

## Ombudsman's Determination

Applicant	Mr R
Scheme	NatWest Group Pension Fund (formerly Royal Bank of Scotland Group Pension Fund) ( <b>the Fund</b> ) RBS International Pension Trust ( <b>the IPT</b> )
Respondents	NatWest Pension Trustees Limited ( <b>the Trustee</b> ) Willis Towers Watson ( <b>WTW</b> )

## Outcome

1. I do not uphold Mr R's complaint and no further action is required by the Trustee or WTW.

## Complaint summary

2. Mr R is unhappy because his benefits from the Fund were not transferred into the IPT when he became a localised employee in 2009.
3. Mr R believes his benefits would be worth more under the IPT, and so he has suffered a financial loss.
4. Mr R also complains that the Trustee and WTW have communicated poorly with him throughout the complaint process.

## Background information, including submissions from the parties

1. The Trustee and WTW are the trustee and the administrator for the Fund respectively.
2. On 15 June 1982, Mr R commenced pensionable service with the Royal Bank of Scotland International (**RBS**) in the UK and began accruing benefits under the Fund.
3. On 1 September 2002, Mr R was seconded to Jersey on an offshore assignee contract. As a result of this, Mr R became a Jersey resident and taxpayer. However, as he was not a local employee, he continued to be eligible for the Fund and not for the IPT.

4. On 30 September 2009, Mr R was moved onto a local Jersey contract. As a result, he was considered a local employee and he became eligible to join the IPT. In addition, he also became eligible to transfer his benefits from the Fund into the IPT.
5. On 28 October 2009, RBS emailed RBS Pension Services, which was the administrator of the Fund at that time. RBS highlighted that Mr R wished to transfer his benefits into the IPT. RBS also stated that Mr R was under notice of redundancy and so the transfer needed to conclude before 7 November 2009.
6. On 6 November 2009, Mr R was made redundant.
7. On 30 November 2009, Mr R was sent a benefit statement confirming that his leaving date from RBS was 6 November 2009. The statement also confirmed his deferred benefits under the Fund, as well as the transfer value of his benefits.
8. On 3 and 11 December 2009, Mr R emailed RBS Pension Services for an update on his transfer.
9. On 16 December 2009, RBS Pension Services acknowledged Mr R's emails and said it would provide an update soon.
10. On 21 December 2009, Mr R emailed RBS Pension Services to say he had received a statement for his benefits under the Fund. He asked whether he should be concerned, as the statement did not mention his transfer to the IPT.
11. On 22 December 2009, RBS Pension Services responded and said that the benefits statement Mr R had received was sent as per their standard process. It said the transfer was in progress and there was no need for Mr R to be concerned.
12. On 19 February 2010, Mr R emailed RBS Pension Services for an update on his transfer.
13. On the same date, RBS Pension Services responded and apologised for the delay in providing Mr R with a full update. It confirmed that a record had been created for him under the IPT and he just needed to complete a form for the transfer to be completed (**the Form of Election**). RBS Pension Services stated that the form would be sent to Mr R within the next week, and the transfer should be complete within the next few weeks.
14. On 7 March 2010, Mr R emailed RBS Pension Services to confirm that he had received the Form of Election. He said that his leaving date from the Fund was noted as 30 September 2009, and he asked whether this was correct.
15. On 8 March 2010, RBS Pension Services responded and explained that Mr R became a local employee on 30 September 2009, so that would be his leaving date from the Fund. RBS Pension Services added that once the transfer was complete all of Mr R's pensionable service would be under the IPT, up to 6 November 2009.

16. On 9 March 2010, Mr R emailed RBS Pension Services and asked whether it believed the transfer was a good idea. In particular, he asked RBS Pension Services to outline the pros and cons of the transfer to him.
17. On 3 January 2011, Mr R emailed RBS Pension Services to chase a response to this email, which had been sent almost a year before. Again, he asked RBS Pension Services to outline the pros and cons of a transfer to him.
18. On 4 January 2011, RBS Pension Services forwarded Mr R's email internally, but it did not respond to him.
19. On 2 February 2011, Mr R emailed RBS Pension Services to chase for a response.
20. On 1 April 2013, the IPT was closed to all transfers in.
21. On 26 and 27 February 2015, Mr R received benefit statements from the Fund which stated that his leaving date was 30 September 2009.
22. On 9 March 2015, Mr R emailed RBS Pension Services to say that the leaving date on his benefit statements was inconsistent and he asked for clarity.
23. On 27 March 2015, RBS Pension Services responded and confirmed that the correct leaving date for Mr R was 6 November 2009.
24. On 30 and 31 March 2015, Mr R received further benefit statements, both stating that his leaving date from the Fund was 6 November 2009.
25. On 6 April 2015, the IPT ceased to be a qualifying recognised overseas pension scheme (a QROPS).
26. On 8 April 2015, Mr R emailed RBS Pension Services to thank it for verbal confirmation that his transfer into the IPT was complete.
27. On 29 April 2015, 14 May 2015, 5 October 2016 and 7 October 2016, Mr R received benefit statements stating that his leaving date from the Fund was 6 November 2009.
28. On 28 June 2017, Mr R signed the Form of Election.
29. In August 2017, WTW took over administration of the Fund, including historic liability.
30. On 9 August 2017, Mr R emailed WTW for an update on his transfer, further to his completion of the Form of Election.
31. On 29 August 2017, 7 September 2017, 13 December 2017 and 2 July 2018, Mr R contacted WTW to chase for an update regarding his transfer.
32. On 6 July 2018, WTW responded to confirm that there was no evidence Mr R's transfer had taken place. WTW also highlighted that the IPT was no longer a QROPS and so the transfer was no longer an option.
33. On 12 July 2018, Mr R raised a formal complaint against the Trustee and WTW.

34. The Trustee responded to Mr R's complaint on behalf of both itself and WTW, so from hereon, only the Trustee is referred to.

### **A summary of Mr R's position**

35. Mr R highlights that he was informed the transfer was going ahead in 2009, and he believed this was the case.
36. Mr R says it is unreasonable for the Trustee to now state the transfer cannot go ahead. Whilst the IPT is no longer a QROPS, Mr R argues that the Trustee should still complete the transfer and that - if a tax charge arises - the Trustee should pay this.
37. Mr R says he completed multiple copies of the Form of Election, and the one he signed on 28 June 2017 was just one of these. He highlights his email on 8 April 2015 as evidence that he thought the transfer was already complete.
38. Mr R believes that a transfer did take place, but the wrong way. In particular, he has no benefits under the IPT, despite being eligible for the scheme from 30 September 2009 to 6 November 2009. He considers that, if no transfer has taken place, he should have benefits under both the Fund and the IPT. As he only has benefits under one scheme, a transfer must have taken place but the wrong way.
39. Mr R believes his benefits would be worth more under the IPT compared to the Fund. In particular, he highlights that - in Jersey – individuals can access 30% of their pension pots tax-free, compared to just 25% in the UK.
40. Mr R also says that, based on the transfer values he has been provided, his benefits under the Fund have breached the Lifetime Allowance in the UK. As a result, some of his benefits will be subject to surplus tax charges, whereas in Jersey they would not have been.

### **A summary of the Trustee's position**

41. The Trustee states the IPT is not a QROPS and so it cannot transfer benefits into it from the Fund.
42. The Trustee says that Mr R needed to sign the Form of Election in order for the transfer to be complete. He did not sign this until 28 June 2017, which was more than two years after the IPT ceased to be a QROPS.
43. The Trustee has not received any other Form of Election from Mr R, and it has not found evidence that he was sent multiple copies. The Trustee believes that the Form of Election returned in 2017 is the original sent to Mr R in 2010.
44. The Trustee acknowledges that it failed to respond to Mr R on multiple occasions when he emailed it. It also acknowledges that it has not been clear with Mr R regarding his leaving date from the Fund, or whether he accrued benefits under the IPT.

45. In light of the above failings, the Trustee has offered Mr R £2,000 for the distress and inconvenience caused.
46. The Trustee has confirmed that, upon becoming a local employee on 30 September 2009, Mr R would have been automatically enrolled into the IPT. However, only employer contributions would have been made, so he would not have seen deductions in his pay.
47. When Mr R was made redundant, he would have lost his entitlement under the IPT because he had insufficient qualifying service for a deferred pension. The Trustee has highlighted that this in line with the trust deed and rules for the IPT in effect at the time. It has provided a copy, and highlighted section 9 which states:

“Early leavers

9.1 Preserved pension

A Member who leaves Service before Normal Retirement Date with at least two years’ Qualifying Service and without becoming entitled to an immediate pension will receive a pension for life from Normal Retirement Date...

A Member who leaves Service with less than two years’ Qualifying Service will also be entitled to a pension under this Rule if a transfer payment of the Member’s rights under a personal pension scheme has been made to [the IPT].

...

9.2 Return to state scheme

If a Member leaves Service before Normal Retirement Date without becoming entitled to either an immediate pension or a preserved pension, the Member will not be entitled to any benefits under [the IPT].”

48. The Trustee has highlighted that Qualifying Service is defined as:

“Pensionable Service and employment which qualified the Member for retirement benefits under any occupational pension scheme from which a transfer payment in respect of the Member has been made to [the IPT], or to a “buy-out” policy and subsequently to [the IPT].”

49. The Trustee has highlighted that Pensionable Service is defined as:

“(a) the Member’s Service after joining [the IPT]; together with

(b) in the case of a NWRBS, OPF, ORBS, PF or RBSI Member, the Member’s Service which was pensionable under the relevant Predecessor Scheme.”

50. The Trustee has highlighted that a PF Member is defined as:

“a Member who was a member of the PF immediately before 1 July 1998 and in respect of whom a transfer of assets was made from the PF to [the IPT] with effect from that date”.

51. Finally, the Trustee has highlighted that the PF is defined as:

“The Royal Bank of Scotland Group Pension Fund, formerly known as the National Westminster Bank Pension Fund.”

52. With the above in mind, the Trustee has clarified that Mr R’s benefits under the IPT never vested as he did not have sufficient Qualifying Service. He also would not have received a refund of employee contributions, as he did not make employee contributions.

53. The Trustee has explained that this is why Mr R has a record under the IPT, but the record shows there is “no liability” for him.

54. In outlining the position regarding the IPT, the Trustee has emphasised that it is the trustee for the Fund only, and not the IPT. So, its explanation is based on its understanding of the trust deed and rules for the IPT.

55. The Trustee has added that it has provided preserved benefits for Mr R under the Fund from 30 September 2009 to 6 November 2009 as a gesture of goodwill. The Trustee has said it exercised its discretion to do this, partly as further redress for the conflicting information Mr R was sent about his Leaving Date from the Fund, and partly because Mr R was unable to accrue benefits in the IPT as he did not have sufficient Qualifying Service.

56. In relation to Mr R’s financial loss, the Trustee has confirmed that the Fund and the IPT are defined benefit schemes, and so the 30% and 25% tax-free rules in Jersey and the UK respectively are not applicable. Instead, Mr R’s tax-free lump sum will be calculated in line with the relevant scheme rules when he retires. The Trustee has confirmed it is possible that Mr R will be worse off under the rules of the Fund compared to the IPT in this respect, but that this will depend on local tax limits at the time and the actuarial factors used in the relevant calculations.

57. The Trustee has said that Mr R’s transfer value is not the correct figure to use when assessing his benefits against the Lifetime Allowance. It has confirmed that the value of his benefits for the purposes of the Lifetime Allowance is £783,312 - or £801,529 if Mr R opts to commute part of his pension in order to take his maximum tax-free lump sum. Both these figures are far below the current Lifetime Allowance.

58. Finally, the Trustee has highlighted that Mr R has not yet retired and the Lifetime Allowance could increase before he does, in any event.

## **Adjudicator's Opinion**

59. Mr R'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:-

- It is clear from the evidence that Mr R initiated a transfer. However, the evidence indicates that the transfer was not completed because Mr R did not sign the required Form of Election until after the IPT was no longer a QROPS.
- It is unclear when Mr R believes the transfer was completed. In April 2015, Mr R sent an email indicating that he believed the transfer had been completed. However, there is no further evidence of the conversation his email refers to, and there is no signed Form of Election from this time.
- In any event, there is no evidence that Mr R has suffered a financial loss as a result of not transferring his benefits from the Fund to the IPT. His benefits under the Fund have purportedly not breached the Lifetime Allowance, and there is no evidence that they will do so. In addition, it is also not known what Mr R's tax-free lump sum will be under the Fund, or how that will compare to what it may have been under the IPT.
- Whilst the Trustee has now clarified its position, initially it did not provide Mr R with a clear explanation as to why he has preserved benefits under the Fund from 30 September 2009 to 6 November 2009, rather than the IPT. However, the non-financial injustice award already offered by the Trustee more than compensates Mr R for the confusion this may have caused him.

60. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided his further comments following the Opinion, and in particular he has argued:

- The Trustee ought to have chased him, when it did not receive the Form of Election from him.
- The Trustee has acknowledged that it failed to respond to his emails in 2010 and 2011. It follows that it is very possible the Trustee committed other errors, such as misplacing his Form of Election.
- He never agreed to transfer his IPT benefits into the Fund.
- The Trustee has changed its position throughout the course of the complaint. In particular, the Trustee has not mentioned before that his benefits under the IPT did not vest, or that he was awarded preserved benefits under the Fund for 30 September to 6 November 2009 as a gesture of goodwill. Instead, the Trustee initially argued that he was never a local employee. Now this has been shown to be incorrect, the Trustee has raised a new argument.

- He was provided with documentation when he became a local employee which showed that his benefits from the Fund ought to have been transferred in to the IPT. In particular, he has provided a copy of the 'End of Offshore Assignment, Converting to Local Terms and Conditions' he was given. These terms state "Your pension contributions will be transferred into the [IPT]."

61. Mr R's further comments do not change the outcome. I agree with the Adjudicator's Opinion and I will only comment on the additional points raised by Mr R.

### **Ombudsman's decision**

62. I do not find that it was the responsibility of the Trustee to chase Mr R for the Form of Election. In addition, while it is unfortunate that the Trustee did not respond to Mr R's emails in 2010 and 2011, it was not the responsibility of the Trustee to provide the information he had requested. So, I am not persuaded that the Trustee's actions prevented Mr R from completing his transfer in time.
63. Mr R had asked for an explanation regarding the overall benefits of a transfer, but this is not something I would expect the Trustee to advise on. If Mr R wanted to understand whether a transfer was beneficial for him, he ought to have sought independent financial advice regarding the transfer, taking into account his particular circumstances.
64. The Trustee had made it clear that the Form of Election needed to be signed in order for the transfer to be completed, and the Trustee is not responsible if Mr R did not sign the Form of Election in time.
65. There is nothing to suggest that Mr R signed the Form of Election before the IPT ceased to be a QROPS, and I note that it is unclear what prompted him to sign it in 2017. In any event, there is no evidence that Mr R was sent or had signed more than one Form of Election.
66. Mr R has suggested that the Trustee's failure to respond to his emails was maladministration, and that it follows that the Trustee might have committed other errors. The Trustee did fail to respond to several of Mr R's emails, but this is not evidence of other errors. In particular, it is not evidence that it received his Form of Election before April 2015 and misplaced it.
67. The Trustee is not the trustee for the IPT, and so it is not required to explain Mr R's entitlement under the IPT. However, it has provided an explanation as to why Mr R has no benefits under the IPT, which appears to be in line with the trust deed and rules of the IPT. I find that the Trustee has taken reasonable steps to explain Mr R's overall benefits to him.
68. Mr R has stated that he never agreed to a transfer of benefits from the IPT to the Fund. However, the Trustee does not claim such a transfer took place. Instead, the Trustee has suggested that Mr R does not have any benefits under the IPT because



those he did accrue were never vested. Separately, the Trustee has then explained that it exercised its discretion to provide preserved benefits under the Fund for Mr R for 30 September to 6 November 2009.

69. Mr R has highlighted that the Trustee has never before mentioned exercising discretion to provide him with preserved benefits. I do agree that it is odd the Trustee did not state this sooner, but it is not evidence that his transfer ought to have been completed.
70. In addition, the Trustee has already acknowledged that its overall response to Mr R's complaint has been lax, and it has offered £2,000 to redress any distress and inconvenience this has caused. This is higher than the award I would normally direct in such cases, so I find this offer more than reasonable.
71. Finally, Mr R has referred to a document he was provided with in 2009, which he believes indicated his benefits from the Fund would be transferred to the IPT. However, the same document also stated: "You will be required to sign a form to sanction this change". The Trustee made it clear that Mr R was required to sign the Form of Election in order for the transfer to be completed. There is no evidence that Mr R did this until 2017, when the IPT was no longer a QROPS, and I am not persuaded that this is the fault of the Trustee.
72. I do not uphold Mr R's complaint, and he should contact the Trustee directly if he now wishes to accept its offer.

**Anthony Arter**

Pensions Ombudsman  
13 August 2021