

Ombudsman's Determination

Applicant	Mr Y
Scheme	Railways Pension Scheme (the Scheme)
Respondents	Railways Pension Trustee Ltd (the Trustee) RPMI Ltd (the Administrator)

Outcome

1. Mr Y's complaint against the Trustee and Administrator is partly upheld. To put matters right, the Trustee shall pay Mr Y £1,000 for the serious distress and inconvenience caused.

Complaint summary

2. Mr Y's complaint concerns the Administrator requiring him to complete a Pensions Security Review Form (**the Form**), and its decision to suspend his pension between July and December 2018. He has also complained about how his complaint was dealt with, after he requested it be considered under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).

Background information, including submissions from the parties

3. Mr Y is a pensioner member of the Scheme and currently resides in France. In early May 2018, the Administrator sent him the Form to complete. The Form asked Mr Y to confirm his address, date of birth, National Insurance Number, the name of his employer at the time that he left service and his period of employment. The Form also had to be witnessed by someone who is not a member of Mr Y's family, and the witness had to confirm that the details on the Form were correct.

4. The covering letter sent with the Form said:

"It is important that you provide all details on the form, including telephone numbers, as we may need to check the information you supply. We appreciate that this may cause some inconvenience but it offers protection which safeguards the interest of all pensioners...

The form must be witnessed by one of the people who are currently in an occupation included in the list below...

If the information is not received by 25 July 2018 we must make you aware that the pension payments will be suspended...”

5. Between 2 July 2018 and 5 August 2018, there were exchanges between Mr Y and the Administrator concerning the completion and return of the Form, and the suspension of his pension. Mr Y had concerns about the wording on the Form and raised a complaint about this issue. Mr Y explained that no one in France would be able to verify his employment history, so they would be committing fraud if they were to sign the Form as a witness. During this period, Mr Y also sent a copy of his passport, a current French bank statement and a current French electricity bill to confirm his identity and asked for his complaint to be considered under the IDRP.
6. As the Administrator had not received the completed Form by 25 July 2018, Mr Y’s pension was suspended.
7. On 28 August 2018, Mr Y emailed the Administrator and informed it that although he had asked, in his email of 5 August 2018, for his complaint to be considered under the IDRP, he had not received an acknowledgement. He again requested his complaint be investigated under IDRP and said:

“This is taking a great deal of my time and causing me unbelievable stress and I think a compensation award of £250 would be reasonable and appropriate to this date.”
8. Between 5 September 2018 and 12 October 2018, there were further exchanges between Mr Y and the Administrator concerning his complaint being investigated under the IDRP. During this period, Mr Y also asked for his complaint to be considered under IDRP stage two.
9. On 22 November 2018, the Administrator responded to Mr Y under stage one of the IDRP but did not uphold his complaint. In summary it:-
 - Explained the purpose of the Form.
 - Said it appreciated that Mr Y may not be able to prove to the person who witnessed his Form all of the details contained within, such as who his employer was, when he left service or his period of employment. However, Mr Y should have been able to prove, with “relative ease” by presenting his passport and any correspondence sent to his home address, that he was the person who was detailed on the Form, and therefore be able to confirm his existence.
 - Explained that Mr Y’s pension would remain suspended until it had received his completed Form.
 - Explained that the Scheme is based and registered in the UK and so must comply with UK law. There was no requirement to alter the Form to comply with European and French Law.

- Said it agreed that the wording on the section of the Form in relation to the witness could be amended to make it clearer to the witness what they were actually being asked to verify. So, it would refer the Form to the relevant department to see how the Form could be developed for future reviews.
10. Following the IDRPs stage one decision, Mr Y sent further letters to the Administrator on 30 November 2018 and 1 December 2018, regarding the suspension of his pension. He also raised concerns regarding the Administrator not updating his address which resulted in him having to pay redirection fees, and its failure to follow its own complaints procedure.
11. On 17 December 2018, the Administrator wrote to Mr Y and said:
- “Having discussed your concerns in detail...it has been agreed, on this occasion, that as a result of the discrepancies on the Form, and as the signature on your letter dated 1 December 2018 matches your signature held in our records, your pension can be reinstated...
- ...your next pension payment will be made on 21 December 2018, and will include all arrears of pension due...
- ...taking into account the issue and frustration you have experienced with this process to date, as a goodwill gesture we would like to offer you compensation of £250...”
12. Between 10 and 25 February 2019, there were further exchanges between Mr Y and the Administrator concerning Mr Y’s complaint and the Form.
13. On 16 March 2019, the Administrator wrote to Mr Y responding to his concerns, and said:
- “Although you believe you have been penalised for stating the form is not fit for purpose, as you will be aware, since satisfying ourselves of your continued existence, your pension has been reinstated and all arrears of pension due, have been paid. In addition you have been paid an amount of compensation totalling £250.
- On review, however, although our main concern was the security of your pension and ensuring it continued to be paid to the correct person, I do concede we could have taken a more pragmatic approach with regards to confirming your existence.
- With this in mind, I believe it appropriate to increase the offer of compensation to a total of £750.00 (£500.00 in addition to the £250.00 already paid) in full and final settlement...”

Summary of Mr Y's position

14. Mr Y said:-

- After a sustained campaign of harassment, threats and intimidation by the management of the Scheme, he is asking for help from The Pensions Ombudsman's Office (**TPO's Office**).
- He had asked on several occasions for his complaint to be dealt with under IDRPs stage two.
- He had written to or emailed the Scheme over 30 times to try and resolve this situation to no avail.
- A compensation offer of £4,000 would be reasonable and fair to settle this matter, after the "pernicious campaign" of maladministration the Administrator had conducted against him, "simply for having the temerity of pointing out to it that their forms and procedures were not fit for purpose."

Summary of the Trustee and Administrator's position

15. The Trustee provided a response on behalf of itself and the Administrator and said:-

- The Trustee is a corporate body owned by all the employers in the railways industry together as a holding company limited by guarantee. The Administrator is a wholly owned subsidiary of the Trustee and is responsible for the day to day administration of the Scheme, and acts under delegated authority from the Trustee.
- In early May 2018, the Administrator wrote to Mr Y as part of its regular overseas pension review (**the Review**). The purpose of the Review is to protect the interests of all genuine beneficiaries who are rightfully entitled to benefits from the Scheme. The Review also helps the Scheme to meet Trustee and Pension regulation requirements, that it holds accurate and up to date information for all beneficiaries, and that it takes steps to maintain this.
- It has been accepted industry practice for a number of years, for trustees to request pensioners to verify their existence by completing a Form and that the Form is witnessed by a third party.
- Quarterly and annual security checks and initiatives are carried out for UK residents through services provided by data tracing agencies.
- Mr Y emailed the Administrator on 3 and 10 July 2018, and he sent a letter dated 6 July 2018, to inform it that he was unhappy with the Form and the suggestion that his pension would be suspended from 25 July 2018, if he did not return the Form by that date. Mr Y had also said that he had returned the Form on 14 May 2018.

- On 17 July 2018, the Administrator wrote to Mr Y and explained the purpose of the Form, and that it had not received his completed Form. The letter also informed Mr Y that, although he had sent a copy of his passport, the Administrator still needed receipt of the completed Form (which had to be witnessed), by 25 July 2018, to avoid his pension being suspended.
- The Form is in line with industry best practice, and the Administrator, on behalf of the Trustee, has a responsibility to request that pensioners verify their existence by completing the Form and having it witnessed by a third party. This is done to protect members' assets in the Scheme and to prevent fraud.
- Mr Y was not singled out. The Form is sent to all pensioner members of the Scheme who live outside of the UK. This includes members who live in France but would appear not to have encountered the same issues that Mr Y has experienced regarding the witnessing of the Form.
- Mr Y's complaint has been properly considered in accordance with the Rules of his section of the Scheme. The Administrator has properly administered Mr Y's pension entitlement in accordance with the Rules.

Adjudicator's Opinion

16. Mr Y'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:-

- There were initially three parts to Mr Y's complaint: (i) the requirement to complete the Form; (ii) the suspension of his pension; and (iii) the way his complaint was dealt with, following his request for it to be considered under the IDRP.
- Based on the information received from Mr Y and the Trustee, the first part of Mr Y's complaint had been resolved. This was because Mr Y did not have to complete the Form, and future ones will be appropriately amended. In addition, Mr Y's pension was reinstated in December 2018.
- The Administrator suspended Mr Y's pension because it had not received the completed Form by 25 July 2018, and it remained suspended until 21 December 2018. The Adjudicator appreciated that it is the Scheme's policy for the Form to be completed annually to ensure that only people entitled to benefits from the Scheme are paid such benefits. The Adjudicator also noted that, prior to the suspension of his pension, the Administrator had informed Mr Y that his pension would be suspended if he did not return the completed Form by the deadline.
- However, the Administrator was aware, since early July 2018, that Mr Y had difficulties completing the Form due to what it required the witness to confirm. Furthermore, prior to the suspension of the pension, the Administrator and Mr Y

corresponded regularly about the Form, and in an effort to prevent his pension being suspended, Mr Y sent a copy of his passport to confirm his identity.

- Given the concerns Mr Y had in relation to the Form, the Administrator could have considered and discussed alternative ways that Mr Y could have proved his existence. In the Adjudicator's Opinion, had the Administrator done so, Mr Y's pension would not have been suspended and its failure to seek an alternative way to confirm Mr Y's existence, in light of the issues with the Form, amounted to maladministration.
- The suspension of Mr Y's pension would have caused him distress and inconvenience. Particularly, as the Administrator had informed him that his pension would remain suspended until he had returned the completed Form, and he was unable to get the Form witnessed by a French citizen. So, he would not have known if or when his pension would be reinstated.
- So, this part of Mr Y's complaint should be upheld.
- In relation to the IDRП, the documentary evidence showed that in an email to the Administrator, dated 22 July 2018, Mr Y had asked for his complaint to be progressed to the "next level", but his request was not acknowledged. It was not until after two further emails from Mr Y to the Administrator on 5 and 28 August 2018, concerning his complaint being considered under IDRП, that his request was acknowledged. A response was sent under stage one of the IDRП on 22 November 2018.
- The Adjudicator acknowledged that, while awaiting the IDRП stage one decision, in an email to the Administrator on 27 September 2018, Mr Y requested that his complaint be considered under stage two of the IDRП. However, as the Scheme has a two stage IDRП, and his complaint had not yet been considered under stage one, there was no maladministration by the Administrator or Trustee in not considering his complaint under stage two of the IDRП at that time.
- Following the IDRП stage one decision, Mr Y sent subsequent correspondence to the Administrator expressing his dissatisfaction with this decision, which resulted in further exchanges between the parties.
- The Adjudicator appreciated that during these exchanges, Mr Y did not explicitly ask for his complaint to be considered under IDRП stage two. However, it was clear from Mr Y's correspondence that he did not accept the IDRП stage one decision. So his complaint should have automatically been considered under the second stage of the IDRП. The Administrator's failure to refer Mr Y's complaint for consideration under stage two of the IDRП amounted to maladministration, that resulted in Mr Y suffering from further distress and inconvenience.
- It was the Adjudicator's view that this part of Mr Y's complaint should also be upheld.

- Mr Y's complaint should be upheld in part, and he should receive an award for the serious distress and inconvenience he had experienced.
- The Administrator had offered Mr Y a total of £750 for the distress and inconvenience he had experienced, with £250 offered and accepted in December 2018, and a further £500 offered in March 2019. Mr Y had not accepted the further offer, as he believed an amount of £4,000 was more appropriate.
- Based on the guidance TPO's Office publishes on its website concerning awards for non-financial injustice, it was the Adjudicator's view that Mr Y had experienced serious distress and inconvenience because of the Administrator's maladministration. So, he should receive an award of £1,000 in recognition of this.
- As the Administrator had previously paid Mr Y £250 in recognition of the distress and inconvenience he had experienced, the Trustee, who has ultimate responsibility for the Scheme, should pay Mr Y an additional £750, to bring the total award for the distress and inconvenience which Mr Y had experienced, to £1,000.

17. Mr Y did not accept the Adjudicator's Opinion. In response, he reiterated points he had made as part of his original submissions and added:-

- His complaint had been ongoing for four years because no one involved, apart from himself, had done what they said they would do in a timely manner. Failings had not been accepted and neither TPO's Office nor the Administrator had acted within their timescales.
- He had suggested compensation for his financial costs. These included costs for telephone calls, recorded delivery postage, ink, paper and other expenses he had incurred up to 28 August 2018, "for doing the administration work of which [the Administrator was] clearly incapable."
- The Trustee implied the £250 offered was to resolve his issue in a reasonable and appropriate manner. This is "blatant nonsense".
- The correspondence he previously sent to TPO's Office clearly stated that he had rejected the £250. He did not accept the £250 for the stress and inconvenience, it was placed in his bank account without his knowledge and consent, in the hope he would go away. The £250 "hardly" covered his costs and expenses.
- The Administrator continues to provide inaccurate information to TPO's Office. The Administrator has never treated him with respect, and it appears that it does not have any respect for TPO's Office.
- He noted TPO's Office's guidance on redress for non-financial injustice and that the Adjudicator's view was that his case fell under the serious category listed in the guidance.

- He believes his case is “beyond the serious category... as it has the vast majority of aggravating factors listed in the exceptional category.”
 - The Administrator disregarded the IDRPs timeline. He had written to the Administrator on over 35 occasions in an attempt to rectify the matter. It had numerous occasions to rectify the situation but repeatedly chose not to.
 - The Administrator has not yet rectified the Form for suitable use outside the UK, and it remains adamant that it has done nothing wrong, while admitting the Form is not fit for purpose.
 - He does not believe anyone should be forced to engage in criminal activity in order to receive their pension.
18. As Mr Y did not accept the Adjudicator’s Opinion, the complaint was passed to me to consider. I agree with the Adjudicator’s Opinion and note the additional points raised by Mr Y.

Ombudsman’s decision

19. There is no dispute that the Administrator’s actions in relation to how it dealt with the requirement for Mr Y to complete the Form and the IDRPs process amounted to maladministration.
20. The Trustee has acknowledged the Administrator’s maladministration and has agreed to pay Mr Y a further £750 for the distress and inconvenience the maladministration has caused.
21. I understand Mr Y’s frustration with the length of time this matter has taken and agree that the requirement for him to complete all aspects of the Form could have been resolved much earlier. Further, Mr Y’s complaint ought to have been considered under stage two of the IDRPs, as it was clear from his subsequent correspondence that he had not accepted the IDRPs stage one decision.
22. I find that the delay in resolving the issue with the Form, which resulted in the suspension of Mr Y’s pension, and the failure to consider Mr Y’s complaint under stage two of the IDRPs would have caused Mr Y serious distress and inconvenience.
23. I note that Mr Y believes an award in excess of £1,000 would be appropriate to recognise the distress and inconvenience he has experienced. Awards in excess of £1,000 are awarded to applicants who have suffered severe or exceptional distress and inconvenience as a result of the respondent’s maladministration.
24. I do not find the Administrator’s actions in this case warrants such an award. In accordance with the guidance my Office publishes on redress for non-financial injustice, I find that an award of £1,000 is appropriate taking into consideration the time taken and effort made by Mr S in trying to get this matter resolved. I note Mr S’

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comments about costs incurred in this matter, however, I do not consider that a further award is warranted in this regard.

25. I uphold Mr Y's complaint in part.

Directions

26. Within 21 days of the date of this Determination, the Trustee shall pay Mr Y, in addition to the £250 already paid, a further £750 for the serious distress and inconvenience he has experienced.

Anthony Arter

Pensions Ombudsman
9 August 2021