

## Ombudsman's Determination

Applicant	Ms H
Scheme	Paymaster Pension Scheme ( <b>the Scheme</b> )
Respondent	Equiniti Pension Trustee Limited ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

2. Ms H has complained that she has not been able to claim a retrospective additional pension benefit (**APB**) that she was eligible for as she was single. She has said she was not made aware of this option at the time of her retirement despite providing evidence that she was divorced.

## Background information, including submissions from the parties

3. On 13 November 2015, the Scheme's administrator sent a letter to Ms H. It said that further to her recent request it had enclosed a retirement quotation (**the retirement quotation**). This outlined the benefits that may be available to her if she took early retirement from 6 April 2016.
4. Ms H's retirement quotation showed an annual pension amount and a pension commencement lump sum (**PCLS**). She was also provided with information about a spouse's pension:

"The pension payable to your surviving spouse or civil partner in the event of your death after retirement would be equal to 50% of the pension that was in payment at the date of your death."
5. Ms H was also sent the Scheme's additional pension benefit consent form (**the APB form**). The full wording of the APB form is provided in the Appendix.
6. On 25 January 2016, Ms H completed the retirement option form and selected the annual pension amount and the PCLS. She sent the completed retirement option form with an uncompleted APB form and a copy of her Decree Absolute to the Scheme's administrator.

7. On 6 April 2016, Ms H's pension benefits were put into payment.
8. On 29 October 2019, Ms H sent an email to the Scheme's administrator and said in summary:-
  - She had taken early payment of her deferred pension benefits in the Scheme. Having revisited her paperwork, she noticed in the letter of 6 April 2016, that a spouse's pension was payable on her death.
  - She was single throughout her membership of the Scheme and still was. She divorced in 1992 and as such believed that she was entitled to a refund of the spouse's pension contributions she had paid, or an APB.
  - The Scheme booklet showed this entitlement and so did the APB form. She returned the relevant paperwork on 25 January 2016 to instigate payment of her pension together with a copy of her Decree Absolute.
  - Please could it confirm the amount owing to her to date and could it enclose the relevant application form if she needed to complete one.
9. On 28 August 2019, the Scheme's administrator sent an email to Ms H and said it had reviewed her historic file from its archiving system. It had been unable to find evidence that she had completed the APB form or provided a copy of her Decree Absolute. It would refer her query to the Scheme Consultant.
10. On 24 October 2019, the Scheme's administrator sent an email to Ms H. It said that the APB form had to be completed at the time of retirement in order for an APB to be paid. As this had not happened an APB was not payable to her.
11. On 29 October 2019, Ms H sent a letter to the Scheme's administrator and said she disagreed that an APB could not be paid. She said in summary:-
  - She was entitled to a refund of her spouse's pension contributions plus interest, and or an APB by virtue of being single at the time she retired. She was still single; had no dependants and she had provided her Decree Absolute at the time of her retirement.
  - The relevant Scheme Rules were Rule 6.2 (c):

"in the case of a Member who is not a Married Member at Normal Retirement Date and **at his option** such additional benefits as the Trustees shall determine after taking the advice of the Actuary as representing the value (including interest) of the Member's ordinary contributions to the Scheme..."

**[My emphasis]**
  - Rule 11.6:

"Unclaimed benefits

Entitlement to any sum which becomes due to or in respect of a Member will cease if it has not been claimed for at least six years from the date upon which it became due, but if it formed an instalment of a pension, the right to the pension shall not be extinguished.”

- The relevant benefits were also set out in the Scheme booklets.
- The amount of refund or the amount of any APB payable to her was not included in the retirement quotation. As such she was not provided with an accurate clear picture of her entitlement and options. Her pension and employment records would have shown her marital status.
- The Scheme’s administrator had now acknowledged that it received the APB form but said she did not provide her Decree Absolute. She did send it with the paperwork that she returned and then it was sent back to her. The fact it was not registered as received was the Scheme administrator’s error.
- She was unsure whether the APB form applied to her, so she returned it uncompleted with her Decree Absolute. She hoped this would flag up any entitlement in respect of her spouse’s pension contributions. As the Decree Absolute was returned to her, she believed at that time that she was not entitled to anything. In hindsight she should have telephoned to query the APB form. However, similarly the uncompleted form should have been queried with her in light of the fact that the Decree Absolute was attached to it.

12. On 17 December 2019, the Scheme’s administrator sent a letter to Ms H and said:-

- It had confirmed the matter with the Trustee and as an APB was not requested at the time of her retirement it could not accept a request retrospectively.
- It did not hold a copy of her Decree Absolute on file, from when she retired, nor had it received a completed APB form.
- Its approach was that anyone who did not complete the APB form at the time of retirement did not want to claim an APB.

13. On 7 January 2020, Ms H raised a formal complaint under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**). She reiterated the points she had raised previously and in addition said:-

- She had a valid claim for an APB, and she knew of at least one other member who had made a claim and been paid this pension retrospectively.
- An APB was provided for by her contributions into the spouse’s scheme and so the money belonged to her and should be refunded to her.

14. On 16 April 2020, the Trustee sent Ms H a letter in response to her complaint and said in summary:-

- Under the Rules of the Scheme members who were unmarried when they retired could request an APB. This was in lieu of the spouse's pension that would be paid if they died while in receipt of a pension. Members were required to exercise this option at retirement.
- Her benefits were not affected by Rule 11.6 as they were already in payment that is the entitlement had arisen. Her complaint concerned whether the level of that entitlement was calculated on the correct basis.
- She had suggested that the contributions she had paid to the Scheme belonged to her. This was not the correct position as the Scheme was a final salary defined benefit arrangement. As a member of the Scheme, she was entitled to the benefits promised to her in the Scheme Rules and member literature. The cost of providing those benefits was determined by the Trustee and the Scheme Actuary and the cost was shared between the members and the employer.
- Contributions from both the employer and the members were invested and used to provide benefits as and when they came into payment. Her contributions formed part of the wider investments of the Scheme that ensured members received the benefits they were entitled to at retirement. Whether she was entitled to a spouse's pension or not was determined by the provisions of the Scheme Rules not by the contributions she had paid.
- In her complaint she explained that the retirement quotation did not include an option for an APB. However, she acknowledged that she was provided with an APB form, and this was not completed. Its records also indicated that a copy of her Decree Absolute was not provided as part of her retirement papers.
- According to the Scheme Rules as an APB was not selected as an option at retirement it was unable to apply this benefit retrospectively.

15. On 2 June 2020, Ms H sent a letter to the Trustee and said:-

- The Trustee had said that the entitlement to her pension benefits had arisen and that her complaint concerned whether that entitlement was calculated on the correct basis. This was incorrect. The entitlement to an APB had arisen because she was unmarried at the time of her retirement.
- As a member of the Scheme, she was entitled to receive the benefits promised in the Scheme Rules and member literature. The spouse's pension was a promised benefit, and an APB was solely related to the spouse's pension. This meant her right to an APB was equal to her right to her annual pension and the PCLS.
- The Trustee had said her benefits were not affected by Rule 11.6 as they were already in payment. She disagreed with this statement. Her claim did not relate to her pension benefits which were in payment. The "any sum" to which she was

entitled to under this Rule was an APB which was not in payment. She was within the six years limitation period to claim an APB.

### **TUPE**

- She became a member of the Scheme under TUPE arrangements in 1997. The Scheme was set up to ensure the benefits she received from the Scheme were comparable to, if not better than, those she was entitled to from the Principal Civil Service Pension Scheme (**PCSPS**), which was her previous pension scheme.
- Under the PCSPS, unmarried members receive a one-off, non-discretionary, lump sum refund of the value of the contributions (plus interest) they made towards a spouse's pension. The right of entitlement to the refund was absolute and she received this refund when her benefits from the PCSPS came into payment on 6 April 2016.
- The first edition of the Scheme booklet met the Scheme's obligations under TUPE, and the Trustees' statutory obligation to honour promised benefits. It stated:

“If you are not married at retirement then the value of your contributions, plus interest will be used to provide an additional amount of pension and/or lump sum benefit. [– **the Trustees will consult you if this applies]**”  
**[my addition]**

- This was a clear statement of intent to provide a “comparable or better than” non-discretionary benefit and give the member the choice between an APB or a lump sum benefit.
- However, this intent, was not repeated in Scheme Rule 6.2 (c) or in the second edition of the Scheme booklet. The lump sum benefit was not mentioned, and an APB became by virtue of wording a discretionary option. Rule 6.2 (c) stated an APB was “at his option” and the Scheme booklet now included the wording “at your option.”

“If on retirement you are unmarried and not in a Civil Partnership, the value of the contributions you have paid, plus interest, may (at your option) be used to provide you with such additional benefits as the Trustees decide.”

- Given the Scheme Rules and the first edition of the Scheme booklet were written at the same time, she believed this was unintentional and the Scheme's administrator was in fact misrepresenting the benefits payable to unmarried members. As it stood, a member who was unmarried at retirement only had the choice of an APB or keeping the spouse's pension benefit available. The latter was not explicit in Rule 6.2 (c), or the second edition of the Scheme b.

***Information on retirement and duty of care.***

- She understood from the Pensions Advisory Service that when an event such as retirement happened, the Scheme's administrator must, as a minimum, automatically provide to the member relevant and specified information about their pension rights and options. She also had a right to this information without having to ask for it.
- The Scheme's administrator had a duty of care to ensure that all benefits payable and options available, including potential ones, were clearly and fully set out in her retirement quotation. The standalone APB form was the only information she received concerning this benefit and so did not fulfil these obligatory requirements.
- Section 13 of the first edition of the Scheme booklet set out the obligations and minimum requirements for benefit quotations stating:

“On retirement, leaving service or death, full details of the benefits arising will be provided to you or your dependents, as appropriate, and quotations will be provided on the options available.”
- The Scheme's administrator did not comply with this. It did not incorporate an explanation of an APB into the main body of the retirement quotation. It did not provide a quote for an APB alongside the other figures, and it was not included on the retirement option form for her to select depending on her marital status. As this information was missing, she was not able to legitimately exercise her right to all the benefits that were payable under the Scheme Rules.
- The PCSPS did not ask her to request a separate quotation for the refund potentially payable. The amount of the refund was included in her retirement quotation and once she confirmed her marital status the benefit was paid.
- The Trustee had a statutory obligation to honour the benefits promised under the Scheme; and a duty of care to act in the best interest of members. She contributed each month to the Scheme in return for the promised benefits. She was entitled to a monetary retirement benefit based on her own reckonable details and that was what personalised her benefits. The decision to refuse her claim because she did not exercise that option on retirement was unjustified as that meant by default the money owing to her was retained by the Scheme.
- Section 10 of the second edition of the Scheme booklet referred to additional information and stated:

“Trustees may withhold any benefit until the required evidence or information is given.”

She had now provided that evidence.

16. On 21 September 2020, the Trustee sent a letter to Ms H and said in summary:-

- The option to take an APB was only available at Ms H's retirement and she did not elect to receive it at that time.
- The amount of an APB was not specified in the retirement quotation as the retirement quotation was completed on the basis that a spouse's pension would be payable.
- The Trustee was satisfied that the correct administrative process had been followed.
- The Scheme booklets were only provided as guides to benefits. The legal position setting out a member's entitlement to benefits under the Scheme was set out in the Scheme Rules.
- Under the Scheme Rules, the relevant provision was under Rule 6.2 (c). The key words were "at his option". This indicated that the member needed to actually opt in to obtain the benefit rather than it being payable by default.
- The provisions in Rule 11.6 were a limit on the amount of pension forfeited if a member failed to come forward and claim their benefits at retirement. The provisions do not apply to provide an entitlement to a benefit that did not already exist. It was not applicable in this case.

#### ***TUPE***

- Ms H stated that her membership of the Scheme began as a result of a TUPE transfer. She indicated that the benefits under the Scheme had to be "comparable, if not better" than those she was entitled to under the PCSPS.
- The Government's Actuary Department (**GAD**) certified that the Scheme was broadly comparable with the PCSPS. The range of benefits offered by the Scheme as a whole had to be of the same or a greater overall value. This did not mean that all of the benefits under the Scheme had to be identical to those of the PCSPS.
- It was satisfied that if she had opted for an APB then that benefit would have been broadly comparable with the benefit, she would have received under the PCSPS.

#### ***Information on retirement and duty of care***

- The Trustee satisfied its duty of care by providing the information in the retirement quotation. The retirement quotation contained the information that a spouse's pension would be payable on death if married. At the time this was not queried, and the signed forms were returned on this basis. The optional APB form was not completed to have an additional amount of pension instead of a potential pension payable to a surviving spouse.

- The Trustee did owe a duty of care to treat the membership as a whole in a fair way. If a retrospective claim had been paid in a different case, then the circumstances of that case would have been different to Ms H's.

## **Adjudicator's Opinion**

17. Ms H'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:-

- The Adjudicator reviewed all the information that was provided to Ms H. In her opinion it was clear that an APB was an option that Ms H needed to actively choose. By not completing the APB form Ms H agreed to take her pension benefits on the basis that after her death a spouse's pension would be payable if she remarried.
- The Adjudicator noted that the wording in the APB form did indicate that it only applied to members of the Scheme who were single at the time of retirement and had not subsequently married. Ms H said she provided her Decree Absolute and the uncompleted APB form to the Scheme's administrator. However, in the Adjudicator's view the receipt of the Decree Absolute and the uncompleted APB form was not enough to indicate that Ms H wanted to query her entitlement to an APB.
- The Adjudicator considered the arguments that Ms H put forward regarding the Scheme Rules and the Scheme booklets and how these provided her with an entitlement to an APB. Rule 6.2 of the Scheme Rules did indicate that the payment of an APB was in lieu of a spouse's pension, but it had to be opted for by the member. Ms H was sent the APB form so she could choose this option if she wished. The first edition of the Scheme booklet indicated that an APB would not be paid automatically but rather the Trustee would consult the member if an APB was applicable. The second edition of the Scheme booklet indicated that an APB was again opted for by the member. In the Adjudicator's opinion, the provision of the APB form for a member to complete fulfilled the descriptions in both Scheme booklets.
- Ms H referred to Rule 11.6 of the Scheme Rules which concerned unclaimed benefits. She asserted that this Rule gave her a right to retrospective payment of an APB. In the Adjudicator's view, the Trustee's explanation of this Rule was correct. Ms H was receiving all the pension benefits she was entitled to. This included the right for a spouse to receive a pension on her death should her circumstances change. These were the entitlements she chose before her pension benefits were put into payment. In the Adjudicator's opinion, the fact that Ms H could have opted for an APB as an alternative to the spouse's pension did not make it an unclaimed benefit.



- Ms H said that the provision of the spouse's pension was based on contributions she had made and as she would remain single this benefit would not be paid. She said that it was unfair that her contributions would be retained in the Scheme. In the Adjudicator's view Ms H was receiving the pension benefits she opted for when she retired which reflected her entitlement under the Scheme Rules.
  - The Adjudicator noted that Ms H became a member of the Scheme through TUPE arrangements. The Trustee had set out the background to the matching of the Scheme pension benefits to the PCSPS. In the Adjudicator's view the Trustee was entitled to rely on the findings of the GAD which stated that the benefits were comparable. The Adjudicator noted that Ms H had referred to another instance of an APB being paid retrospectively but in her view Ms H's case had been dealt with appropriately based on her circumstances and there had been no maladministration by the Trustee.
18. Ms H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms H provided her further comments which are summarised below:-
- Rule 11.6 applied to her as she had unclaimed benefits that she was entitled to.
  - She had a legitimate right to receive full details of monies payable including all the requisite figures prior to completing any consent and option form(s). There was no justifiable reason for omitting them from her retirement quote of 13 November 2015.
  - The other Scheme member who received a retrospective payment of the APB was also single and submitted her claim for the payment post-retirement. This payment meant the Trustees had set a precedent and it should be applied to her. The Trustee had not demonstrated how their situations were different
19. I have considered Ms H's comments, but they do not change the outcome, I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

20. Ms H has complained that her retrospective claim for an APB has not been allowed by the Trustee.
21. I have considered whether the Scheme Rules have been followed correctly. Ms H had the option to apply for the APB at the time of her retirement and she did not complete the required form that was supplied by the Scheme's administrator. The wording of the form did clearly state that it applied to members who were single at the date of retirement. If Ms H was unsure whether the form applied to her it would have been prudent to have queried it at the time.
22. Ms H was provided with information at retirement about the spouse's pension which would be payable on her death, and she signed the forms on this basis. The APB was

an alternative to the spouse's pension and as such does not meet the criteria for an unclaimed pension benefit.

23. Ms H has said that the full details of the APB should have been set out in her retirement quote. However, I note that she was provided with information about her pension benefits, and this included a spouse's pension. In addition, she was given the option to choose the APB if that was appropriate to her circumstances. The APB form wording did state that the figures would be provided on request so it is clear that the information could be provided if needed for decision-making. I find that Ms H was given appropriate information at the time of her retirement.
24. The Trustee has said that if a retrospective payment of the APB was paid to another member, then their circumstances would have been different to Ms H's. I have put this aside, as my consideration of Ms H's complaint is restricted to the particular merits of her case.
25. I do not uphold Ms H's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
11 June 2024

## **Appendix – The Paymaster pension scheme additional pension consent form**

“This form only applies to members of the Paymaster Pension Scheme who are single at the date of retirement.

This will only apply to you if you paid contributions whilst you were single and have not subsequently married.

The value of the contributions that the member has paid, plus interest may (at their option) be used to provide additional pension benefits. This additional pension will be calculated on request. Once in payment it cannot be revoked and on death it will not transfer to a surviving spouse.

The contributions comprise those paid to the Paymaster Pension Scheme. Contributions paid to the Principal Civil Service Pension Scheme for the provision of a spouse’s pension will also be included, if the PCSPS benefits have been transferred into the Paymaster Pension Scheme.

Please be aware that there may be a delay while we obtain PCPS contribution details.

If you are single and wish to take this option, please complete, and return this form with any applicable supporting documentation.

Have you ever been married or have entered into a civil partnership?

I am widowed.

If yes, please enclose a copy of your spouse’s death certificate.

I am divorced.

If yes, please enclose a copy of the decree absolute.

If more than one of these applies, please provide details along with supporting documentation.

I confirm that my marital status at my date of retirement will be single.

I give authority for Paymaster Pensions Administration to contact my previous pension scheme for details of contributions made for a spouse’s pension.

I confirm that I wish to receive a quotation for the additional pension provided by the contributions I have made towards a spouse’s pension.

I understand that, once received, the additional pension cannot be revoked and also that on my death it will not transfer to a surviving spouse.

Signed Date”