

Ombudsman's Determination

Applicant	Mr R
Scheme	BBC Pension Scheme (the Scheme)
Respondent	BBC Pension Trust Limited (the Trustee)

Outcome

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

Complaint summary

2. Mr R has complained that the Trustee requires him to be divorced rather than separated in order to claim a partial refund of contributions. He has said that this requirement is discriminatory on the grounds that it conflicts with his religious beliefs, which prohibit divorce.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
4. The Scheme is governed by the BBC Pension Scheme Trust Deed and Rules (**the Scheme Rules**). Section 7A.9 of the Scheme Rules provides that:-

"When a Member's pension becomes payable, he or she may exercise the following options

[...]

(3) Partial Refund of Member Contributions

"Partial Refund" means 20% (or such other percentage* as the BBC and the Trustees agree) of the Member's Member Contributions plus Interest, less any tax payable in connection with the refund. The Member may elect to receive the Partial Refund if –

- (a) he or she is unmarried and does not have Civil Partner; or

(b) his or her current period as an Active Member started before 1 July 1978 and his or her spouse or Civil Partner has agreed to the Partial Refund in the form prescribed by the Trustees (...)"

and then further provides that following the Partial Refund, "(i) no Qualifying Spouse's, Qualifying Civil Partner's or Nominated Dependant's pension will be payable under rule 7B.2(2); and (ii) any Qualifying Children's pension under rule 7B.2(3) will not be doubled; and (iii) any GMP to which the Member's Widow, Widower or Civil Partner is entitled will be paid".

5. On 1 June 1988, Mr R commenced employment with the British Broadcasting Corporation (**the BBC**) and joined the Scheme.
6. On 2 July 1998, Mr R left the Scheme and became a deferred member.
7. On 12 April 2021, Mr R telephoned the administrator of the Scheme, the Pension and Benefits Centre (**the Administrator**). According to the Administrator's notes Mr R enquired about the benefits that would be payable in the event of his death and the following points were also discussed:-
 - Mr R said he was separated from his wife (**Mrs R**) and they did not live together anymore. The Administrator said that Mrs R would not qualify for a spouse's pension under the Scheme Rules, in the event of his death, under the circumstances he had described.
 - Mr R queried whether it would be possible for him to claim a partial refund of contributions. The Administrator replied that a partial refund of contributions (**the partial refund option**) 'would only be available if Mr R was divorced'. Mr R said that divorce was against his religion.
8. On the same day Mr R telephoned the Administrator again and was told that the information he had received earlier was correct. However, his benefits in the Scheme partly consisted of a Guaranteed Minimum Pension (**GMP**) entitlement. In the event of his death if he remained married a spouse's pension of approximately £1,400 per year would be payable to Mrs R from the GMP portion of his benefits.
9. Mr R subsequently emailed the Administrator and said:-
 - He was aware that his GMP entitlement meant that Mrs R would be entitled to a spouse's pension from the Scheme in the event of his death. Alternatively, he would similarly be the beneficiary of a spouse's pension if Mrs R predeceased him, as she was also a member of the Scheme.
 - Having checked the Scheme's Handbook for members, it did not appear to confirm his understanding about the death benefits that would be payable to either him or Mrs R. So, he would like clarification on that point.
10. On 14 June 2021, the Administrator emailed Mr R apologising for the delay in responding to his enquiry and said:-

- He had been contracted-out of the State Earnings Related Pension Scheme for a portion of his Scheme membership. This meant that he had paid reduced National Insurance contributions and would qualify for a GMP from the Scheme at the State Pension Age. At that time, the Scheme was required to pay a pension at least equal to the GMP in respect of any contracted-out service between 6 April 1978 and 5 April 1997.
- His member record showed that his GMP at the State Pension Age was £2,800.72 per year. In the event that he predeceased Mrs R, she would be entitled to claim a spouse's pension of half of that sum. This entitlement was provided for in Government legislation rather than the Scheme Rules and was an obligation that the Scheme needed to comply with. The GMP also had to be revalued each year in accordance with Government guidelines.

11. On 17 June 2021, Mr R emailed the Administrator and said:-

- He had previously been told that in order to claim the partial refund option, 'he needed to be divorced' and have a decree absolute. So, it appeared that the Scheme was discriminating against his Catholic religion, which said that a marriage annulment was possible but not a divorce. He would like clarification on this point.
- The Catholic Church did not recognise divorce and said that a marriage could only end when one spouse died or if there were grounds for an annulment. While a married couple may be granted a civil divorce their marriage would continue "in the eyes of God" according to the Bible.

12. On 28 June 2021, the Administrator emailed Mr R and said:-

"Under the Scheme Rules [the partial refund option] is available at retirement to members of the Old Benefits section of the Scheme who are:

a) unmarried and do not have a civil partner, or

b) joined the Scheme before 1 July 1978 and whose spouse or civil partner has agreed to the Partial Refund"

13. In summary the Administrator also said:-

- The Trustee had no discretion under the Scheme Rules to allow a member to exercise the partial refund option unless the criteria set out in (a) or (b) as previously mentioned was satisfied. The aim of these rules was to ensure that the partial refund option was only made available when it was clear that at the time of the decision, no existing qualifying spouse or civil partner could be a beneficiary.
- Having sought legal advice it was concluded that the qualification criteria for the partial refund option would not result in any unlawful discrimination. Additionally, the partial refund option did not require him to be "divorced" but rather "unmarried". So, if for example, his marriage was legally annulled, he would then

be “unmarried”, and the partial refund option, which had increased to 27% of a member’s total contributions, would be permitted.

14. On 20 July 2021, Mr R complained under stage one of the Scheme’s Internal Dispute Resolution Procedure (**IDRP**) and said:-

- He had wanted to claim retirement benefits from age 60 but the options provided to him had been “unfair” and showed discrimination on the grounds of his religion. He had accrued benefits in other pension schemes that would pay a spouse’s pension in the event of his death, even if he was not living with Mrs R at the time, or pay him a partial refund of contributions immediately, even if he was not unmarried.
- His religious beliefs prohibited divorce but the Trustee had not considered the impact that requiring him to be unmarried in order to claim the partial refund option could have. So, he would like a review of that issue. The Administrator ought to have offered him the opportunity to challenge the options offered to him via the IDRP earlier, rather than ‘force him to seek a divorce.’

15. On 26 August 2021, the Administrator wrote to Mr R and said:-

- The Catholic Church would not recognise a divorce but he could legally divorce Mrs R. Due to that possibility the Scheme Rules had not discriminated against him on the grounds of religion.
- The Trustee was required to act in accordance with the Scheme Rules and had no discretion to pay him a partial refund unless he was unmarried.
- There had been delays in responding to his enquiries regarding the partial refund option. That poor service would have caused him significant distress and inconvenience. An award of £500 would be appropriate recognition of this.

16. On 3 September 2021, Mr R appealed under stage two of the IDRP and said that the Administrator’s “requirement for him to be divorced” when exercising the partial refund option conflicted with the Bible. Mr R said the Administrator did not appear to care that divorce was forbidden in the Bible and had a lack of respect for this point.

17. On 19 November 2021, the Trustee wrote to Mr R and said:-

- The Scheme had to be run in accordance with the Scheme Rules and any related overriding pensions legislation. The Scheme Rules required a member to be “unmarried” in order to exercise the partial refund option.
- Consideration had been given as to whether or not there was any pensions legislation that would take precedence over the Scheme Rules, or whether enforcement of the Scheme Rules in his case amounted to discrimination.
- The response issued at stage one of the IDRP was correct. He had not been discriminated against on the grounds of his religion. There was also no

requirement to consider the Bible in administration of the Scheme and not doing so had not breached his rights.

- The £500 award previously offered by the Administrator at stage one of the IDRPs was appropriate.

Mr R's position

18. The Catholic Church does not support divorce and God forbids it. So, he should not have been put into a position where a 'divorce' was necessary to exercise the partial refund option. That requirement was also in breach of indirect discrimination legislation under the Equality Act 2010 (**the 2010 Act**), (see Appendix), and put him at a "disadvantage."
19. It was unclear as to the Trustee's position regarding claims for the partial refund option made by Muslims, Mormons, or members of other religious groups that "do not allow divorce". His problem was exacerbated by the fact that Mrs R was also a member of the Scheme. He considers that the Scheme Rules requiring him to be unmarried to exercise the partial refund option was designed so that 27% of his and Mrs R's contributions could be retained within the Scheme's assets for the benefit of other members.
20. Results from Internet searches he had completed regarding a Catholic getting divorced to qualify for benefits included "Yes, you'll need to show a reason to have your marriage annulled, but you can get a divorce without a reason". The Internet search results also stated "No, the Catholic Church does not recognise divorce..." and "No, a pension provider can't say that you must be divorced to receive a share of a pension when your former spouse dies."
21. The £500 award offered by the Administrator ought to have been kept "separate" from his claim for indirect discrimination under the 2010 Act. An increased sum would be more appropriate now as the £500 award should have been paid several years ago.

The Trustee's position

22. The Scheme Rules provide that when a member's pension becomes payable they may claim a partial refund of their own contributions. The updated maximum payable is 27% of the member's total contributions to the Scheme. To qualify for that benefit a member would need to be unmarried unless their active service started before 1 July 1978, and his or her spouse agreed to the partial refund. Mr R did not join the Scheme until 1 June 1988, so he was only entitled to claim the partial refund option if he was unmarried.
23. Under the 2010 Act indirect discrimination occurs where a requirement puts a person with a protected characteristic at a particular disadvantage compared to someone who does not have that protected characteristic. While Mr R did not wish to proceed with a divorce, that was a legal option for a Catholic. So, Mr R was not indirectly discriminated against as a result of the Scheme Rules requiring him to be unmarried

to exercise the partial refund option. In any case, Section 19(2)(d) of the 2010 Act provides that indirect discrimination can be objectively justified, and is legal, if it amounts to a proportionate means of achieving a legitimate aim.

24. Clarification regarding a member's marital status through provision of a decree absolute was necessary before allowing the partial refund option. This made it possible to identify whether there was an eligible beneficiary with entitlement to a spouse's pension or a child's pension under the Scheme Rules. Requiring a member to demonstrate that they are not married in order to exercise the partial refund option was a proportionate means of achieving this legitimate aim in accordance with Section 19(2)(d) of the 2010 Act as set out in the Appendix.
25. Mr R's complaint regarding the level of service he had received was part of his overall grievance around alleged discrimination under the 2010 Act. So, a £500 award was appropriately offered in an attempt to settle the complaint in recognition of the distress Mr R suffered as a result of the delays in responding to his enquiries. The £500 award is still available should Mr R now wish to take it as a resolution to his complaint. However, there was no maladministration resulting from discrimination against Mr R on religious grounds.

Adjudicator's Opinion

26. 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:-
 - The Catholic Church does not recognise divorces. It says a marriage may only end following the death of either spouse, or due to an annulment. However, the Trustee is required to act in accordance with the Scheme Rules, which require a member to be "unmarried" rather than 'divorced' to qualify for the partial refund option. There are no provisions under the Scheme Rules requiring the Trustee to consider a member's religious beliefs when claiming that benefit.
 - Members would be treated in the same way regarding qualification for the partial refund option whether they were Muslim, Mormon, or belonged to any other religious group. The Scheme Rules do not provide the Trustee with discretion to allow a member to exercise the partial refund option even when a divorce would be the only option for the member concerned to be classed as "unmarried" and qualify.
 - In the Adjudicator's opinion the Trustee has correctly concluded that it could not allow Mr R to exercise the partial refund option while he remained married, even if he was separated from Mrs R. There was also no requirement for the Trustee to consider the results of Mr R's internet searches or the benefits that Mr R might qualify for in his other pension arrangements while he remained married. Especially as the rules governing any other pension arrangements would have been different.

- Mr R has acknowledged that he may be granted a civil divorce from Mrs R, even if their marriage would continue “in the eyes of God”, according to the Bible. The Scheme Rules simply require Mr R to be unmarried, or he can be divorced in the civil or legal sense, even if he would ‘remain married’ according to his religious beliefs. In the Adjudicator’s opinion the Scheme Rules do not discriminate against Mr R under the 2010 Act on the grounds of his religion in any case. He is in a protected group under the 2010 Act, based on his Catholic beliefs. But Mr R would be treated no differently under the Scheme Rules, if he was not a Catholic, or if he was a member of any other religious group.
- In the Adjudicator’s view there was no evidence of direct or indirect discrimination under the 2010 Act by the Trustee in applying the Scheme Rules that required Mr R to be “unmarried” before he could exercise the partial refund option. Neither was there any evidence that the Trustee required Mr R to be unmarried, so that his contributions could be retained within the Scheme’s assets for the benefit of other members, should he keep his existing marital status.
- In the Adjudicator’s opinion the Trustee correctly concluded that the £500 award offered by the Administrator was appropriate recognition of the distress and inconvenience that Mr R suffered. The delay in responding to Mr R’s enquiries regarding benefit entitlements, that caused the distress and inconvenience, was related to his wider concerns that there had been discrimination by the Trustee based on his religion. Mr R should contact the Trustee if he would now like to accept the £500 award.

27. The Trustee accepted the Adjudicator’s Opinion, but Mr R did not, so the complaint was passed to me to consider. Mr R provided his further comments which do not change the outcome. I agree with the Adjudicator’s Opinion and note the additional points raised by Mr R.

Mr R’s additional comments

28. The Trustee’s decision not to allow him to exercise the partial refund option amounts to discrimination against his Catholic beliefs, which prohibit him from seeking a divorce. It was unclear whether the Trustee would take a similar approach with members who practiced other religions.
29. If he owned a company with a workplace pension scheme, and the rules governing that scheme were such that the company could not employ staff who were Muslims, due to them praying five times a day, that would be an example of discrimination against the Muslim religion. He has similarly been discriminated against based on his Catholic beliefs despite this being a protected characteristic under the 2010 Act.
30. The £500 award offered by the Administrator is insufficient recognition of the distress and inconvenience he suffered; it does not correspond with the nature of the complaints he made and the fact that the award has remained unpaid for several years.

Ombudsman's decision

31. Mr R has complained that the Trustee's decision not to allow him to exercise the partial refund option amounts to discrimination against his Catholic beliefs, which prohibit him from seeking a divorce. He says it was unclear whether the Trustee would take a similar approach with members who practised other religions.
32. Pursuant to section 61 of the 2010 Act, the Scheme includes a non-discrimination rule and the Scheme Rules have effect subject to that non-discrimination rule. The non-discrimination rule provides that the Trustee must not discriminate against Mr R. Discrimination for the purposes of the Equality Act includes indirect discrimination, i.e. the application of a provision, criterion or practice that puts persons with a protected characteristic, being a Catholic in Mr R's case, at a particular disadvantage compared with persons who don't share that protected characteristic, unless it can be shown to be a proportionate means of achieving a legitimate aim. Under section 62 of the 2010 Act, the Trustee also have power to make non-discrimination alterations to the Scheme Rules.
33. The issue I therefore need to determine in this case is whether the Trustee or Scheme Rules discriminate against Mr R in relation to his being a Catholic and whether the Trustee is in breach of the non-discrimination rule or can be directed to exercise its power to make non-discrimination alterations under section 62 of the 2010 Act.
34. There is no direct discrimination in this case in that Rule 7A.9 applies equally to all members irrespective of their religious beliefs. The issue Mr R complains of is that Rule 7A.9 indirectly discriminates against him because the requirement to be unmarried as a condition of having the option of receiving a partial contribution refund puts him at a disadvantage compared to persons who do not share his religious beliefs because, on account of his religious beliefs, he can only separate from his wife and cannot get divorced.
35. It is worth considering the nature of the benefit provided under Rule 7A.9. It allows the member, at their option, to elect to receive a partial contribution refund at retirement if they are unmarried and not in a civil partnership (for convenience I will use "married", "marriage" and "unmarried" and related terms to refer to marriage and civil partnership) at that time on the basis that following payment of such partial contribution refund no spouse's or civil partner's or nominated dependant's pension will be payable except the widow or widower's GMP. In effect, it is an option for those who are single at retirement to trade-in the non-GMP dependant's pension for a partial refund of contributions. The option is only available for the unmarried, i.e. where at the point of retirement there is no person who could receive such benefits. The GMP cannot be disappplied and would remain payable to a surviving spouse or civil partner if the member married after retiring. If a member does not choose this option, the full dependant's pension will be payable to any surviving spouse or civil partner they might marry during retirement or to any nominated dependant.

36. The restriction Mr R complains of is that only members who are unmarried at retirement have this option. More specifically, his complaint is that other members who have been married can access this option by getting divorced before retiring whereas he is not able to access this option because, on account of his religious beliefs, he is not able to get divorced and thereby qualify as unmarried at retirement.
37. I agree with the Trustee that Mr R is legally able to get divorced. Mr R's complaint however is that even though he may be legally permitted to get a divorce, he cannot in fact do so on account of his religious beliefs. It seems to me that the fact that Mr R is legally able to get divorced does not mean that he may not be put at a disadvantage on account of his religious beliefs by a criterion that requires him to be divorced rather than separated. A person may be disadvantaged by a provision, criterion or practice which, practically and legally, they are able to comply with but that they cannot comply with because of religious observance. So, I find that the fact that he can legally get divorced is not relevant and what is relevant is that he cannot get divorced on the grounds of his religious beliefs. As such, I consider that if being divorced were the criterion for a benefit, it is in principle possible for that criterion to be indirectly discriminatory against persons such as Catholics who cannot get divorced on the basis of their religious beliefs.
38. However, I must consider the disadvantage Mr R complains of and then consider whether such disadvantage can be justified as a proportionate means of achieving a legitimate aim.
39. Mr R essentially complains that he cannot exercise an option to receive a partial refund of contributions on terms that would deprive his wife of a Qualifying Spouse's pension which she could be entitled to subject to other conditions. Because he remains legally married to her, his wife also remains entitled to a widow's GMP from the Scheme, i.e. the Scheme has a liability for dependant benefits in respect of his membership. A legal divorce would have changed her status for the purpose of the Scheme Rules, GMP rules and the authorised payment rules under the Finance Act 2004 applicable to the Scheme so that these benefits would have ceased to be contingently payable to her.
40. Mr R is not at a disadvantage compared to other married persons or persons in civil partnerships; they too are prevented from trading in their spouse's or civil partner's pension for a partial refund of contributions. He is only at a disadvantage compared to persons who have never married (which Mr R is not comparing himself with) and persons who have been married and are divorced having obtained a decree absolute (or dissolution of their civil partnership) and remain unmarried and not in a civil partnership.
41. But his situation does not seem comparable. The difference in treatment under Rule 7A.9 reflects the fact that, as he was legally married at retirement, his legal spouse had contingent pension rights and a dependant's pension, or at least a widow's GMP was contingently payable in respect of Mr R's membership. Where a member has divorced, the position of the member's ex-spouse (or former civil partner) is different:

they are not entitled to a widow or widower's GMP or to a Qualifying Spouse's or Qualifying Civil Partner's pension under the Scheme. The loss of this interest which is consequential on the divorce will normally have been addressed through the divorce proceedings as part of the financial settlement (which may have included a pension sharing order not available on separation). By limiting the option to persons who are unmarried at retirement (i.e. the point at which the option is exercisable), the Scheme Rules ensure that the Rule 7A.9 option is only available where there is no person currently contingently entitled to the dependant's pension that is cancelled by the member's exercise of the option. The limitation to the unmarried therefore ensures the protection of the interests of any current spouse or civil partner. Their rights can only be terminated through the formal process of divorce proceedings, not as a unilateral member option under the Scheme.

42. As such, I find that Mr R is not being indirectly discriminated against by the Trustee or by the Scheme Rules on grounds of religion because he is not disadvantaged by the requirement to be unmarried in order to be able to exercise the option under Rule 7A.9 since, being separated and not divorced from his wife, his wife has contingent rights to a Qualifying Spouse's pension and a widow's GMP under the Scheme in respect of his membership and his position is not analogous to that of a member who has completed divorce proceedings and whose ex-wife does not have such contingent rights under the Scheme. Put another way, to provide for a partial refund of contributions in exchange for the cancellation of dependant pension rights so far as permitted by law only for those in respect of whom the dependant pension benefits are currently of no value and not for those in respect of whom there is an expected liability and an identifiable beneficiary is not disadvantaging the latter.
43. In any event, to the extent that the limitation of the option under Rule 7A.9 to unmarried members is indirectly discriminatory, I find that the provision is a proportionate means of achieving the legitimate aim of protecting the Scheme from paying partial refunds of contributions where the Scheme retains a liability to pay a widow's GMP or other dependant's pensions in respect of the relevant member, while also protecting the interests of spouses and civil partners of members who are contingently entitled to such pensions.
44. Consequently, I find that the Trustee has not discriminated and Rule 7A.9 of the Scheme Rules does not discriminate against Mr R directly or indirectly in respect of his religious beliefs and I find there has been no breach of the non-discrimination rule under section 61 of the 2010 Act.
45. Further, the £500 award offered by the Administrator was appropriate recognition of the distress and inconvenience Mr R suffered due to the delays in responding to his enquiries. Mr R should contact the Trustee if he would now like to accept the £500 award.

CAS-87715-D5W3

46. I do not uphold Mr R's complaint.

Camilla Barry

Deputy Pensions Ombudsman

24 June 2025

Appendix

The 2010 Act Part 2 provides that:-

Chapter 1

Protected characteristics

4 The protected characteristics

The following characteristics are protected characteristics—

[...]

religion or belief;

[...]

Chapter 2

Prohibited conduct

Discrimination

19 Indirect discrimination

- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
 - a) A applies, or would apply, it to persons with whom B does not share the characteristic,
 - b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
 - c) it puts, or would put, B at that disadvantage, and
 - d) A cannot show it to be a proportionate means of achieving a legitimate aim.
- (3) The relevant protected characteristics are—

[...]

religion or belief;

61 Non-discrimination rule

- (1) An occupational pension scheme must be taken to include a non-discrimination rule.
- (2) A non-discrimination rule is a provision by virtue of which a responsible person (A)—
- (a) must not discriminate against another person (B) in carrying out any of A's functions in relation to the scheme;
 - (b) must not, in relation to the scheme, harass B;
 - (c) must not, in relation to the scheme, victimise B.
- (3) The provisions of an occupational pension scheme have effect subject to the non-discrimination rule.
- (4) The following are responsible persons—
- (a) the trustees or managers of the scheme;
 - (b) an employer whose employees are, or may be, members of the scheme;
 - (c) a person exercising an appointing function in relation to an office the holder of which is, or may be, a member of the scheme.
- [...]
- (7) A breach of a non-discrimination rule is a contravention of this Part for the purposes of **Part 9** (enforcement).
- [...]
- (11) A duty to make reasonable adjustments applies to a responsible person.