

Ombudsman's Determination

Applicant	Mrs S
Scheme	HBOS Final Salary Pension Scheme (the Scheme)
Respondents	Lloyds Banking Group Pensions Trustees Limited (the Trustee) Willis Towers Watson (WTW)

Outcome

1. I do not uphold Mrs S' complaint and no further action is required by the Trustee and WTW.

Complaint summary

2. Mrs S has complained that the Trustee and WTW have used an incorrect Normal Retirement Date (**NRD**) of her 62nd birthday to calculate the retirement benefits available to her from the Scheme.
3. In her opinion, she has met the criteria stipulated in the Trust Deed and Rules of the Scheme (**the Scheme Rules**) to have an NRD of her 60th birthday. She therefore considers that she should be able to retire from age 60 with no actuarial reduction being applied to her benefits or take early retirement where the actuarial reduction is calculated with reference to age 60 rather than 62.
4. She has also complained that WTW failed to provide her in a timely manner with a copy of the Scheme Rules and adequate information about the ill health early retirement (**IHER**) benefits available from the Scheme to make an informed decision.

Background information, including submissions from the parties

5. The relevant definition of NRD in the Scheme Rules is:

““Normal Retirement Date” means a Member’s, Early Leaver’s or Pensioner’s 62nd birthday, except that if a Member, Early Leaver or Pensioner was a Member on 1 July 1987 and so agreed in writing with the Principal Employer before that date it means either his 65th or 60th birthday, as specified in that written agreement. If a Member retires at NRD the previous day is his last day in Employment.”

6. Mrs S joined the Scheme on 9 June 1986 and left it on 31 December 2000. She is now a deferred member of the Scheme.
7. In October 2014, WTW provided Mrs S with the current value of her deferred pension in the Scheme. It also sent her a statement showing the retirement benefits available to her assuming she decided to retire early on 31 January 2015. This statement showed her NRD to be 8 March 2026 which was the date before her 62nd birthday.
8. In April 2015, WTW sent Mrs S another early retirement quotation which showed the same NRD of 8 March 2026.
9. In November 2016, Mrs S notified WTW that she was considering IHER. WTW replied that the IHER benefits available to a deferred member of the Scheme were subject to actuarial reduction and explained how it would apply to her benefits.
10. In February 2017, after Mrs S had confirmed her interest in IHER, WTW sent her a retirement pack (**the Pack**) with a covering letter which said that there was no additional benefit in taking IHER from deferred status in the Scheme. The Pack included a statement showing the benefits available to her based on an early retirement date of 31 March 2017. The NRD shown on this statement was again 8 March 2026.
11. On 21 February 2017, Mrs S asked WTW to supply her with more information about IHER and the early retirement factors applicable to deferred members of the Scheme.
12. WTW provided Mrs S with the requested early retirement factors and emphasised that there were no enhanced benefits available on IHER from deferred status in its letter dated 28 February 2017 to her.
13. In November 2017, Mrs S asked WTW to supply her with the “terms and conditions” for taking an IHER pension in the Scheme.
14. WTW replied on 15 November 2017 that unless a deferred member of the Scheme was seriously ill and expected to live for under 12 months only, no enhancement of benefits was available on IHER.
15. Mrs S informed WTW that she had been a member of the Halifax Retirement Fund (**the Halifax Scheme**) and it was her understanding that IHER was available to deferred members of this scheme. She requested the full terms and conditions of the Halifax Scheme. She also subsequently asked WTW on 20 November 2017 to send her the early retirement reduction factors applicable to deferred members on IHER.
16. WTW did not reply to this request from Mrs S.
17. On 13 August 2018, Mrs S asked WTW to send her as much information as possible about the Halifax Scheme including the member booklet, the terms and conditions and details of any IHER enhancements.

18. On 20 August 2018, WTW sent Mrs S copies of the member booklets for the Scheme and the Halifax Scheme. It also reiterated that there was no benefit enhancement for IHER from deferred status except when the member was seriously ill.
19. After Mrs S requested more information about IHER in the Halifax Scheme for deferred members, WTW reiterated on 29 August 2018 that there was no enhancement of benefits for IHER from deferred status.
20. On the following day, Mrs S informed WTW that she was still confused about the rules which applied in the calculation of her benefits in the Scheme. She asked whether the Halifax Scheme still existed or if it was now part of the Scheme. She also said that she had found a document for the Scheme which said:

“If you have to finish work early due to ill health, you may be entitled to draw your deferred pension early.”
21. Mrs S again requested a copy of the Scheme Rules for her information.
22. On 9 September 2018, WTW replied that the Halifax Scheme had been incorporated into the Scheme and sent her a copy of the Scheme booklet. Mrs S told WTW that she had already received this booklet which did not fully answer her questions and asked it to send her a copy of the Scheme Rules.
23. On 17 September 2018, WTW sent Mrs S a guide for the Halifax Scheme and informed her that she should contact it if she needed further information on a specific rule or procedure.
24. On 2 October 2018, Mrs S asked WTW to provide her with a guide to the Halifax Scheme. WTW replied that it had already sent this to her on 17 September 2018. Mrs S then told WTW that the Pensions Advisory Service had informed her that she was entitled to receive a copy of the Scheme Rules.
25. On 15 October 2018, Mrs S requested a copy of the Scheme Rules. WTW replied that it was a large document and asked her if there was a specific part of it that she required. Mrs S said that she wished to see the IHER rules and reiterated it was her understanding that enhanced IHER benefits was available to deferred members of the Halifax Scheme.
26. After WTW had sent her the section of the Scheme Rules regarding IHER on 4 November 2018, Mrs S asked for the complete rules of the Halifax Scheme.
27. On 20 November 2018, WTW sent Mrs S guides to the Scheme and the Halifax Scheme and the sections in the Scheme Rules concerning the Halifax Scheme.
28. In her letter dated 21 November 2018 to WTW, Mrs S said it was her view that:-
 - As she was an active member of the Halifax Scheme prior to 1 July 1987, the Scheme Rules stipulated that her NRD should be her 60th and not her 62nd birthday.

- The rules of the Halifax Scheme permitted payment of an unreduced IHER pension to a deferred member, and she wished to be considered for IHER on this basis.
29. On 28 November 2018, WTW informed Mrs S that:-
- In accordance with the Scheme Rules, no enhanced benefits were available to deferred members in all sections of the Scheme on IHER.
 - She could therefore only take unreduced benefits in the Scheme from her NRD on 8 March 2026.
 - Entitlement to normal retirement from age 60 was discretionary and had to be formally agreed in writing with the Principal Employer. There was no evidence of such an agreement in its records for her.
30. Mrs S was dissatisfied with this reply and WTW referred her enquiry about her NRD to the Trustee.
31. On 28 December 2018, WTW informed Mrs S that the Trustee required sight of documentary evidence showing that she had successfully applied to the Principal Employer for her NRD to be reduced to her 60th birthday before it could consider her request.
32. In her e-mail dated 4 January 2019, Mrs S sought clarification from WTW on what evidence the Trustee needed. She also set out her interpretation of the definition of NRD in the Scheme Rules. She said that, in her opinion, "being a member on 1 July 1987 and so agreed in writing" entitled her normal retirement date to be her 60th birthday.
33. After WTW reiterated on 7 January 2019 that the Trustee needed to see evidence of her successful application to the Principal Employer, Mrs S said that:
- she and some of her colleagues had requested this change at the time; and
 - evidence of her application should be on her file, and she should not be penalised if WTW had not kept it.
34. WTW replied as follows:-
- Without any concrete evidence of her successful application to the Principal Employer to reduce her NRD to her 60th birthday, the Trustee could not do so now.
 - If she had successfully applied, she should have received a copy of her accepted application and the agreed lower NRD would have been shown on all benefit statements issued to her thereafter.

- If she had made such an application, she reasonably ought to have queried why the NRD shown in her subsequent benefit statements had not changed.
- There was no specific IHER provision for deferred members of the Scheme.
- There was no enhancement for IHER from deferred status in the Scheme and her benefits would be reduced by applying the appropriate reduction factor on IHER.

35. Mrs S made a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**) in April 2019. It was not upheld at both stages of the IDRP in June and August 2019.

Mrs S' position

36. There is no dispute that she meets the condition of being an active member of the Scheme on 1 July 1987. In her view, by virtue of having fulfilled this criterion, she is eligible for normal retirement at age 60 in the Scheme.
37. The Scheme Rules do not specifically state that action was needed on her part to apply for a NRD of her 60th birthday. Her interpretation of the relevant definition of NRD is that male and female members who joined the Scheme prior to 1 July 1987 have a NRD of their 65th and 60th birthdays respectively, as it is linked to State Pension ages (**SPA**) at that time, and only members who joined thereafter have a NRD of their 62nd birthday.
38. If she had been advised to specifically apply for a NRD of her 60th birthday, there is no reason why she would not have chosen to do so. Furthermore, if such an application process existed, there should be evidence of it in the files held by WTW and the Trustee.
39. In any event, she was not provided with a copy of the Scheme Rules when she joined the Scheme and could not therefore have known that she had to apply for a lower NRD.
40. In 2016, she had to retire on ill health grounds from her employment at the time. She consequently decided to investigate IHER from deferred status in the Scheme by requesting information including the Scheme Rules from WTW.
41. In her view, the information provided by WTW in response to her IHER enquiries was deficient and not always correct. She therefore requested a copy of the Scheme Rules to check whether she was entitled to apply for IHER in the Scheme. WTW failed to supply her with a copy of the Scheme Rules in a timely manner.
42. The lack of correct information prevented her from making an informed choice on whether to take her benefits in the Scheme.

The Trustees' position

43. It is clear from the Scheme Rules that for Mrs S to have a NRD of her 60th birthday there must be an agreement in writing between Mrs S and the Principal Employer which was made before 1 July 1987. Mrs S' interpretation of the relevant definition of NRD ignores this requirement for a written agreement. While Mrs S was an active member of the Scheme on 1 July 1987, there is no written evidence demonstrating that she had agreed with the Principal Employer to reduce her NRD to her 60th birthday.
44. In 1997, 65 and 60 were respectively the SPA for men and women. There is nothing in the Scheme Rules, however, which stipulates that the NRD is automatically linked to the SPA. For the Scheme Rules to have the meaning which Mrs S seeks, they would have to state that, for active members who had joined the Scheme prior to 1 July 1987, their NRD would be their SPA.
45. There are no documents showing the Principal Employer had agreed that for all members who joined prior to 1 July 1987, their NRD should be their SPA.
46. Mrs S has not supplied any documentary evidence to substantiate her assertion that she and several colleagues had previously requested a NRD of their 60th birthday. This is anyway at odds with her assertion that her NRD is her 60th birthday as of right in accordance with the Scheme Rules.
47. Mrs S received benefit statements since 2007 which all showed her NRD to be her 62nd birthday. She did not, however, complain that her NRD should be her 60th birthday until she was sent a copy of the Scheme Rules by WTW in November 2018 referring to the possibility of reducing her NRD to her 60th birthday if certain criteria were met.
48. The failure of WTW to respond to Ms S' request in November 2017 for a copy of the Scheme Rules on a timely basis did not prevent her from making an informed choice about IHER. WTW provided Mrs S in February 2017 with an IHER quotation showing her correct NRD and the early retirement benefits available to her in the Scheme. WTW also responded correctly to her numerous subsequent enquiries about the IHER benefits available in the Scheme.
49. It has apologised to Mrs S for the length of time WTW took to send her a copy of the Scheme Rules. The distress and inconvenience which Mrs S has suffered because of the delay is nominal and does not, in its view, warrant the minimum payment of £500 which the Pensions Ombudsman could award for non-financial injustice under such circumstances.

Adjudicator's Opinion

50. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee and WTW. The Adjudicator's findings are detailed below:-

- The fundamental duty of the Trustee is to act in accordance with the Scheme Rules and within the framework of the law. As the Scheme Rules is a formal document establishing the trust, it is unavoidably written in a legal language which can make the provisions contained therein difficult to understand and open to interpretation.
- Having carefully studied the relevant definition of NRD in the Scheme Rules, in the Adjudicator's view, it could perhaps have been constructed in a plainer way which would have left Mrs S in no doubt as to its intended true meaning.
- There was no dispute that Mrs S fulfilled the condition of being an active member of the Scheme on 1 July 1987. Mrs S contended that the phrase "being a member on 1 July 1987 and so agreed in writing" in the definition of NRD entitled her to a NRD of her 60th birthday in the Scheme without further action required on her part. However, the Adjudicator concurred with the Trustee that Mrs S' interpretation of this definition disregarded the clear requirement for a written agreement between her and the Principal Employer prior to 1 July 1987 which specified the reduction of her NRD from her 62nd to her 60th birthday.
- Mrs S had tried to justify her interpretation by saying that the change to the NRD for male and female members of the Scheme who had joined prior to 1 July 1987 was made by the Principal Employer to align it with the SPA in force at the time, and only members who joined thereafter would continue to have an NRD of their 62nd birthday.
- If this had been the case, the definition of NRD in the Scheme Rules would, in the Adjudicator's opinion, have been constructed differently and mentioned explicitly the connection of the NRD to the SPA. Furthermore, it was reasonable to expect there to be documentary evidence of the decision made by the Principal Employer to align the NRD with the SPA for active members of the Scheme who had joined before 1 July 1987. The Trustee, however, said that it had no record of such a decision made by the Principal Employer. The Scheme records should now also show that the NRD for all male and female members whose status was active on 1 July 1987 to be their 65th and 60th birthdays respectively but the Adjudicator had seen no evidence of this.
- Moreover, if such a decision had been made by the Principal Employer, in the Adjudicator's view, it would have been deemed unilateral on its part and not made with the written agreement of the affected members of the Scheme.
- Mrs S contended she and several of her colleagues had made an application to the Principal Employer to reduce their NRD to their 60th birthdays. But if her interpretation of the NRD was correct, then it would have been unnecessary for her to have done this. In any case, Mrs S had not been able to provide any

evidence which corroborated her assertion and there was no proof of such an application in the Scheme records held by WTW.

- The Adjudicator also concurred with the Trustee that if Mrs S had indeed made such an application, it was reasonable to expect that she ought to have noticed that the NRD shown on the benefit statements which she subsequently received was still her 62nd birthday and she should have made enquiries at the time to change it to her 60th birthday. Mrs S did not however do this until she received a copy of the Scheme Rules from WTW in 2018.
- The available evidence therefore led the Adjudicator to conclude that Mrs S' 62nd birthday was the correct NRD for her. In the Adjudicator's view, there had consequently been no maladministration on the part of the Trustee and WTW in using an NRD of Mrs S' 62nd birthday to calculate the benefits available to her in the Scheme.
- Trustees of occupational pension schemes were obliged to disclose certain documents and information to scheme members, prospective members, beneficiaries and appropriate trade unions in accordance with the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (**the Disclosure Regulations**). Most information need only be disclosed on request although some must be provided as a matter of course, regardless of whether a request was made.
- In accordance with the Disclosure Regulations, WTW was required to provide Mrs S with a copy of the Scheme Rules to keep within two months of the request being made, but no more than once a year, on behalf of the Trustee. Any charge must be limited to the cost of producing and sending it.
- The failure of WTW to do this constituted clear maladministration on its part for which the Trustee had sincerely apologised to Mrs S.
- Mrs S alleged that the lack of correct information provided by WTW in its responses to her IHER enquiries prevented her from making an informed decision on whether to take her benefits in the Scheme.
- WTW, however, had provided Mrs S in February 2017 with an IHER quotation showing her correct NRD and the early retirement benefits available to her in the Scheme. WTW had also responded to her numerous subsequent enquiries about the IHER benefits available in the Scheme correctly, albeit some of its responses could have been more detailed. This would have avoided Mrs S having to seek clarity by asking further questions.

- If Mrs S had difficulties understanding the information WTW provided her, it had always been open to her to seek appropriate independent financial advice to make an informed choice.
- Given the information Mrs S was provided with, the failure of WTW to supply her with a copy of the Scheme Rules without delay should not have prevented her from assessing her pension entitlement in the Scheme on IHER.
- Although in the Adjudicator's view Mrs S had not suffered any actual financial loss, it was clear she had experienced distress and inconvenience because of the maladministration identified. The Trustee said it was not willing to offer her a modest award in recognition of this. The Pensions Ombudsman's awards for non-financial injustice started at £500 for significant distress and inconvenience. In the view of the Adjudicator the degree of non-financial injustice which she has suffered was not sufficient to warrant the minimum payment from the Pensions Ombudsman.

51. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome. She says that:

- There is nothing in the Scheme Rules which suggested that she needed to apply for a change/reduction in NRD from her 62nd to her 60th birthday.
- The Trustee has not provided any documentary evidence to substantiate its position on this matter.
- She was very ill at the time she requested information from WTW about the IHER benefits available in the Scheme and a copy of the Scheme Rules. Despite this, WTW failed to provide her with all the information in a timely manner.
- The level of maladministration attributable to WTW, in her opinion, is therefore "serious" when applying the criteria shown on the Pensions Ombudsman's factsheet entitled "Redress for non-financial injustice."

52. I note the additional points raised by Mrs S, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

53. Having examined the relevant definition of NRD in the Scheme Rules, it is evident to me that it stipulates there must be an agreement made in writing between Mrs S and the Principal Employer before 1 July 1987 for her to have a NRD of her 60th birthday.

54. I concur with Mrs S that this definition does not, however, explicitly state that it was necessary for her to have applied to the Principal Employer for the reduction.

55. But I cannot disregard the clear requirement of a written agreement between her and the Principal Employer for the change to be made to her NRD and that there is no concrete evidence of such an agreement, regardless of how it was made.
56. For essentially the same reasons as given by the Adjudicator in his Opinion, I therefore conclude that Mrs S' 62nd birthday is the correct NRD for her. In my view, there has consequently been no maladministration on the part of the Trustee and WTW in using Mrs S' 62nd birthday as her NRD to calculate the Scheme benefits available to her.
57. The Trustee has already sincerely apologised to Mrs S for WTW's failure to send her a copy of the Scheme Rules within two months of her request. It also has accepted that Mrs S suffered some "nominal" distress and inconvenience because of the maladministration identified above. The Trustee, however, has considered that the non-financial injustice which Mrs S suffered was "nominal" and did not therefore warrant the minimum payment of £500 which I could award under such circumstances.
58. When deciding whether to direct an award for non-financial injustice, I assess each case on its facts and merits. Having carefully considered the submissions and evidence, I find that the degree of non-financial injustice which Mrs S has suffered does not merit the minimum award of £500. I consider the sincere apology that Mrs S received from the Trustee to be sufficient.
59. I do not uphold Mrs S' complaint.

Anthony Arter

Pensions Ombudsman
10 June 2021