

## Ombudsman's Determination

Applicant	Mr N
Scheme	Royal Bank of Scotland Group Retirement Savings Plan ( <b>the Plan</b> )
Respondent	RBS Retirement Savings Trustee Limited ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

2. Mr N has complained that the Trustee did not give him the option to transfer the contributions that had been made to the Plan when he left employment and, as a result of this, he has lost his entitlement to any benefits under the Plan. So, he would like a refund of the contributions plus the investment growth over the past 10 years.

## Background information, including submissions from the parties

3. The Plan is governed by the Royal Bank of Scotland Group Retirement Savings Plan Rules, effective from 1 October 2006 (**the Rules**). The specific Rule relevant to Mr N's complaint is Rule 7 set out in the Appendix.
4. On 1 June 2008, Mr N joined the Royal Bank of Scotland Group (**RBS**) and became an active member of the Plan. Mr N has said that he paid approximately £730.00 to the Plan each month.
5. The Plan is part of a salary sacrifice arrangement whereby the employee agrees to exchange part of their salary before tax, in return for a non-cash benefit. In Mr N's case, his non-cash benefit was a pension contribution. Although it is a salary sacrifice, the Plan was non-contributory. That is, the contributions made were considered as employer contributions and not employee. The employee had the option of contributing themselves, but these would be treated as Additional Voluntary Contributions (**AVCs**). Mr N did not pay any AVCs to the Plan.
6. On 12 December 2009, Mr N ended his employment with RBS, and left the Plan.

7. In September 2018, Mr N contacted the Trustee and asked to transfer his benefits from the Plan to a Self-Invested Personal Pension (**SIPP**). The Trustee informed him that:
- he had left with less than two years' pensionable service;
  - when he left RBS, he would have been given the option to transfer his benefits or receive a refund of the contributions that he had made; and
  - as he had not contacted the Trustee, he had "lost the right to benefits".
8. On 30 September 2018, Mr N complained to the Trustee under stage one of the Plan's Internal Dispute Resolution Procedure (**IDRP**). He said that:-
- He had paid approximately 10% to 12% of his base salary of £70,000 as a pension contribution.
  - When he left RBS in 2009, he assumed that his pension contribution would continue to be invested.
  - He received no communication from the Trustee about his options.
  - He was not given the opportunity to transfer his contributions. Under UK Law if an employee leaves service within 2 years they should be allowed to transfer the pension accrued to another provider.
  - Alternatively, because the contributions came from his salary and were not Employer contributions, they should have been returned to him.
  - It has been nine years since he left the Plan and he had missed out on the investment growth on the contributions which was not acceptable.
9. On 12 December 2018, the Trustee responded to Mr N's complaint. It said:-
- Under the terms of the Rules, as Mr N was a member of the Plan for less than two years (June 2008 to December 2009), on leaving the Trustee would have offered him a transfer value of the full value of his savings in the Plan to take to another registered pension arrangement of his choice.
  - It was the Trustee's practice, through RBS' administration team (**the Administrator**), to notify members following withdrawal from service.
  - The notification would also have explained that Mr N was required to complete the transfer within a specified time otherwise he would lose the right to any benefits under the Plan.
  - As Mr N did not make any election to transfer the accumulated value of his savings in the Plan to an alternative arrangement when the Trustee offered him the option, he lost the right to any benefit under the Plan.

10. The member booklet (**the Booklet**) clearly stated that:

“If you leave the Group with two years’ qualifying service, the full value of your account may be:

- left in the Plan where it will continue to be invested until you retire; or
- transferred to a new employer’s registered pension scheme; or
- transferred to a registered personal pension plan of your choice.

If you leave the Group with less than two years’ qualifying service you will be offered a transfer value of the full value of your account to take to another registered pension arrangement of your choice. If you do not complete the transfer within a specified time after leaving service, you will lose the right to this benefit.”

11. On 2 March 2019, Mr N emailed the Trustee and escalated his complaint to stage two of the Plan’s IDRPs. Mr N said:-

- He was not offered the option to transfer the value of the fund to another provider.
- In 2009, he had less than two years’ service, but the Trustee did not give him the option to take a refund of his contributions.
- His contributions to the Plan should have been automatically refunded.

12. On 2 September 2019, Mr N contacted the Trustee and said that it had been six months and he had not received a response to his complaint.

13. On 3 September 2019, the Plan Secretary emailed Mr N and apologised that he had not received a stage two IDRPs response to his complaint. It explained that, according to its records, its representative had received Mr N’s email while on holiday and, on return, had omitted to log his complaint. It said that it would arrange for the Trustee to consider his complaint and expedite its response.

14. On 18 September 2019, the Trustee issued its stage two IDRPs response. It explained that:-

- It had carefully considered the matter, had taken legal advice, and it upheld the decision reached at stage one of IDRPs.
- It was required to follow the Rules when administering benefits payable from the Plan. As Mr N did not elect to transfer his benefits within the specified time period, he had lost the right to any benefit under the Plan.
- The Administrator was not required to keep copies of individual letters issued as far back as 2009, but it had always been the Trustee’s practice to notify

members, through the Administrator, of their options following their withdrawal from service and to send a follow-up letter if no response is received.

- The fact that Mr N said that he did not receive the letters did not alter the position.
- The Trustee is not authorised under the Rules to reinstate Mr N's pension benefits and, it had no discretion to offer him a refund.

### **Summary of Mr N's position**

15. Mr N said:-

- He was still unhappy because he "lost out on around £10,000.00".
- He was unhappy with the time that it had taken for the Trustee to respond to his stage two IDRPs complaint.

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

16. The Trustee said:-

- In accordance with the Plan's Rules, the salary that Mr N sacrificed resulted in £13,251.87 of Employer contributions being paid to the Plan on his behalf.
- The address it held on file was Mr N's current address and it was not aware of any changes to this.
- Its administration system stored a record that a standard letter was issued to a leaver but not a copy of the letter itself.
- The administration of the Plan transferred to Legal & General in 2017, and the record of when letters were issued was not retained.
- It agreed that there was a delay in responding to Mr N's stage two IDRPs complaint due to an administrative error. However, when Mr N chased for a response on 2 September 2019, it apologised for the delay and issued its response in under three weeks; on 18 September 2018.
- It was not aware of any issues with the administration system and held no records of any problems with letters being issued at the time the letter was sent to Mr N.
- When Mr N joined the Plan, all new joiners were directed to the Employer's main benefits platform (**the RBSelect**) to make their benefits selection. The RBSelect contained information about the Plan and included a link to the member booklet.
- It had located a copy of the letter that the Administrator would have sent to Mr N which stated:

“As you have left the Group with less than 2 years’ qualifying service, it is possible for you to transfer the final fund value of your account to another approved arrangement. If you do not complete the transfer within 3 months, you will lose the right to this benefit.”

## Adjudicator’s Opinion

17. Mr N’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:-

- The Trustee has said that Mr N lost his entitlement to any benefits under the Plan because he did not elect to transfer his pension benefits within the specified time period.
- The Trustee has said that it was, and still is, standard practice for the Administrator to write to a member when they leave RBS with less than two years’ service. The letter outlines the member’s options in relation to their benefits held in the Plan. However, due to the time that has passed since Mr N left RBS, the Administrator no longer holds a copy of the letter that it would have sent to him.
- According to the Trustee’s records, Mr N held no entitlement under the Plan. So, there would have been no legal requirement for the Administrator to retain a copy of a letter that was sent more than 10 years ago. Nevertheless, Mr N lives at the same address that the Administrator held on its records for him at the time he left his employment with RBS. So, based on the balance of probabilities, it was the Adjudicator’s opinion that it was more likely than not that the Administrator sent the letters to Mr N. While the Adjudicator appreciated Mr N’s position, the Trustee could not be held accountable for Mr N not having received the letters.
- Irrespective of this, Mr N could have contacted the Trustee or the Administrator at any time after he left the Plan. Mr N had the opportunity to familiarise himself with the Booklet, which outlined what would happen if a member left with less than two years of qualifying service. Given that this information was available to Mr N, it can be argued that he ought reasonably to have known that he should have been given the option of transferring his benefits and that the contributions would not remain invested in the Plan if he took no action. So, it was the Adjudicator’s view that Mr N could have mitigated his circumstances.
- Mr N also contended that he should have received a refund of his contributions. As the contributions were made through a salary sacrifice scheme, the Adjudicator could see why Mr N believed that the sacrificed element of his salary were employee contributions. However, certain pension schemes, like the Plan, are set up so that members can benefit from tax and National Insurance contribution advantages. The Employer reduces an employee’s entitlement to

cash pay, usually in return for a non-cash benefit. For the cash element, the Employer would operate a PAYE system through its payroll. It would apply different tax treatments to the cash and non-cash elements in accordance with Her Majesty Revenue and Customs' (HMRC's) Employment Income Manual.

- In particular, HMRC's Employment Income Manual (EIM42785) confirms that pension contributions made "under successful salary sacrifice arrangements continue to be regarded as employer contributions and not taxable on the employee." In addition, section 62 and section 308 Income Tax (Earnings and Pensions) Act 2003 (and subsequent amendments), state that in a salary sacrifice arrangement, the employer makes the payments in respect of the employee, they are not deductions. So, Mr N was not entitled to a refund of contributions because they were non-cash benefits and not regarded as employee contributions.
- In relation to the Trustee's complaint responses, the Adjudicator appreciated that it would have been beneficial if Mr N had received these as soon as possible. The Adjudicator noted that the Trustee first received Mr N's stage two IDRPs complaint on 2 March 2019, but, due to an administrative error, it did not issue a response until 18 September 2019. Taking into account that the Pension Regulator considers four months as a reasonable timeframe to respond to a complaint, it was clear that the Trustee's delay amounted to maladministration.
- While there was maladministration, in the Adjudicator's view the delay will have caused Mr N nominal distress and/or inconvenience. This level of distress and inconvenience does not warrant an award. The Adjudicator said this because, although the error had to be pointed out, the Trustee expedited its stage two IDRPs response once it had been made aware of the error. In addition, had the delay significantly impacted Mr N, the Adjudicator would have expected him to have chased for the Trustee's response a lot sooner than he did, or asked for an acknowledgement to ensure that his complaint was received.
- Mr N did not accept the Adjudicator's Opinion and in response has made the following points:-
  - He argues that the Booklet's wording is not clear on what the "benefit" is. He believes this benefit to be the right to transfer that he is entitled to.
  - He disagrees with the Adjudicator's view that he should have contacted the Administrator for clarification. He was not unsure, he interpreted the wording in the Booklet as being that, in any event, he would not lose out on his pension.
  - The correct interpretation of the wording in the Booklet should have been explained during his exit interview with HR.
  - There is no evidence that the Administrator ever sent the letter as the letter had not been kept on its systems.

- He maintains he is entitled to his contributions of £13,251.87.
  - The Administrator should have contacted him via telephone or email not just a letter that he never received.
  - There needs to be “an updated contract with the lower salary remuneration and the actual benefit.” This is required by HMRC manual.
18. The complaint has now been passed to me to consider. I have noted Mr N’s further comments, but they do not change the outcome. I agree with the Adjudicator’s Opinion.

### **Ombudsman’s decision**

19. Mr N has argued that he should be entitled to the refund of his contributions, of £13,251.87, made to the Plan.
20. Contributions to the Plan were made through a salary sacrifice scheme. It is set up so that the employee agrees to reduce their earnings by an amount equal to their pension contributions. And in exchange, the employer then agrees to pay the total pension contributions.
21. When Mr N joined the Plan, he agreed to this lower level of salary so his employer could pay the total pension contributions. However, the payments count as employer contributions, rather than employee contributions. I find that Mr N is not entitled to a refund of contributions, as he did not make any contributions.
22. Rule 7.2 states that if the member leaves with less than two years of qualifying service and does not select an option to transfer benefits to another qualifying scheme within the period notified to them, the member will not receive any benefits under the Plan, except a refund of their own contributions. As Mr N did not make any of his own contributions to the Plan, he is not eligible to a refund.
23. I have considered all the information that would have been available to Mr N at the time he left the Plan. I note there is no conclusive evidence of the letter having been sent by the Administrator to Mr N notifying him of his pension options. However, I find it is more likely than not, on the balance of probabilities, that the Administrator did send the standard letter that it kept on its systems. I appreciate that Mr N says that he did not receive any such letter, but the Administrator has confirmed the address it held for Mr N was the correct one and so there is no reason to believe it was not safely delivered. Furthermore, I find that the non-receipt of the letter does not create any entitlement to the pension.
24. The Booklet would have informed Mr N that he would be offered a transfer value of the full value of his account to take to another registered pension arrangement of his choice. However, if he did not complete the transfer within a specified time after leaving service, he would lose the right to this benefit. As Mr N did not give any such

notice to the Trustee within the specified time period, he has lost his entitlement to the benefit.

25. Mr N believes there should be an updated legal contract to provide for the salary sacrifice option under the Plan. But, when Mr N joined the company the Plan was already operating as a salary sacrifice scheme. I find that the Trustee has acted in accordance with the Plan rules, and I find no maladministration on its part.
26. Lastly, I find there was maladministration as there was a delay in the Trustee replying to Mr N's stage two IDRPs complaint. I find the delay will have caused Mr N some distress and/or inconvenience. However, I do not find that the level of distress and inconvenience was such that an award is warranted. The Trustee expedited its stage two IDRPs response once it had been made aware of the error. In addition, had the delay significantly impacted Mr N, I would have expected Mr N to have chased for the Trustee's response a lot earlier than he did, or, at least asked for an acknowledgement to ensure that his complaint was received.

27. I do not uphold Mr N's complaint.

**Anthony Arter**

Pensions Ombudsman  
26 May 2021



## **Appendix**

### **Rule 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 of 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.”