

## Ombudsman's Determination

Applicant	Miss H
Scheme	RBS Retirement Benefit Plan ( <b>the Plan</b> )
Respondent	RBS Retirement Savings Trustee Limited ( <b>the Trustee</b> )

## Outcome

1. Miss H's complaint against the Trustee is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, for the part that is upheld, the Trustee should pay Miss H £500, for the significant distress and inconvenience she has experienced.

## Complaint summary

2. Miss H's complaint concerns the Trustee's decision not to allow her to transfer her pension benefits from the Plan. She believes that she has lost the opportunity to transfer her benefits because the Trustee did not give her sufficient time to complete the transfer.
3. Miss H has also complained that the Trustee did not respond to her initial complaint under the Plan's internal dispute resolution procedure (**IDRP**).

## Background information, including submissions from the parties

4. Miss H was employed by RBS (**the Bank**), when she joined the Plan in January 2008. Her employment with the Bank ceased in November 2009 and Miss H was no longer an active member of the Plan. During this period, the Bank contributed a total of £23,359.49 into the Plan, on Miss H's behalf, through the Bank's salary sacrifice arrangement.
5. The Trustee said that after Miss H left the Bank's employment in November 2009, it sent her letters in November 2009 and April 2010. It also sent her letters on 29 September and 9 December 2016 (**the 2016 letters**).
6. The 2016 letters said:

"You left the Plan on 5 November 2009 with less than 2 years qualifying service. You must transfer the value of your pension investments to another

registered pension provider such as a new employer's scheme or personal pension plan..."

7. The 2016 letters informed Miss H of what she needed to do to facilitate the transfer and they also said:

"If you do not transfer by the 27 December 2016 you will lose your rights to any benefits from the Plan. It's not possible to have your fund paid to you as a lump sum.

### **ACTION REQUIRED BY YOU**

You must complete the transfer by 27 December 2016 otherwise you will lose your rights to any benefits from the Plan. If you are having problems with the transfer, please contact us."

8. On 13 December 2016, Miss H emailed the Plan's administrator (**the Administrator**) concerning her benefits in the Plan. Two days later, the Administrator replied to her and amongst other things said, "I have extended the deadline until the end of March but you will need to transfer your benefits."
9. On 28 May 2017, Miss H emailed the Administrator to check on the status of her transfer. On 5 June 2017, the Administrator replied and told her that it had not received her transfer paperwork from the other company (**the Receiving Scheme**).
10. On 6 June 2017, Miss H emailed the Administrator and asked it to resend the transfer forms "as they must have got lost somewhere." On 15 June 2017, the Administrator replied to Miss H and said:
- "As we have now passed the extended deadline (end of March) you no longer have the opportunity to transfer your benefits and have lost your rights to any benefits from the Plan."
11. Unhappy with this, in July 2017, Miss H made a complaint through the Plan's IDRPs.
12. Miss H did not receive a response to her IDRPs complaint, so she referred her complaint to The Pensions Ombudsman (**TPO**) and made the following comments: -
- She did not receive any correspondence from the Trustee, after her employment with the Bank ceased in 2009. She contacted the Bank in December 2016, after she started a new job.
  - The Administrator gave her an extension to transfer her benefits from the Plan and she immediately set up a personal pension plan (**PPP**) with the Receiving Scheme to transfer her Plan benefits into.
  - In May 2017, she chased the transfer and the Administrator informed her that it had not received any paperwork from the Receiving Scheme and that she had now lost the right to transfer.

- Her transfer paperwork has been lost between the Administrator and the Receiving Scheme and none of this is her fault.
  - The Trustee should have contacted her years ago concerning her benefits. She cannot lose her entitlement because the Trustee did not give her the appropriate opportunity to transfer her benefits to the Receiving Scheme.
  - The fault lies with the Trustee and or the Receiving Scheme. The Trustee should have made more of an effort to contact her in the past. Every time she moved addresses, she notified all parties of her change of address. It appears that the Trustee did not update its records.
13. Subsequent to Miss H referring her complaint to TPO, the Trustee responded to her IDRPs complaint but did not uphold it. In summary, the Trustee explained that as Miss H had failed to elect to transfer her benefits by the deadline, despite being given an extension, she had lost her right to any benefits from the Plan.
14. As Miss H was dissatisfied with the Trustee's IDRPs response, TPO continued to investigate her complaint.
15. In response to Miss H's complaint, the Trustee provided a copy of the Plan Rules (**the Rules**), copies of correspondence between the Administrator and Miss H between September 2016 and June 2017, and a copy of the Member Booklet that was available at the time Miss H joined the Plan. It also provided its comments on the complaint. The main points were: -
- Under the Rules, as Miss H was a member of the Plan for less than two years, she was offered a transfer of the full value of her account, to take to another registered pension arrangement of her choice.
  - Rule 7 was applicable to Miss H at the time, and information concerning members' entitlement on leaving service is also detailed in the Plan's Member Booklet.
  - Following withdrawal from service, Miss H was offered a transfer value by the Administrator. The notification informed her that she needed to complete the transfer within a specified time, otherwise she would lose the right to any benefit under the Plan.
  - Miss H says that she did not receive any correspondence from the Trustee concerning the transfer of her benefits. However, its records show that letters were sent to her in November 2009, at the time she left employment with the Bank, and again in April 2010. Further letters were sent to her in September and December 2016, at her current address.
  - The 2016 letters clearly said that the transfer needed to be completed by 27 December 2016, otherwise she would lose any rights to benefits from the Plan. This information was highlighted in bold and "set out in a box headed in bold capitals "ACTION REQUIRED BY YOU"."

- Miss H emailed the Administrator on 13 December 2016. The Administrator responded two days later, and agreed to extend the deadline for her to transfer her Plan benefits, to the end of March 2017.
  - On 28 May 2017, Miss H contacted the Administrator to query the progress of her transfer. The Administrator informed her that it had not received any paperwork from the Receiving Scheme.
  - Since then, Miss H has not provided any evidence that the Receiving Scheme had sent her transfer paperwork to the Plan.
  - As Miss H did not formally instruct or authorise the transfer of her benefits to an alternative arrangement, although an extended timescale was given to her, she lost her rights to any benefit from the Plan.
  - The Trustee's investigation showed that although Miss H had submitted an IDRP complaint on 20 July 2017 and it was received by the Administrator, it was not forwarded to the Trustee to deal with.
  - From July 2017, the Plan's administration services were transferred to another company and the Trustee can only apologise that Miss H's complaint was missed, during this period of significant administration change.
  - Miss H submitted a further IDRP stage one complaint in January 2018 and this was responded to on 13 March 2018.
16. Following receipt of the Trustee's response, there was further correspondence between Miss H and TPO. Miss H confirmed the following: -
- She did not receive any correspondence from the Receiving Scheme which confirmed that it had received her transfer paperwork.
  - She did not receive any correspondence from the Receiving Scheme which confirmed it had sent her transfer paperwork to the Administrator.
  - She waited until May 2017 to request an update from the Administrator, regarding her transfer request, because it was her experience that processes like this took time. As far as she was concerned, she had completed her part of the process and her instructions were being executed.
  - The only reason she opened the PPP was to accept the transferred benefits and both the Trustee and the Receiving Scheme knew this.
  - She had informed the Administrator of what was happening and "trusted it was progressing as a reasonable person should be able to assume."

## Adjudicator's Opinion

17. Miss H's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee. The Adjudicator's findings are summarised below:-

- The Trustee has to administer the Plan in accordance with the Rules, and as Miss H was a member of the Plan for less than two years, she did not qualify for deferred benefits under the Rules. Relevant extracts of the Rules are in the Appendix.
- Rule 7.2 states that a member, irrespective of their length of service may ask the Trustee to provide a cash transfer sum, within the period notified to the member by the Trustee. However, Miss H did not provide the Administrator with the required transfer documents to enable the transfer, prior to the expiration of the deadline. So, there was no maladministration by the Trustee.
- Miss H said that the Trustee did not try hard enough to contact her to inform her of her benefits in the Plan. She claims that she did not receive the letters the Administrator sent her, on the Trustee's behalf, in 2009, 2010 or 2016.
- However, Miss H contacted the Administrator on 13 December 2016 to discuss the transfer of her benefits. In the Adjudicator's opinion, on the balance of probabilities, Miss H contacted the Administrator in December 2016, because she had received the letter it had sent her earlier, in the same month. When Miss H contacted the Administrator in December 2016, the Administrator agreed to extend the deadline to the end of March 2017, for her to transfer her benefits.
- Although Miss H was aware of the 31 March 2017 deadline, she did not contact the Administrator until 28 May 2017, to query the transfer. She also confirmed that prior to that date, she did not find out from the Receiving Scheme if it had received or had sent her transfer documents to the Plan.
- In the Adjudicator's opinion, there was insufficient evidence for her to conclude that the Trustee had received Miss H's application before the expiration of the deadline, and that it was the Trustee's maladministration that resulted in her losing the benefits she had accrued in the Plan. The Adjudicator was satisfied that the Administrator, on behalf of the Trustee, gave Miss H sufficient notice regarding what would happen if she did not transfer her benefits by the deadline. It was her responsibility to ensure that she took reasonable steps to ensure the transfer was completed prior to the deadline.
- Therefore, it was the Adjudicator's view that I would not uphold this element of Miss H's complaint, and direct the Trustee to allow her to transfer the benefits she had accrued in the Plan.
- With that being said, it was the Adjudicator's opinion that the Trustee's failure to respond to Miss H's original IDRPs amounted to maladministration. This

maladministration caused Miss H significant distress and inconvenience and she should receive an award in recognition of this.

18. Miss H did not accept the Adjudicator's Opinion and in response made the following comments: -

- The Adjudicator missed the point in that the Trustee had an explicit obligation to try and contact her. Any reasonable person would have effected a transfer out of the Plan if they were aware of the two year deadline.
- As the Trustee did not receive a response from her, it should have concluded that she had not received the communication, so it should have made more of an effort to contact her.
- She previously advised us that she had informed the Trustee of her change of address. It did not update its records and consequently continued to write to her at the wrong address .
- This makes the Trustee negligent and goes to the heart of her complaint. There is not a lot of money involved in this, but the fact remains that the Trustee has acted unprofessionally, and she is "out of pocket by their shocking service".

19. As Miss H did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Miss H for completeness.

### **Ombudsman's decision**

20. Miss H is disappointed that she is no longer able to transfer the benefits she had accrued in the Plan, to a PPP. She believes that she is in this position because of the Trustee's maladministration.

21. The Regulator's Code of Practice 04 explains the Trustee's legal obligations to early leavers where, as in this case, the scheme rules do not provide vested rights to benefits for members with three months' service, but less than two years' service.

22. Within a reasonable period of a member leaving service as above, trustees of the scheme must provide them with a written notice giving adequate information to explain:

- the nature of the right acquired to a cash transfer sum or a contribution refund under the legislation;
- the amount of both the cash transfer sum and contribution refund;
- how and by when they may exercise the right; and
- such other information as may be prescribed.

23. The Regulator expects that notices will be provided to a member as soon as reasonably possible and that this should normally be within three months of the member leaving pensionable service. When a member is provided with a statement of their rights, they must be given a reasonable period within which to reply to the trustees or managers in order to exercise those rights. The last date upon which the member may reply must be set out in the statement.
24. The member may exercise their rights by notifying their chosen option to the trustees or managers in writing; this can include electronic transmission (fax, email) if both parties are agreeable. If the member requests further time to reply, the trustees or managers can extend the reply period, but they are not obliged to do so. When the reply date (and any further period noted in paragraph 22 above) has passed, the member may be provided with a contributions refund under the default procedure.
25. On receiving the member's written reply the trustees must, within a reasonable period, do what is needed to carry out the member's election. If the member is exercising their right to a cash transfer, they must specify how it is to be used. Cash transfers can be used to acquire benefits or rights under another occupational or personal pension scheme, or to purchase an annuity, or in any other way that the legislation may prescribe.
26. Where a member does not reply to the trustees or managers to exercise the right to a cash transfer sum or contribution refund within the reply period (or within that period as extended by the trustees or managers), the trustees or managers may, within a reasonable period from the reply date or from the end of any further period allowed by them, pay the contribution refund to the member. The Regulator would expect the trustees or managers to allow a period of one month after the reply date before paying a member a contribution refund (as an exercise of the default option).
27. I appreciate Miss H's disappointment that she is unable to transfer the benefits she had accrued in the Plan. However, I do not find her inability to do so is due to the Trustee's maladministration.
28. I say this because, irrespective of whether Miss H received communications from the Trustee in 2009, 2010 or 2016, when she contacted the Administrator in December 2016 the deadline for her to transfer her benefits was extended to 31 March 2017, and there is no doubt that Miss H was aware of the extension.
29. I find that Miss H had sufficient time between December 2016 and 31 March 2017 to effect the transfer. Therefore, she should have taken steps to notify the Trustee in writing that she wanted to take a cash transfer. There is no evidence to prove that the Administrator or Trustee had received the relevant transfer documents before the expiration of the revised deadline, or that they received any other request in writing from Miss H. In the circumstances I do not consider that the Trustee caused the extended deadline to be missed. Therefore, I do not uphold this element of Miss H's complaint.

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30. I find the Trustee's maladministration in not replying to Miss H's IDRPs complaint caused her significant distress and inconvenience, and she should receive an award in recognition of this.
31. Therefore, I uphold Miss H's complaint in part.

### **Directions**

32. Within 14 days of the date of this Determination, the Trustee shall pay Miss H £500 for the significant distress and inconvenience she has experienced.

**Karen Johnston**

Deputy Pensions Ombudsman  
12 March 2020



## Appendix 1

### Relevant extracts from the Royal Bank of Scotland Group Retirement Savings Plan (with effect from 1 October 2006)

“ ...

#### **7 Early leavers**

##### **7.1 Preserved benefits**

A Member who leaves Service without becoming entitled to immediate benefits will remain entitled to benefits under the Plan if he or she satisfies the preservation requirements (see Rule 7.3 (preservation requirements)).

The Trustee will provide retirement benefits for the Member, as described in Rule 5 (Member's retirement benefits), on the Member's 65th birthday. However, the Member may choose to start receiving benefits from:

**7.1.1** a later date (but not later than the Member's 75th birthday); or

**7.1.2** If RBS consents, an earlier date (but not before the Member's 55th birthday, unless the Trustee is satisfied after receiving evidence from a registered medical practitioner that the Member is (and will continue to be) incapable of carrying on his or her occupation because of physical or mental impairment).

If the Member dies before starting to receive benefits under the Plan, death benefits will be provided as described in Rule 6.2 (benefits on death before retirement).

However, if RBS so directs, instead of providing benefits under the Plan, the Trustee will assure them to the Member by means of a transaction which satisfies the requirements of Regulation 6 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991.

##### **7.2 Members who are not entitled to immediate or preserved benefits**

A Member who leaves Service without becoming entitled to immediate or preserved benefits may, regardless of the length of the Member's Qualifying Service, require the Trustee to provide a cash transfer sum in accordance with Chapter 5 Part IV of the Pension Schemes Act 1993 (early leavers: cash transfer sums and contribution refunds).

If the Member does not select this option within the period notified to the Member by the Trustee for this purpose, the Member will not receive any benefits under the Plan, except a refund of the proceeds of his or her own voluntary contributions (if any) less tax at such rate as applies from time to time. RBS may require the Trustee to use the balance of the Member's

Retirement Account to meet any liability of the Employers to contribute to the Plan or pay expenses.”

### **7.3 Preservation Requirements**

A Member satisfies the preservation requirements if:

7.3.1 the Member leaves Service with at least two years' Qualifying Service;  
or

7.3.2 a transfer payment in respect of the Member's rights under a personal pension scheme has been made to the Plan.

**“Qualifying Service”** means:

any period which counts as Qualifying Service for the purposes of Section 71 of the Pensions Schemes Act 1993; and

any other period during which contributions are made to the Plan in respect of the Member (other than for the purposes of providing benefits under Rule 6.1) and which RBS designates as Qualifying Service.

...”