

Ombudsman's Determination

Applicant	Mr T
Scheme	The Mizuho Bank London Final Salary Scheme (the Scheme)
Respondent	The Trustees of the Mizuho Bank London Final Salary Scheme (the Trustee)

Complaint Summary

1. Mr T has complained that he is entitled to deferred benefits from the Scheme that the Trustee has failed to recognise.

Summary of the Ombudsman's Determination and reasons

2. The complaint should be partly upheld against the Trustee because:
 - 2.1. The Trustee failed to maintain adequate records, including relevant copies of the Scheme's Trust Deed and Rules, and this amounts to maladministration that has caused Mr T significant distress and inconvenience.
 - 2.2. Illustrations such as the Benefits Quotation and the Transfer information Sheet do not guarantee any subsequent pension entitlement.
 - 2.3. Rather, HMRC, in its letter of 25 July 2018, confirmed that a Contributions Equivalent Premium (**CEP**) had been received from the Scheme, and that this had reinstated Mr T's full entitlement under the State Second Pension Scheme and extinguished a contracted out benefit entitlement that had previously existed in the Scheme. There is insufficient evidence to support any finding that an error was made by HMRC in accepting, or the Trustee in paying, the CEP in Mr T's case.
3. As a result, on the balance of probabilities, Mr T does not have a deferred benefit in the Scheme. However, following its maladministration, the Trustee shall pay Mr T an award as set out in paragraph 51 below.

Detailed Determination

Material facts

4. Under the Social Security Act 1986 (the 1986 Act), a member is entitled to deferred benefits if they leave a pension scheme having accrued two or more years of pensionable service.
5. Between 1978 and 2016, members of contracted-out pension schemes paid reduced National Insurance contributions in return for reduced benefits from the State Second Pension Scheme – a process known as “contracting out”. In return, for the period between 6 April 1978 up to 5 April 1997, a defined benefit occupational pension scheme had to provide members with a Guaranteed Minimum Pension (**GMP**).
6. On 17 February 1994, Mr T commenced employment with Fuji Bank Limited (the **Bank**), which is the employer linked to the Scheme. At some point after commencing employment, Mr T joined the Scheme (although the exact date has been a matter of dispute). The Scheme was an occupational pension scheme providing defined benefits. It was also ‘contracted out’ and, at that time, had to provide GMPs to its members.
7. On 12 August 1996, Prudential, then the administrator of the Scheme, wrote to Mr T and provided a benefits quotation, (**the Benefits Quotation**) stating that he had left the Scheme on 29 March 1996 and had accrued deferred benefits of £927.08 a year, payable from 3 July 2023.
8. Also enclosed with the letter was a ‘Transfer Information Sheet’, (**the Transfer Information Sheet**), which stated that Mr T had joined the Scheme on 17 February 1994 and had left on 29 March 1996.
9. The Trustee has said that Mr T initially enquired about his deferred benefit entitlement in 2015.
10. On 1 September 2015, Prudential wrote to the Trustee and said that no record had been found for Mr T.
11. Mr T has said that he first contacted Prudential in 2017 to request details of his deferred benefit entitlement in the Scheme.
12. On 25 July 2018, HMRC wrote to the Trustee and confirmed that a CEP had been received from the Scheme, and that this had reinstated Mr T’s full entitlement under the State Second Pension Scheme. So, there was no remaining benefit entitlement under the Scheme for Mr T.
13. On 19 November 2018, Mr T complained under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**), and said:-

- 13.1. He joined the Scheme on 17 February 1994 and left on 29 March 1996. So, he qualified for deferred benefits having accrued more than two years of pensionable service.
- 13.2. On 12 August 1996, the Benefits Quotation was sent to him confirming his deferred benefit entitlement, but no further correspondence regarding the Scheme had been sent to him since that time.
- 13.3. He subsequently contacted the Trustee to ask for an updated benefit statement. However, no response was received to that enquiry. So, he wanted the requested information to be sent as acknowledgement of his membership.
14. On 25 October 2019, HMRC wrote to Mr T confirming that he had been employed by the Bank for part of tax year 1993/1994 (paying Category A National Insurance) and for the whole of tax years 1994/1995 and 1995/1996 (paying Category D¹ National Insurance).
15. On 8 November 2019, the Trustee wrote to Mr T and said:-
 - 15.1. Equiniti, which provided administration services to Prudential, had confirmed that Mr T was employed by the Bank from 1 April 1994 to 29 March 1996.
 - 15.2. HMRC had confirmed that a CEP, was received from the Scheme. Such payments were made when a member left the Scheme and had their contracted-out benefits reinstated in the State Second Pension Scheme. This suggested that Mr T no longer retained a benefit entitlement in the Scheme.
 - 15.3. To investigate the matter further, HMRC would need to confirm the date on which the CEP was paid and the period of contracted-out service which the payment related to. HMRC would not discuss the matter with the Trustee. So, Mr T should raise an enquiry with HMRC to obtain the required information.
16. On 22 January 2020, the Trustee wrote to Mr T in response to his complaint under the IDR and said:-
 - 16.1. Equiniti could not verify the details quoted in the Transfer Information Sheet.
 - 16.2. Equiniti confirmed that the guarantee end date on the Transfer Information Sheet was November 1996, which meant that it was produced in August 1996. Equiniti's records showed that Mr T 'joined the Scheme in 1995', having signed an application form on 6 February 1995, as confirmed by data files of 6 June 1995.
 - 16.3. Equiniti had confirmed that Prudential required the Bank's employees, including Mr T to have completed six months company service before joining the Scheme, and his employment had commenced on 17 February 1994. So, the earliest date on which Mr T could have joined the Scheme was on 17

¹ For employees in a contracted-out workplace pension scheme.

August 1994. So, Mr T could not have completed two years pensionable service, which meant that he did not qualify for a deferred pension under the Scheme.

17. On 7 July 2020, HMRC wrote to Mr T and confirmed that his contracted-out period of service with the Bank had started on 6 April 1994 and ended on 29 March 1996.

Mr T's position

18. After leaving the Bank in 1996 he received the Benefits Quotation, which confirmed that he had accrued two years of pensionable service and set out his deferred benefit entitlement on that basis.
19. The Trustee's conclusion that he joined the Scheme six months after the commencement of his employment with the Bank was based on poor record keeping and administrative errors. The Benefits Quotation would not have been provided if he was not entitled to the quoted pension.
20. The Benefits Quotation confirmed that he joined the Scheme on 17 February 1994 and left on 29 March 1996 with accrued deferred benefits of £927.08 a year. This was supported by the Transfer Information Sheet which confirmed that he had joined the Scheme on 17 February 1994 and left on 29 March 1996. This is evidence that he had accrued sufficient pensionable service to qualify for deferred benefits in the Scheme.
21. The Trustee has said that the earliest date on which he could have joined the Scheme was 17 August 1994. The Trustee also said Equiniti had confirmed that he 'joined the Scheme in 1995', after signing an application form on 6 February 1995. These suggested joining dates were not supported by any evidence.
22. HMRC's contracted-out start date of 6 April 1994 does not correspond with either of the membership start dates suggested by the Trustee.
23. If the period of contracted-out service was meant to correspond with his membership, it is unclear why the first six weeks of his employment in the 1993/1994 tax year was not recognised in HMRC's letter of 25 October 2019, or why the contracting-out period quoted 'ceased at the end of the 1994/1995 tax year'.
24. His contracted-out period of 6 April 1994 to 29 March 1996 quoted in HMRC's letter of 7 July 2020 was approximately one week less than the two years minimum required under the 1986 Act for automatic entitlement to deferred benefits in the Scheme. However, HMRC's evidence was based on information provided by the Bank and not independently verified.
25. The evidence provided by HMRC does not correspond with any of the membership start dates quoted by the Trustee. His period of contracted-out service was meant to correspond with his membership.

26. The initial six weeks of his employment in the 1993/1994 tax year ought to have been recognised in HMRC's letter of 25 October 2019. It is also unclear why his contracting-out period 'ceased at the end of the 1994/1995 tax year' in that letter.
27. HMRC has confirmed that the CEP relates to a period of pensionable service covering the period 6 April 1994 to 29 March 1996. So, if he had left pensionable service seven days later, he would have been entitled to a deferred pension.
28. If so, this means that his pensionable service started on 6 April 1994. Given the importance attached to this seven-day deficit, the exclusion of pensionable service covering the period 17 February 1994 to 5 April 1994 appears to be "puzzling and inconsistent."
29. He has provided evidence of deferred benefit entitlement in the Benefits Quotation and the Transfer Information Sheet. The evidence provided by HMRC originated from information provided by the Bank and has not been independently verified. So, he retains a deferred benefit entitlement in the Scheme.

The Trustee's position

30. Mr T initially claimed a benefit entitlement under the Scheme in 2015. However, no records of Mr T's membership were found. Investigations were completed based on historical information provided by Prudential and Mr T. The Benefits Quotation is not a benefit statement and may have been sent to Mr T in error before the details were subsequently corrected by Prudential at a date shortly after 12 August 1996.
31. HMRC has confirmed that it received a CEP in respect of Mr T's period of pensionable service. This is only possible when a member has accrued less than two years of pensionable service. Consequently, Mr T's maximum period of contracted-out service corresponds with his pensionable service, which was from 6 April 1994 to 29 March 1996, which is less than two years. So, Mr T is not entitled to claim deferred benefits under the Scheme.
32. Investigations have been undertaken based on historical information provided by Prudential and Mr T. However, no record of Mr T's membership has ever been found. The Benefits Quotation is not a benefit statement and may have been sent to Mr T in error before the details were subsequently corrected by Prudential at a date shortly after 12 August 1996.

Conclusions

33. It is not unusual for The Pensions Ombudsman to see cases where individuals claim that they remain entitled to a deferred benefit in a pension scheme, while the records maintained by the trustee of that scheme suggest that is not the case. In those situations, records are often incomplete or ambiguous, usually because of the passage of time. As a result, I am required to weigh up competing evidence and reach a conclusion, on the balance of probabilities, as to whether that individual does indeed have a deferred benefit in the scheme in question.

34. That is the task that confronts me with this case. Here it is accepted that Mr T had been a member of the Scheme. However, the question at hand is whether he had two year's qualifying service in the Scheme, such that he would have retained a deferred benefit.
35. On one hand, the Trustee has argued that Mr T never accrued two years' qualifying service. It sets out the investigations it has made, and, notably, points out that the results of those enquiries show that:
 - 35.1. Mr T "worked for the Company between 1 April 1994 and 29 March 1996", which would not provide the two years' service required to have retained a deferred benefit.
 - 35.2. It is clear that a CEP was paid in order to reinstate Mr T into the State Second Pension Scheme – and this would only have been paid if a member had less than two years' qualifying service in a contracted-out pension scheme.
 - 35.3. Whatever the period of employment, records show that Mr T only joined the Scheme in 1995, having signed an application form on 6 February 1995 (the **Application Form**).
 - 35.4. There had been a requirement for a six-month probationary period to be completed before an employee was permitted to join the Scheme – and so, if Mr T had started employment on 17 February 1994 (the Trustee having seemingly accepted that date, notwithstanding the earlier argument that employment commenced in April 1994) then the earliest date on which Mr T could have joined the Scheme was 17 August 1994. Bearing in mind his eventual date of leaving the Company, that would still not have allowed for him to accrue two years' qualifying service.
36. In contrast, Mr T submits that:
 - 36.1. The Trustee said he joined the Scheme in either August 1994 or February 1995, but this was not supported by any evidence. Mr T says that the contracted out start date of 6 April 1994 quoted in HMRC's letter of 7 July 2020 does not correspond with either of the joining dates suggested by the Trustee.
 - 36.2. Mr T also contends that if his period of contracted-out service was meant to correspond with his pensionable service, it was unclear why the first six weeks of his employment in the 1993/1994 tax year has not been recognised by HMRC in the letter of 25 October 2019, or why the contracting-out period quoted 'ceased at the end of the 1994/1995 tax year'.
 - 36.3. Instead, Mr T argues that the Benefits Quotation confirmed he left the Scheme on 29 March 1996, having accrued deferred benefits of £927.08 a year. Additionally, the Transfer Information Sheet confirmed that he joined the

Scheme on 17 February 1994 and left on 29 March 1996. Mr T said that this is evidence of his deferred benefit entitlement under the Scheme.

37. Illustrations such as the Benefits Quotation and the Transfer information Sheet provide an estimate of potential benefits and do not guarantee any subsequent pension entitlement. They do, nonetheless, add weight to Mr T's arguments.
38. However, HMRC, in its letter of 25 July 2018, confirmed that a CEP had been received from the Scheme, and that this had reinstated Mr T's full entitlement under the State Second Pension Scheme. Payment of that CEP would only have been possible where Mr T accrued less than two years of pensionable service, and it extinguished any benefit entitlement in the Scheme. Without categorical evidence of an error this cannot now be undone.
39. I place considerable weight to this evidence. It is a fact, confirmed by the independent authority responsible for overseeing National Insurance Contributions relating to formerly contracted-out pension schemes, that the CEP was paid, which would only be paid in the circumstances set out above. In view of the other competing and often contradictory evidence, I find this evidence 'tips the scales' to a finding that Mr T did not accrue two years' qualifying service in the Scheme, and so does not have a deferred benefit in the Scheme.
40. On the basis that is clear that a CEP was paid, I have also considered whether the CEP should have been paid at all. Essentially whether there is any other evidence that would outweigh the confirmed payment of the CEP, and the other information provided by the Trustee, and therefore lead me to conclude that it was paid in error (which might then still allow a conclusion that Mr T has a deferred benefit in the Scheme).
41. In particular, the Trustee pointed to the six-month probationary period that needed to elapse before an employee was permitted to join the Scheme – and argued that this was evidence that he could not have accrued two years' qualifying service.
42. Disappointingly, I am informed that the Trust Deed and Rules that governed the Scheme on and around the point that Mr T entered employment with the Company or joined the Scheme are not available (**the Old Rules**). Instead, as evidence of this probationary period, the Trustee points to the Scheme booklet produced in 1991 (**the Booklet**), which simply states that "The Fund is open to all permanent full-time employees ... who have completed six months' service and are not paying contributions to a personal pension scheme".
43. The Trust Deed and Rules that are available for analysis, while not directly relevant to Mr T's period of membership, are the 2004 Rules, relating to the MHCB London Final Salary Scheme. This includes, at Schedule 3, the Rules of the Fuji Bank Section (the Scheme having merged into this arrangement). The Fuji Bank Section was closed to new members at this point – but the 2004 Rules still include some provisions relating to membership and joining the Scheme. To the extent that some redundant provisions are still included in the 2004 Rules, it suggests (although I

appreciate it is not definitive, as is also the case with the Booklet produced some years before Mr T entered service) that those provisions may also have existed in an earlier iteration of the Scheme's governing documentation.

44. In particular, although the 2004 Rules do not set out the probationary period suggested by the Scheme's Booklet (it being closed to new members by then), they do include, in the definition of Pensionable Service², a provision that "in the case of a member who entered Pensionable Service on the first date on which he was eligible so to do Pensionable Service also includes continuous full-time Service³ before the date of entry into the Pensionable Service". Essentially, this allowed Pensionable Service to be backdated, and for a member to 'fill in the gap' of the probationary period.
45. Therefore, on the face of it, if this provision also applied to the period when Mr T joined the Scheme, and if he joined the Scheme at "the first date on which he was eligible", then his period of probation, after he entered employment, but before he joined the Scheme, would also count as Pensionable Service. In turn, if he did indeed start his employment on 17 February 1994 and left on 29 March 1996, that, to the extent that the backdating provision referred to above applied to him, would be enough to provide two years of qualifying service and a deferred benefit in the Scheme.
46. However, although I mention this analysis for completeness, it is not in my view sufficient, with the evidence available to 'tip the scales' back in Mr T's direction. Rather, as the Trustee correctly states, it is not certain that the backdating provision did apply to Mr T's period of membership. It is not, for example, referred to in the Booklet.
47. Furthermore, the Booklet states that the probationary period lasted only six months, after which time an employee would be eligible to join the Scheme. On that basis, if Mr T started employment on 17 February 1994, he first became eligible to join the Scheme on 17 August 1994 (assuming he was not contributing to a personal pension scheme until a later date). However, the Application Form was signed by Mr T much later than that, on 6 February 1995. In that situation, even if the 'backdating' provision in the definition of Pensionable Service in the 2004 Rules did apply to Mr T, it would not seem to have been engaged, as he did not enter Pensionable Service on the first date he was eligible to do so.
48. It is clearly disappointing that there is such an absence of consistent records available with which to determine Mr T's complaint. However, for the reasons set out

² In short, a 'qualifying member' for deferred benefits in the Scheme at the time Mr T left his employment would need to have accrued two years' 'qualifying service' – which includes "Service ... which is pensionable", and so Pensionable Service in this case is relevant in helping determine whether Mr T has a deferred benefit in the Scheme.

³ Service, in this case, means "service with the Employers or, prior to the Merger Date, service with any employer under the Former Scheme..."

above, and on the balance of probabilities, I find that Mr T does not retain a deferred benefit in the Scheme.

49. Although I have found that Mr T does not have a deferred benefit, I have noted that the Trustee has been unable to provide a copy of the Old Rules or adequate records to be able to ascertain with certainty what became of Mr T's benefits. This uncertainty has resulted in inconsistent answers being provided, which amounts to maladministration, and has undoubtedly exacerbated the time required to bring this process to a conclusion. These shortcomings meant that Mr T was left in doubt as to his entitlement. This will undoubtedly have caused Mr T significant distress and inconvenience for which he should be compensated.

50. I partly uphold Mr T's complaint.

Directions

51. Within 28 days the Trustee shall pay Mr T £500 in recognition of the significant distress and inconvenience caused to him.

Dominic Harris

Pensions Ombudsman
27 December 2023