

Ombudsman's Determination

Applicant	Mr K
Scheme	Liberata Pension Plan (the Scheme)
Respondent	Liberata UK Limited (Liberata)

Outcome

1. I do not uphold Mr K's complaint and no further action is required by Liberata.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr K says Liberata should have given him the option to transfer out the Contributions Equivalent Premium (**CEP**) of £1,010 that was paid to HM Revenue & Customs (**HMRC**) in May 2017, in respect of his membership in the Scheme. Mr K says he missed out on the opportunity to invest the CEP and to benefit from any investment growth.

Background information, including submissions from the parties

4. In November 2002 Mr K's employment was transferred from Barclays Bank Plc (**Barclays**) to Liberata, under the transfer of undertakings (protection of employment) (**TUPE**) regulations. Mr K says under the terms of the transfer, he retained past benefits in the Barclays pension scheme.
5. Regulation 7 of the 1981 TUPE regulations, excludes occupational pension schemes from the range of protections provided on a transfer under the regulations.
6. Liberata says it holds very little details on Mr K's membership of the Scheme. His contract indicates that he was an active member of the '1964 section' of the Scheme from November 2002 to July 2003 - a non-contributory (final salary) scheme.
7. Mr K was contracted out of the State second pension under the Scheme for period 1, January 2002 to 31 July 2003.

8. Under the Pension Schemes Act 1993, where a pension scheme leaver has completed less than 2 years' qualifying service, there is no requirement to provide him with a deferred pension.
9. Rule B3 of the '1964 pension scheme' section of the Scheme Rules (the **Rules**) says:

“Except [where an active member elects to pay additional voluntary contributions (**AVCs**), has purchased added years; or was a member who joined the service of 'Martins Bank Limited' before April 1969, and elects to transfer to the Fund] no contributions shall be made to the Fund by a Member.”
10. Rule B8.4 of the Rules says:

“Where a Member leaves Service or the Fund with less than two years' Qualifying Service without becoming entitled to an immediate pension.... he or she shall be entitled to benefits arising as a result of the Fund being contracted-out in accordance with the Requirements for Contracting-out save that the Trustees shall be entitled at their discretion to pay a contributions equivalent premium.. and thereby to extinguish the Member's rights to benefits arising as a result of the Fund being contracted out...”
11. Mr K says some time after he left the Scheme he contacted Liberata about his pension and was told that he did not have a deferred pension entitlement as he had completed less than 2 years' pensionable service. He accepted this and destroyed all his paperwork. He now has no documentation dating back to when he left employment.
12. Mr K says he does not recall whether he paid contributions into the Scheme, but he believes that he lost out on around 11 months' worth of employer contributions, any member contributions he may have paid, and the investment growth on those contributions.
13. In 2010, Liberata transferred responsibility for the administration of the Scheme to Aon Hewitt. In October 2012, the Scheme was transferred to the Pension Protection Fund (the **PPF**).
14. In early 2016, Mr K says he was told by a friend, that as he had been transferred under TUPE, he was entitled to a deferred pension on leaving the Scheme.
15. On 31 March 2016, Mr K contacted Liberata enquiring about his pension. He quoted his national insurance number, and said that he had been advised that the pension was part of his benefit package under the terms of the TUPE transfer. He did not say which scheme he was enquiring about.
16. On 5 April 2016, Liberata acknowledged his letter and requested that he provide additional information.

17. On 14 April 2016, following an exchange of correspondence during which Mr K confirmed his dates of employment, Liberata advised that the only scheme which would have been available to him would have been its stakeholder scheme administered by Standard Life.
18. Following contact with Standard Life and the PPF to locate his pension without success, Mr K entered into a further exchange of communication with Liberata.
19. On 24 August 2016, Liberata replied saying that, at the time he was employed by the Company, it had two schemes: a final salary scheme, administered by Liberata, and a stakeholder scheme with Standard Life. Liberata said that, as he had not indicated which scheme he may have contributed to, it had provided contact details for Standard Life, as Standard Life had confirmed that it held a benefit for him. Liberata said that it had contacted Aon Hewitt for information about any contributions he may have paid into the Scheme but Aon Hewitt had asked that he contact Aon Hewitt directly because of data protection.
20. On 19 September 2016, in response to an enquiry from Mr K, Aon Hewitt advised that its records indicated that he was a member of the Scheme from 1 November 2002 to 31 July 2003, and that he had taken a refund of his contributions on leaving. Consequently, he had no further benefits in the Scheme.
21. On 17 November 2016, following a further exchange of correspondence with Liberata, Mr K was advised that Liberata was waiting for confirmation from HM Revenue & Customs (**HMRC**), on whether a CEP payment had been made in respect of his Scheme membership.
22. On 6 December 2016, Liberata wrote to Mr K and explained that under the terms of the contract between Liberata and Barclays Bank, Liberata was required to provide a scheme for staff transferred to Liberata. Liberata said that as the scheme in question was a non-contributory scheme, and his service amounted to less than 2 years, no refund was payable. Liberata said that it was apparent that a CEP payment had not been paid to HMRC. Liberata apologised for the oversight, and for time taken to deal with his queries. Liberata said that it would now make the CEP payment.
23. On 3 February 2017, Liberata advised Mr K that a CEP payment of £1,010 had been made to HMRC.
24. On 9 February 2017, Mr K replied saying that Liberata had given no explanation as to how the CEP had been calculated. He was not satisfied that the amount represented the total value of his deferred pension in the Scheme. He asked for a detailed breakdown of the calculation and questioned why he had not been given the option to invest it in his stakeholder plan.
25. In its reply of 16 February 2017, Liberata said that under rule B8.4 of the Rules, payment of the CEP extinguishes a member's right to benefits. Consequently, Liberata was satisfied that he did not retain any rights in the Scheme.

26. Mr K's further comments are set out below.

- He received 'a very brief and curt response' on 17 November 2016, and 'a half-hearted' apology on 6 December 2016, with a detailed explanation of what had happened in his case.
- Liberata has dealt with his case in a disgraceful way. Liberata should be 'censored' for its gross negligence.
- The Pensions Manager's letter of 3 February 2017, 'is appalling' and shows the 'contempt' Liberata has shown him throughout the entire process. He would like a proper apology and compensation for the time he wasted chasing Liberata.

27. HMRC has confirmed to this office that it received a CEP payment for Mr K in May 2017, and that it restores his entitlement to the additional State pension for the period 1 January 2002 to 31 July 2003.

28. During the investigation, the PPF confirmed that there are 56 Scheme members with less than 2 years' service who left the Scheme in 2003, or in the preceding three years, who have been granted deferred benefits in the Scheme. The PPF was unable to confirm whether any of the members had either: transferred in benefits, purchased added years; or paid AVCs. Aon Hewitt was unable to provide any information to this office about the Scheme.

29. While Liberata accepts that a CEP payment should have been paid to HMRC at the end of Mr K's membership, it does not accept that he has any pension rights in the Scheme.

30. Mr K considers a transfer payment equal to the amount of CEP, plus redress for the alleged lost investment growth, would be reasonable compensation.

31. Mr K's complaint was considered by one of our Adjudicators who concluded that no further action was required. The Adjudicator's findings are summarised briefly below:-

- Mr K completed less than two years' pensionable service in the Scheme. Under the Rules, he would only have been entitled to a refund of his contributions (if any). There was no requirement under pension legislation to offer him the option of a cash transfer sum.
- The CEP represents the national insurance contributions otherwise payable had Mr K not been contracted-out under the Scheme. He did not have a right to transfer out the CEP.
- The correct action in this case would have been for the administrators to pay the CEP to HMRC, after it was notified that he had left the Scheme. That action has now been taken (albeit late). HMRC has accepted the payment, and confirmed that it restores his entitlement to the additional State pension for the period in question.

32. Mr K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr K provided further comments:-

- The Adjudicator's Opinion did not take into consideration that, had the CEP been paid to HMRC at the time he left Liberata, rather than going towards his entitlement to the State additional pension, he would have had the right to transfer the CEP into a protected rights bond/plan.
- The investment growth on the CEP would have been substantial, and, with the new pension flexibilities in place; of much more value to him.
- CEP has only recently been paid to HMRC, therefore he should be entitled to have it paid into a personal pension/stakeholder plan and to compensation for loss of any investment growth.
- The Adjudicator took no account of the 'appalling way' he has been treated by Liberata over the years. Particularly, from the time he starting making enquiries again about his pension. He has spent considerable time and effort trying to claim what is his rightful entitlement - Liberata mismanaged his enquiries and was, at best, negligent. He should be compensated for this.
- There seems to be no concern that he may not be the only member who has been affected. And no effort is being made to ensure that no other leavers have also been 'cheated' by Liberata.

33. However, these do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr K for completeness.

Ombudsman's decision

34. With regard to the alleged financial loss. There is no evidence to support the suggestion that Mr K paid additional contributions into the Scheme, or to corroborate his assertion that he was entitled to a deferred pension on leaving the Scheme.
35. As stated by the Adjudicator, the purpose of a CEP payment is to reinstate rights to the additional State pension following termination of contracted out employment. Doing so extinguishes the individual's rights to benefits arising as a result of the scheme being contracted out. As Mr K had been paid a refund of his contributions having completed less than 2 years' service in 2002/3 the CEP was not a payment that Mr K had a right to transfer elsewhere.
36. The CEP payment was unduly delayed by Liberata and that delay amounted to maladministration. But this does not change the outcome.

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37. HMRC has confirmed that the CEP payment has restored Mr K's entitlement to the additional State pension for the relevant period. As a result, there is no outstanding financial loss to be remedied.
38. In considering whether an award for non-financial injustice is warranted, while I acknowledge that Mr K has raised issues about Liberata's handling of his enquiries, I note that Liberata has apologised to him for delaying payment of the CEP and, for not providing him with a full response until December 2016. I consider the apology to be sufficient in the circumstances. I am unable to find that the matter warrants any further action by Liberata.
39. Therefore, I do not uphold Mr K's complaint.

Anthony Arter

Pensions Ombudsman
23 August 2017