension equal to 50% of the pension prior to commutation”.

- As a result of those documents and other employment terms offered at that time, he, and many others, were persuaded that the employment rights on offer from the Bank protected existing arrangements including pensions. No reference was made to two separate membership classes, which were now shown as Category A and Category B.
  - He was an Assistant Manager within NatWest Markets International Division, and over the next seven years had two further promotions. In 1994 he was promoted to a Managerial appointment within NatWest Markets and given the formal job title of Manager. He continued as a Manager within the Bank until his departure in December 1997. Had he ever been notified at that time that he was considered to be a Category B member, that is a member of the Secretarial and Clerical Employees part of the Fund, he would have raised an immediate objection.
  - The confirmation letter he received from the Fund in January 2015, after his commutation decision, stated that in the event of his death, a pension for a spouse/civil partner or partner may be payable. There was no mention of any restriction to this benefit.
  - In February 2019 he received clarification that the spouses pension benefit would not be reduced if he had given up part of his pension for a lump sum.
  - It is only now that, having recently used the spouse’s pension estimate facility from the website, that the spouse’s pension figure quoted was not what he expected. It appeared that at some point in the past, and without his knowledge or consent, he had been wrongly categorised as a Category B member of the Fund.
13. On 20 July 2020, Mr D sent an email to WTW and said that the facts of his case had been set out in his previous emails, but he also wanted to provide the information about joining the NWM Fund that was sent to him in 1994 which said:

“On joining a participating company as an Executive member of staff or above you have the right to choose between:

- NatWest Markets Pension Fund (final salary)
- NatWest Markets Defined Contributions Pension Scheme (money purchase)
- Personal Pensions”

14. On 31 July 2020, Mr D completed an internal dispute resolution procedure (**IDRP**) application form. He reiterated the points that he had put forward to WTW.

15. On 5 October 2020, the Trustee issued its IDR response. It said in summary:-

- The rules of the NWM Fund which applied at the time noted that Category A members were employees who:

“at the date of their admission to the Scheme or at any time prior to the date of their retirement or withdrawal from Service, have been advised in writing by the Trustees at the direction of an Employer that they are Category A Members for the purposes of the Scheme”.

- Category B members were all other members who were not Category A members. Mr D had not provided any evidence that he had been advised in writing that he was being admitted as a Category A member.
- The headings used in the various documents for categories of membership were shorthand references which had developed over time. A member’s category was determined by the specific eligibility provisions of the Fund Rules rather than by job title. A promotion or change in role would not necessarily result in a change in pension benefits or a move from the category the member was already in.
- Category A members’ benefits were calculated on the basis of a 1/45th accrual rate and Category B members’ benefits were calculated on a 1/60th accrual rate. The Bank Final Salary Fund Booklet contained the information that the Fund was open to Executive staff or above and that the pension was normally calculated as 1/60th x pensionable service up to 40 years x final pensionable salary. The benefits set out in the remainder of the Bank Final Salary Fund Booklet were also consistent with Category B membership.
- Mr D had also referred to the NWM summary. Again, that document referred to a 1/60th accrual rate and so was consistent with Category B membership.

#### **Pension payable on death of a Category B member.**

- The relevant calculation of a pension payable upon the death of a Category B pensioner was contained in Rule 1 of Division 1 of Schedule 8 (**the Rules**). It stated that for a pensioner who had left Pensionable Service prior to 1 April 1999 any pension was calculated as:

“the greater of:

(aa)  $\frac{1}{2}$  of the Category B Member’s Pension actually in course of payment at the date of his death;

and

(bb) ½ of the Category B Member’s Pension at the date of retirement before the exercise of any election to commute or to surrender in favour of his spouse any part of his Pension.”

- Mr D has pointed to two documents which indicate that this is not correct. The NWM summary said that the Spouse’s pension was equal to 50% of the pension prior to commutation. It agreed that the wording of this was not particularly detailed and did not contain all of the relevant information. This was because it was intended to be a summary comparison of the available pension options.

- Further details were contained in the Bank Final Salary Fund Booklet, with Mr D noting that it said that commutation lump sums did not reduce a spouse’s pension. Further information was provided in section 10. Death Benefits:

“If you die in retirement, the benefits are:

...

A spouse’s pension, which will normally be the greater of;

50% of the pension in course of payment of the deceased pensioner at date of death, or

50% of the pension at retirement before election of any cash commutation or allocation to secure an additional spouse’s pension.”

- This was consistent with the calculation that had been provided to Mr D. It was satisfied that the estimate of any spouse’s pension payable upon his death had been calculated in accordance with the Fund’s governing provisions. It would also note that the calculation applicable to a Category B member in the NWM Fund was the same as that which applied in his previous scheme immediately prior to joining the NWM Fund in 1994.

#### **Information provided by WTW**

- Unfortunately, the information provided to Mr D by WTW regarding the pension payable upon his death had been inconsistent. In 2019 he was provided with the Factsheet which did not apply to his circumstances. The Factsheet was intended to be used for current employees, and certain categories of pensioner member.
- Mr D should have been provided with specific information tailored to his circumstances. It apologised that the information was misleading. It noted that WTW had now clarified the correct position.

16. Following the complaint being referred to The Pensions Ombudsman, the Trustee and Mr D made further submissions that are summarised as follows.

### **The Trustee's submission**

17. The Fund's records show that Mr D was a Category B member under the NWM Fund, and so he became a Category B member in the Fund. Mr D retired from the Fund in 2015, commuting some of his pension for a tax-free cash lump sum
18. The headings used within the Rules did not entitle Mr D to a specific category of membership based on the position he held prior to retirement. It had not been provided with any evidence that Mr D was advised in writing that he was being admitted as a Category A member.
19. Category A members' benefits were calculated on a different basis to Category B members (a 1/45th accrual rate instead of a 1/60th accrual rate, and other identifiable differences). The documentation Mr D had provided was consistent with him being a Category B member.
20. Mr D has confirmed in his complaint that he has always known that his pension would be based on a 1/60th accrual rate, and indeed has never seen any reference in any materials he has received to 1/45th accrual rate. This again reinforced that Mr D is, and always has been, a Category B member. The relevant extracts of the Rules are in the Appendix.
21. It also noted that the relevant pension on death calculated under the Fund was the same as that which applied in the Bank Final Salary Fund. Mr D had made reference to a 'written promise' in his complaint and as far as it was aware, no promises were made to Mr D.
22. Unfortunately, the information provided to Mr D by WTW about the pension payable upon his death had been inconsistent. However, the correct information regarding the provisions applicable to him and also a detailed calculation of the pension payable on his death were provided to Mr D during July 2020.
23. There has been no loss suffered and it did not consider the error in providing the information in 2019 was severe enough to require any award for distress and inconvenience.
24. Mr D also referred to a letter dated 13 March 1998. It was clear from the wording quoted by Mr D that regrettably there was a typographic error. The words 'greater of' in respect of the spouse's pension were missing. The wording provided would mean that essentially a 100% pension was payable which was obviously incorrect. The correct wording was included in the Bank Final Salary Fund Booklet.

### **Mr D's submission**

25. He had been provided with incorrect information on a number of occasions and he does not think that this was a coincidence. He had known from when his Bank career began in 1975 that his pension would be based on a 1/60th accrual. He could not find any reference to the 1/45th accrual rate that had been cited by the Trustee. His

complaint was regarding the level of the spouse's pension, and he was not interested in other calculations.

26. He had been at a managerial level within the Bank since 1987. That was seven years before he joined NatWest Markets and the NWM Fund in 1994, and more than 10 years before he left the Bank. He was, or should have been, a Category A Fund member from 1994, not just on the day he left.
27. The Factsheet included the following wording:

“You should read this document if you are a former NatWest Markets Pension Fund Member and became a member of this Fund on 1st April 1999 and were a Director, Associate Director, Assistant director, Manager, Executive or Executive Trainee (sometimes referred to as a Category A member).”

According to this document, Category A membership was expressly stated as being job-title specific, the claim by the Trustee that he needed to be specifically advised in writing of Category A membership was false.

28. There were seven different specific job titles detailed in the Fund's description of Category A, and these were the same job titles that were in use in NatWest Markets at the time. This ignored the point previously made and repeated above, that he was invited in writing to join the NWM Fund in 1994 as an Executive member of staff or above.
29. As far as he was concerned, every document sent to him by the Trustee regarding his pension arrangements formed part of a written promise regarding the provision of his pension.
30. He decided on the level of his lump sum commutation in January 2015 based on his clear understanding of the pension promises made to him by the Trustee in writing. The promises were provided over a period of more than 20 years, and he altered his financial position accordingly. Until the complaint was upheld, the contingent loss remained in place and the resulting distress and inconvenience was now considerable.

## **Adjudicator's Opinion**

31. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or WTW. The Adjudicator's findings are summarised in paragraphs 32 to 40 below.
32. The Adjudicator reviewed the information that Mr D provided regarding his Fund membership and his assertions that it indicated that he was a Category A member of the Fund. The descriptions for the types of roles that attracted Category A membership were stated as Director, Associate Director, Assistant Director, Manager, Executive or Executive Trainee. Secretarial and Clerical Employees were referred to as a Category B member.

33. The Adjudicator agreed with Mr D that the description of the two categories of membership based on job title was unhelpful. However, the Rules did not provide any link between job title and the category of membership. In the Adjudicator's view, a member's job title did not entitle a member to be in a particular category of the Fund.
34. Mr D's pension entitlement was set out in the Rules. The Rules in Schedule 8 applied to former members of the NWM Fund. Mr D has said that he was aware that his pension was accruing on a 1/60th basis, and this was consistent with the Category B calculation in the Rules. In the Adjudicator's opinion, on the basis of the pension benefits he is receiving, Mr D was a member of the Category B section of the Fund.
35. The Adjudicator considered the information that Mr D was provided with regarding a spouse's pension following his death. Mr D has said that he was led to believe that the spouse's pension would be 50% of the pension in payment at the time of death but calculated as if no lump sum had been taken. He has also said that he elected to commute part of his pension benefits to receive a lump sum on the basis that it would have no effect on the spouse's pension. The correct position is that the spouse's pension payable is the greater of 50% of the pension in payment or 50% of the pension at the date of retirement before the election of any cash commutation.
36. Mr D has referred to the extracts of information from the Bank Final Salary Fund Booklet and the NWM summary. The Adjudicator agreed with Mr D that the information provided should have been clearer. However, the Bank Final Salary Fund Booklet did contain a section that covered the full position for death benefits. The NWM summary was provided as an overview of the pension options available. In the Adjudicator's opinion, although the information that Mr D has highlighted did not provide the complete rule for the calculation of the spouse's pension the full information was available to him.
37. Mr D has said that he commuted part of his pension on the understanding that it would not affect any spouse's pension payable. In the Adjudicator's opinion, there would have been a number of reasons why Mr D commuted part of his pension to a lump sum. Although his understanding of how the spouse's pension was calculated was incorrect, there is not sufficient information to say that he would have done anything differently had he been aware of the correct position.
38. There was no dispute that Mr D was given incorrect information by WTW as the Factsheet was not applicable to his circumstances. However, the provision of incorrect information did not mean that Mr D now has a right to a pension benefit to which he was not entitled. Mr D would have to demonstrate that he relied on the incorrect information to his detriment and that it was reasonable for him to have done so. As Mr D had already commuted part of his pension before he received the Factsheet, in the Adjudicator's view it did not have any impact on his decision making.
39. Mr D has said that he had expected that his partner would receive a higher spouse's pension should he die before her. The Adjudicator agreed with the Trustee that this



loss had not yet occurred and whether a spouse's pension would be payable at all would depend on future circumstances. In the Adjudicator's opinion there is no current financial loss to Mr D.

40. The Adjudicator noted that the letter Mr D was sent in 1998, when he left the NWM Fund, contained a typographic error. It was unfortunate that this happened, but the Adjudicator agreed with the Trustee that the paragraph did not make sense in its current format and so could not be relied upon.
41. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D provided further comments which do not change the outcome. Mr D's comments were extensive, and I have considered them in their entirety however the main points of his argument have been summarised in paragraphs 43 to 48 below.
42. The Trustee accepted the Adjudicator's Opinion and provided the additional comments summarised in paragraphs 49 to 52 below. I agree with the Adjudicator's Opinion and note the additional points raised.

### **Mr D's submission**

43. There was a clear link between the Rules in Schedule 8 and the job titles in use on NWM in 1994. It was normal in employment for salaries, holiday entitlement, bonuses and other benefits including pensions to be dependent on or linked to job titles. He had not claimed that moving from one job title to another led to an automatic pension change but rather he was at the Executive level specified in the Fund documents for seven years before he was invited to join the NWM Scheme.
44. He was invited to join the NWM Fund in 1994 as an Executive, having been at Executive level within the Bank since 1987. If he was not in Category A then had he been discriminated against in some way compared to his contemporaries in 1994?
45. The 1/60th accrual was also consistent with Category A membership. The Category A calculation in Schedule 8 1.1 showed that full pension payable on retirement would be equal to 2/3rds of Final Pensionable Salary. 2/3rds of final salary over an expected 40-year career equalled an accrual rate of 1/60th for each year of service. If he had retired from NatWest Markets in 2015 after 40 years of service in the NatWest Group, his pension would have been calculated as 2/3rds or 40/60ths of his final pensionable salary – an accrual rate of 1/60th.
46. In 2015 he had reasonably held expectations regarding the link between lump sum commutation and spouse's pension. If he had been aware back in the 1990s of the Fund's intention to apply Category B membership he would have challenged the Fund at that time.
47. In 2019 WTW personally sent him the Factsheet which was for Directors and Managers. WTW were fully aware that he had left the Bank more than 20 years previously and that he could in no way be described as a "current employee".

48. The letter he was provided with when he left NWM 1998 did make sense from his point of view if he substituted or for the incorrectly stated and he was entitled to assume that such an important communication was accurate.

### **The Trustee's submission**

49. The 'job titles' referred to were shorthand references, not determinative of the category of membership and it had provided the eligibility criteria under the Rules. The Trustee was unable to comment on any employment matters regarding decisions taken by the Bank.
50. Category A membership benefits were based upon 2/3rds of salary being payable after 30 years of pensionable service, this was equal to a 1/45th accrual rate. This was consistent with the messaging in the member communications for this category of membership. In effect, for years of service over those 30 years, the main benefit of continued membership was a link to final salary.
51. The Factsheet was not applicable to Mr D, and it is regrettable that he was provided with a copy by WTW in 2019.
52. The Trustee accepted that the letter provided by the Bank in 1998 should have been clearer regarding the specifics of the calculation of spouses' pensions.

### **Ombudsman's decision**

53. Regardless of what Mr D's job title was or the job titles shown in the Fund rules, Mr D's pension benefits have accrued on the basis of him being a Category B member of the Fund. The Trustee has clarified that pension benefits for Category A membership were provided on a 1/45th accrual basis and not 1/60th as Mr D has stated. Mr D's pension benefits have accrued under a 1/60th basis that was applicable to Category B membership. Mr D was informed of how his benefits would accrue and he has accepted that this was on a 1/60th accrual basis.
54. Mr D was originally a Category B member under the NWM Fund and so he became a Category B member of the Fund. The criteria for the transfer into the two categories in the Fund was the existing membership category in the NWM Fund. I have not seen any correspondence from the Bank that was provided to Mr D or the Trustee to indicate that Mr D should have been moved to a different category of membership based on a change in his employment.
55. Mr D has been provided with an estimate of the survivors benefits that may be due as applicable to Category B membership. I find that there has been no maladministration by WTW or the Trustee in how Mr D's pension has been administered with regard to his category of Fund membership.
56. I note Mr D has raised the issue of whether he was discriminated compared to his contemporaries at the Bank in 1994. My role is to review Mr D's complaint and so it is beyond my remit to investigate the position of other employees of the Bank. However,

whether or not Mr D was treated differently with regard to the pension he was offered would be a matter for the Bank. There is no indication that the Trustee made a decision with regard to which category Mr D should be a member.

57. Mr D was provided with incorrect information in the 1998 letter. I agree that he should have been able to rely on this information. However, as Mr D was aware that it was incorrect it would have been prudent to check the correct position before relying on it. Mr D was provided with full information in the Bank Final Salary Fund Booklet regarding the death benefits payable. This was available so that he could make an informed decision in 2015 when he decided to take a lump sum as part of his pension benefits.
58. Mr D was also sent the Factsheet that did not apply to his circumstances. This was sent in error, it did not mean that Mr D could now receive a benefit to which he was not entitled. Mr D is now aware of the correct position, and he can plan accordingly.
59. I do not uphold Mr D's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

29 July 2024

## **Appendix – NatWest Group Pension Fund Definitive Trust Deed**

### **“Membership Schedules**

#### **Main Section**

#### **Schedule 8**

#### **Former Members of the NatWest Markets Pension Fund**

#### **Division 2 (Directors, Associate Directors, Assistant Directors, Managers, Executives and Executive Trainees)**

##### **1.1 Retirement at Retiring Age**

On retirement of a Category A Member with Qualifying Service from Pensionable Service on his Retiring Age he shall be entitled to an immediate Pension commencing on the day next following the date of retirement calculated as follows:

1.1.1 where the Category A Member has completed 30 or more years of Pensionable Service, a Pension equal to 2/3rds of the Category A Member’s Final Pensionable Salary;

1.1.2 where the Category A Member has completed less than 30 years’ Pensionable Service, a Pension of:

$$\frac{N \times P}{30}$$

30

Where:

N is the completed Pensionable Service, and

P is the amount of Pension calculated in paragraph 1.1.1 above.”

....

#### **“Division 3 (Secretarial and Clerical Employees)**

##### **1. Annual Pension Benefits**

##### **1.1 Retirement at Retiring Age**

On retirement of a Category B Member with Qualifying Service from Pensionable Service on his Retiring Age he shall be entitled to an immediate Pension commencing on the date of retirement equal to 1/60th of the Category B Member’s Final Pensionable Salary for each year (with extra complete months of Pensionable Service counting as 1/12th of a year) up to and not exceeding the maximum of 40 years.”