

## Ombudsman's Determination

Applicant	Mrs R
Scheme	HSBC Bank (UK) Pension Scheme ( <b>the Scheme</b> )
Respondents	HSBC Bank Pension Trustee (UK) Limited ( <b>the Trustee</b> ) Sun Life Financial of Canada (UK) Limited ( <b>SLFC</b> )

### Complaint Summary

Mrs R's complaint against the Trustee and SLFC concerns the loss of the pension benefits she accrued in the Scheme between 1972 and 1990. She would like either the Trustee or SLFC to accept liability for providing her with the pension she is entitled to, in respect of those benefits.

### Summary of the Ombudsman's Determination and reasons

The complaint is upheld against the Trustee because I find, on the balance of probabilities, that Mrs R's pension benefits were not transferred out of the Scheme. I consider that the Trustee remains liable to provide benefits for and in respect of Mrs R, for all periods of pensionable service accrued by her in the Scheme, and that SLFC has no liability to provide benefits to or in respect of Mrs R.

## Detailed Determination

### Material facts

1. Between September 1972 and March 1990, Mrs R was employed by Midland Bank, with a break in employment from around February 1981 until April 1983.
2. From January 1985 to September 1986, Mrs R was transferred to Midland Bank's Jersey office and did not pay National Insurance (**NI**) contributions during that time. Through this employment, she joined the Scheme (being at the time, the Midland Bank Pension Scheme) which is an occupational defined benefit arrangement. The exact date of Mrs R's enrolment is unclear, but she was 16 in 1972. Mrs R left the Scheme, as a deferred member on 31 March 1990.
3. Between 1978 and 1990, Mrs R was contracted out of the State Earnings Related Pension Scheme (**SERPS**) which meant that, alongside her other benefits she would accrue a Guaranteed Minimum Pension (**GMP**).
4. On 24 January 1991, Mrs R received a Cash Equivalent Transfer Value (**CETV**) illustration from Midland Bank which showed that the CETV of her benefits in the Scheme was valued at £5,287 (**the 1991 CETV**). The 1991 CETV also said that the provided value was guaranteed for three months, after which it would have to be recalculated.
5. On 2 September 1992, the Trustee recorded an entry in its ledger stating that the pension benefits Mrs R accrued in the Scheme between 1972 and 1990 were transferred to the Liberty Life Personal Retirement Plan (**the Liberty Plan**) with a transfer payment of £6,181.11 (**the Ledger Entry**).
6. At that time, the Scheme was governed by its Trust Deed and Rules dated 16 December 1988 (**the Trust Deed**). Clause 34 of the Trust Deed permitted the Trustee to transfer rights under the Scheme in respect of any person to another scheme "to the intent that" the receiving scheme shall provide such rights to that person as the Trustee thinks fit and as agreed with the trustee or manager of the receiving scheme (Clause 34(1)(a)). Noting that "no transfer shall be made" to the receiving scheme until it is so approved and provided for under a transfer agreement (Clause 34(2)(a)). The completion of a transfer in accordance with Clause 34 and "the receipt of the trustees or managers of the receiving scheme" discharged the Trustee of all liability to and in respect of the person whose rights were transferred.
7. Clause 34 of the Trust Deed was expressed to be subject to the "Social Security Act" meaning (for the purposes of Clause 34) the Social Security and Pensions Act 1975 (**the 1975 Act**). Provisions relating to transfers are set out at Schedule 1A the 1975 Act (**Schedule 1A**), which are in turn expressed to override the provisions of a scheme's rules to the extent that they conflict (with the exception of the scheme's provisions on winding up priorities) (paragraph 18, Schedule 1A). Schedule 1A sets out a member's right to transfer benefits after leaving service. It also provides that the right may only be exercised by making an application in writing to the trustees or

managers of the scheme (paragraph 16(1)) by no later than six months from the date of leaving service (paragraph 15(1)). On receipt of such an application, trustees must carry out the member's request within 12 months of receipt (paragraph (16(3))) and will be discharged from obligation to provide benefits to which the transfer value related only when they have completed the transfer in accordance with Schedule 1A (paragraph 16(2)).

8. In 1994, the Financial Conduct Authority (**FCA**) established a pensions review amid concerns that personal pension arrangements had been mis-sold to members who would have been better off in an employer's pension scheme, but they had been incorrectly advised to transfer out or not join in the first place (**the Pensions Review**). This review looked at all the sales and transfers of personal pension arrangements that had taken place between 29 April 1988 and 30 June 1994. Pension providers were required to retain records of advice given during that period in relation to a transfer for future review so compensation could be offered if a personal pension arrangement was mis-sold.
9. In 1995, Liberty Life was purchased by Lincoln National (UK) Plc (**Lincoln National**). If a transfer had been made to the Liberty Plan in 1992, Lincoln National would have become responsible for the management of Mrs R's pension benefits which would have been held in the Lincoln National Personal Retirement Income Plan (**the Lincoln Plan**).
10. In 2007, the FCA published the Conduct of Business Sourcebook (**COBS**). Regulation 9.5 of COBS stipulated that records in relation to a pension transfer must be retained indefinitely.
11. In 2009, Lincoln National was purchased by SLFC.
12. In August 2016, Mrs R contacted Willis Towers Watson (**WTW**), the current administrator of the Scheme, to claim her deferred pension benefits as she had reached her normal retirement age (**NRA**). WTW responded to Mrs R, stating that the pension benefits she had accrued in the Scheme between 1972 and 1990 had been transferred to the Liberty Plan on 2 September 1992.
13. Subsequently, Mrs R sought the assistance of the Pension Tracing Service and became aware that Liberty Life had been purchased by Lincoln National in 1995 and later by SLFC in 2009. Mrs R was informed that all pension arrangements that were previously managed by Liberty Life were now being overseen by SLFC.
14. Between December 2016 and February 2017, Mrs R contacted SLFC on several occasions, but it could not locate any records for her. SLFC stated that Mrs R was not a member of any of the pension arrangements under its management.
15. On 4 June 2018, Mrs R contacted HM Revenue & Customs (**HMRC**) to query her contracted-out history and to determine who was responsible for providing her with a pension for the period between 1970 and 1992.

16. HMRC provided Mrs R with the following information (**the HMRC records**):
  - 16.1. Mrs R held three periods of membership in the Scheme. The first being 6 April 1978 to 6 February 1981 (**the first membership period**), the second being 6 April 1983 to 31 December 1984 (**the second membership period**), and the third being 6 April 1986 to 5 April 1990 (**the third membership period**).
  - 16.2. The pension benefits Mrs R accrued during the first membership period, as well as the second membership period, were transferred from the Scheme to the Lincoln Plan (A7001093P). However, the benefits accrued during the third membership period remained in the Scheme.
17. On 20 November 2018, Mrs R wrote to SLFC stating that the HMRC records indicated that her pension benefits had been transferred to the Liberty Plan which was now managed by SLFC. She provided SLFC with the ASCON number quoted by HMRC of “A7001093P” and requested that it conduct a further search to find her record.
18. On 28 November 2018, SLFC responded to Mrs R saying that it had reviewed its records and had found no information in her name. It also clarified that the ASCON number quoted in her letter was a general reference for all pension arrangements previously managed by Liberty Life and was not connected to a specific plan or policy.
19. Following this, Mrs R raised a complaint with the Trustee under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**). She expressed frustration that despite her extensive efforts since reaching NRA in 2016, neither WTW, SLFC, nor HMRC had clarified who was responsible for providing her with a pension for the period in dispute. She also mentioned that while WTW and HMRC had suggested that her deferred pension benefits had been transferred out of the Scheme to the Liberty Plan in 1992, she had no memory of requesting or consenting to this transfer.
20. The Trustee responded to Mrs R’s complaint under both stages of the IDRP. In summary, it stated that the pension benefits Mrs R had accrued in the Scheme between 1972 and 1990 had been transferred to the Liberty Plan on 2 September 1992. So, it was no longer responsible for providing her with a pension.
21. On 23 April 2023, the Trustee wrote to HMRC stating that according to its records, Mrs R’s pensions benefits were transferred out of the Scheme to the Liberty Plan in September 1992. Consequently, the Trustee asked HMRC to provide an RD562A or CA1625 form to confirm this transfer or alternatively any other transfer that may have occurred with regards to the benefits Mrs R held in the Scheme.
22. On 25 July 2023, HMRC responded to the Trustee saying that it held no documentation suggesting that Mrs R’s pension benefits were transferred from the Scheme into the Liberty Plan or that any other transfer had taken place.

### **Summary of Mrs R's position**

23. The Trustee has refused to take responsibility for providing her with a pension, relying upon the "fact" that her deferred pension benefits were transferred out of the Scheme to the Liberty Plan on 2 September 1992. However, she did not request or consent to such a transfer.
24. She was unaware that a transfer was supposed to have taken place on 2 September 1992 as she did not receive any documentation regarding its completion. Furthermore, she did not receive any communication from Liberty Life, Lincoln National or SLFC which would have indicated to her that her pension was being held in an arrangement other than the Scheme. The fact that she contacted WTW, the current administrator of the Scheme, to claim her pension when she reached NRA in 2016 illustrates that she had no knowledge of this supposed transfer.
25. Either the Trustee or SLFC is responsible for the pension benefits she accrued in the Scheme between 1972 and 1990. She would like the Trustee or SLFC to accept its liability and provide her with the pension she is entitled to.

### **Summary of the Trustee's position**

26. It maintains that Mrs R's deferred pension benefits were transferred out of the Scheme to the Liberty Plan on 2 September 1992, as supported by the 1991 CETV, the Ledger Entry and HMRC records. The Ledger Entry would not exist if the transfer was not completed in 1992. Consequently, the Trustee was not responsible for providing Mrs R with a pension.
27. The HMRC records show that the pension benefits Mrs R accrued in respect of the first membership period as well as the second membership period were transferred to the Liberty Plan. While the third membership period is unaccounted for, since both previous periods were transferred, it is likely that the third period was transferred as well.
28. The Scheme underwent a GMP reconciliation project with HMRC between 2016 and 2019 and no liability was found with regards to Mrs R's pension. Therefore, it contends that the HMRC records for the third membership period are incorrect. Additionally, the Trustee would not have processed a partial transfer for any member of the Scheme. The Trust Deed stipulates that no further benefits should be left in the Scheme after a successful transfer. On that basis, there would be no option to partially transfer benefits and leave some benefits behind in the Scheme.
29. Liberty Life has had a complex history having been through multiple ownership changes since 1992 and this could explain why SLFC has been unable to locate any records for Mrs R. The documentation in relation to her transfer may have been lost during the transitions, either when Lincoln National purchased Liberty Life in 1995 or when SLFC purchased Lincoln National in 2009.

30. Further, the absence of additional correspondence related to Mrs R's pension in the Scheme's records suggests that the liability for her pension was transferred out of the Scheme.

### **Summary of the SLFC's position**

31. After thoroughly checking both its historic and current records using a variation of Mrs R's name, date of birth and NI number, it had not found any evidence to suggest that she was ever a member of any pension arrangement under its management. Consequently, SLFC was not responsible for providing Mrs R with a pension.
32. A transfer did not take place between the Scheme and the Liberty Plan on 2 September 1992, in respect of Mrs R's deferred pension benefits. If this transfer had occurred, it would have been covered by the Pension Review. Given that it has reviewed its records and does not hold any information in relation to discussing or giving advice to Mrs R about a pension transfer, it considers it unlikely that her deferred benefits were transferred to the Liberty Plan in 1992. Moreover, it is aware of its obligations under Regulation 9.5 of COBS which requires that it maintains a record of a pension transfer indefinitely. If Mrs R's benefits were transferred to one of its pension arrangements, there would have been some record of it, even if the plan or policy had terminated years ago.
33. In 1992, transfers were completed through a manual process whereby the ceding scheme would complete discharge forms and send these to the receiving scheme with a transfer payment cheque. The APP1/2 forms which advised HMRC of the change of scheme would be completed by the ceding scheme at the same time and posted to them so that HMRC could update its records. In Mrs R's case, the Trustee may have initiated the transfer process, but the transfer may not have been completed as the necessary forms and payment cheque did not reach Liberty Life. As a result, the Trustee may have mistakenly believed that the funds were transferred and notified HMRC accordingly, but the actual cheque remained uncashed in the Trustee's bank account. HMRC would have been unaware that the transfer was not completed and would have updated its records incorrectly.
34. Mrs R did not receive any communication from Liberty Life, Lincoln National or SLFC before or after the supposed transfer had been completed. This includes statements, member booklets and transfer completion documents.

### **The Preliminary Decision**

35. A Preliminary Decision (**the Decision**) was issued to the parties on 12 August 2025.
36. Mrs R responded to the Decision on 13 August 2025, confirming that she accepted the Decision.
37. The Trustee responded to the Decision on 26 August 2025. In summary it stated that whilst it accepted the Decision, it had considered an alternative approach for providing Mrs R with the pension benefits she was entitled to. It explained that since

there was a lack of data in relation to Mrs R's service history, salary, etc and due to the passing of time, it was planning to calculate her pension based on the 1991 CETV, increasing it to reflect inflation since 1991 and then applying a retirement uplift, including an amount to take account of interest for late payment of her benefits.

38. SLFC did not respond to the Decision. Its failure to provide a response suggested that it either agreed with the outcome of the Decision or did not wish to make any further comments. Regardless, as Mrs R's complaint has only been upheld against the Trustee, SLFC's response has no bearing on the outcome of this complaint.
39. Mrs R confirmed on 6 October 2025 that she accepted the calculation method the Trustee had communicated on 26 August 2025.

## **Conclusions**

40. Mrs R's complaint against the Trustee and SLFC concerns the loss of the pension benefits she accrued in the Scheme between 1972 and 1990. She would like either the Trustee or SLFC to accept the responsibility for providing her with the pension she is entitled to, for that period.
41. It is not disputed that Mrs R was an active member of the Scheme from 1972 until 1990. What remains unclear is where the liability lies to provide the pension benefits, she accrued in the Scheme during the 1972 to 1990 period.
42. The starting point in resolving a dispute of this nature is that the liability remains with the original pension scheme, unless it can be shown, on the balance of probabilities, that the deferred pension benefits were successfully transferred to another arrangement; the primary obligation of the original pension scheme to provide the benefits can only be discharged by a valid transfer. The responsibility for ensuring that a member received their pension would fall on either the trustees of the original pension scheme, or the trustees of the receiving scheme the benefits were transferred to. In this case, the core question is whether Mrs R's deferred pension benefits were transferred from the Scheme to the Liberty Plan in 1992, as the Trustee claims, or whether the Trustee remains liable for providing her with a pension.
43. Having reviewed the available information in Mrs R's case, I find that the Trustee remains responsible for providing her with a pension as I consider it unlikely that a valid transfer of her deferred benefits to the Liberty Plan occurred on 2 September 1992. I note that Mrs R has consistently stated that she has no recollection of ever requesting or consenting to such a transfer; a pension transfer would have required her explicit request and approval as the member. I find it inherently unlikely, that Mrs R would have initiated a substantial financial transaction such as a transfer and have no memory of it. Further, I consider it improbable that, Mrs R would have failed to take any follow-up steps regarding her requested transfer, if she had received no communication confirming its completion, or further details about the new pension arrangement from Liberty Life. I accept that Mrs R received no documentation from Liberty Life, such as a member's booklet or deferred benefit statement and find that this supports the conclusion that no transfer took place on 2 September 1992.

44. As a regulated pension provider, Liberty Life was subject to strict record-keeping obligations set by the Pensions Review. If Mrs R's deferred pension benefits had been transferred to the Liberty Plan in 1992, Liberty Life would have been required to retain a record of any advice provided in relation to this transfer and the transaction itself. The fact that SLFC, which inherited these obligations after multiple takeovers, has been unable to locate any such records for Mrs R, indicates that a transfer did not take place. While it is conceivable that some documentation could have been lost during the acquisition of Liberty Life by Lincoln National and later SLFC, it is unlikely that all records specifically relating to this transfer would be missing. The complete absence of any documentary evidence or records suggests that Mrs R's deferred pension benefits were not transferred to the Liberty Plan in 1992.
45. In normal circumstances, the information obtained from HMRC is a reliable indicator of whether a transfer has taken place. However, in Mrs R's case, the HMRC records cannot solely be relied upon as they are either incomplete, inconsistent or incorrect. The HMRC records suggest that the pension benefits Mrs R accrued during the first membership period and the second membership period (1978-1984) were transferred out of the Scheme, while the benefits accrued in the third membership period (1986-1990) remained within the Scheme. This is inconsistent with the information provided by the Trustee as both the 1991 CETV and the Ledger Entry indicate that all of Mrs R's deferred pension benefits were supposedly transferred out of the Scheme. Also, given that the Trust Deed would not have allowed the Trustee to action a partial transfer of benefits, it is unlikely that a transfer would have occurred covering only two periods of Mrs R's membership without the third membership period as the HMRC records suggest.
46. I find that, the most plausible explanation for the conflicting information held by HMRC and the Trustee is that the transfer of Mrs R's deferred pension benefits was never successfully completed. This is supported by the discrepancies between the 1991 CETV and the Ledger Entry. The 1991 CETV shows a value of £5,287, while the Ledger Entry lists the amount of £6,181.11 as a supposed transfer payment to Liberty Life for Mrs R's transfer to the Liberty Plan. Notably, while the Trustee has provided us with the Ledger Entry, there is no evidence that a payment was actually made to Liberty Life, such as a cheque or a receipt or bank record. Furthermore, the CETV was issued in 1991 and would have only been valid for a guarantee period of three months. Mrs R's supposed transfer date of 2 September 1992 significantly postdates this period, meaning that a decision would have been made to extend the period or, a new CETV illustration would have been provided in order to complete the transfer. Given that there is no evidence of the Trustee making such a decision, providing a new CETV illustration or, any payment confirmation, I find that a valid transfer of Mrs R's deferred pension benefits did not occur on 2 September 1992.
47. Having regard to the gaps and inconsistencies in the evidence and surviving documentation, I consider it more probable that an administrative error occurred in updating the Ledger Entry and HMRC, rather than that Mrs R's deferred pension benefits were transferred from the Scheme to the Liberty Plan on 2 September 1992.



It is possible that the Trustee began to process a transfer for Mrs R but did not complete it, and the incomplete details in relation of this transfer were subsequently recorded by the Trustee and HMRC. This would explain the contradictions in the records, Mrs R's lack of recollection, and the absence of any supporting documentation held by SLFC.

48. In conclusion I find, on the balance of probabilities, that Mrs R's deferred pension benefits were not transferred out of the Scheme to the Liberty Plan on 2 September 1992, noting that:
- 48.1. there is no evidence that Mrs R requested a transfer of her deferred pension benefits from the Scheme;
  - 48.2. no documentation exists which shows that a transfer was completed, including any evidence of a transfer payment or transfer agreement within the terms of Clause 34;
  - 48.3. in any event, Schedule 1A of the 1975 Act required that Mrs R would have had to exercise her right to transfer her benefits within six months of leaving service (that is, by 30 September 1990), and the Trustee would have been required to complete the transfer within 12 months of that date (that is, by no later than 30 September 1991). The information provided shows that no transfer value was given until 24 January 1991, and the Trustee says that a transfer was paid on 2 September 1992. Both these dates are outside the relevant statutory window applicable at the time; and
  - 48.4. furthermore, the information that has been provided by the Trustee and HMRC contains discrepancies which further undermines the likelihood that a transfer was properly made.
49. It follows that the Trustee's liability to provide deferred pension benefits to and in respect of Mrs R has not been discharged for the purposes of Clause 34 of the Trust Deed, or for the purposes of paragraph 16(2) of Schedule 1A of the 1975 Act.
50. I find that the Trustee remains liable to provide pension benefits for and in respect of Mrs R for all periods of pensionable service accrued by her in the Scheme, and that SLFC has no liability to provide benefits to or in respect of Mrs R.
51. Additionally, I have considered whether Mrs R should receive compensation for the distress and inconvenience she has experienced, which is otherwise referred to as non-financial injustice. I consider that the withholding of her pension for such a long period and the efforts required of her to pursue payment would have caused her serious distress and inconvenience. This matter has continued over a long period and stems essentially from a failure on the Trustee's part to maintain complete and adequate records, either of Mrs R's entitlements or, in proving that a valid and complete transfer had taken place, and from persistently failing to recognise the weakness of the evidence of such a transfer and being slow to put matters right. The Trustee has acted as if it were for Mrs R as the member to disprove that a transfer

took place, rather than for the Trustee to prove that it had made a transfer payment and had been discharged of all liability to provide Mrs R with a pension under Clause 34 and the 1975 Act. For these reasons, I find that Mrs R is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice she has suffered.

### **Directions**

52. Within 28 days of the date of the Determination, the Trustee shall arrange that the Scheme pays:
  - 52.1. £1,000 for the serious distress and inconvenience Mrs R has experienced.
  - 52.2. all future benefits to which Mrs R is entitled, on and from that date; and
  - 52.3. any benefits to which she would have been entitled before that date had she not been treated as having transferred out of the Scheme.
53. In each case the benefits shall be calculated based on the 1991 CETV of £5,287, adjusted for inflation since 1991 and with a retirement uplift in accordance with the applicable Scheme rules.
54. The retirement uplift shall include interest due to the delayed payment of benefits. The Trustee shall pay Mrs R simple interest on each of her benefit payments from the date she was originally eligible to receive it up to the date it was actually paid, at the base rate for the time being quoted by the Bank of England.

Camilla Barry  
Deputy Pensions Ombudsman  
3 December 2025