

Ombudsman's Determination

Applicant	Mr R
Scheme	NatWest Group Retirement Savings Plan formerly the RBS Group Retirement Savings Plan (the Plan)
Respondent	RBS Retirement Savings Trustee 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 did not tell him that he would lose any notional benefits he held in the Plan if he did not take a 'cash transfer sum' of those benefits within three months of leaving his job.
3. Mr R said that his RBS employment was his first job and he was young, vulnerable, and financially inexperienced. He argued that he would have complied with the Plan Rules if the Trustee had made him aware of them.
4. He would like the Trustee to either reinstate his Plan benefits to allow him to transfer them to his current pension provider or reimburse the value to him with investment growth.

Background information, including submissions from the parties

5. The Plan is governed by the RBS Group Retirement Savings Plan Rules, effective from 1 October 2006 (**the Rules**). The specific Rule relevant to Mr R's complaint is Rule 7, set out in the Appendix.
6. Mr R was enrolled into the Plan as a member in June 2010.
7. The Plan was part of a salary sacrifice arrangement whereby an employee agreed to exchange part of their salary before tax, in return for a non-cash benefit paid by RBS. In Mr R's case, his non-cash benefit was a pension contribution by his employer, RBS. Although it is a salary sacrifice, the Plan was non-contributory. The contributions made were considered to be employer contributions, not employee

contributions. The employee had the option of contributing themselves, but the Plan would treat any employee contributions as Additional Voluntary Contributions (**AVCs**). Mr R did not pay any AVCs to the Plan.

8. In December 2010, Mr R left his employment with RBS.
9. In September 2021, Mr R asked the Trustee about his contributions. It told Mr R that he had lost any benefits in the Plan as he had not transferred them to another provider within three months of leaving his employment with RBS.
10. On 7 October 2021, Mr R told the Trustee that he wanted to pursue a complaint through the Plan's Internal Dispute Resolution Procedure (**IDRP**). He said:-
 - To the best of his knowledge, the Trustee did not write to him to inform him, or verbally tell him, that he needed to transfer his Plan benefits as he had less than two years' service.
11. His RBS employment was his first job and he was young, vulnerable, and financially inexperienced.
12. He wanted the Trustee to either reinstate his benefits so he could then transfer them to his current provider or reimburse his Plan value of £162.86 with added investment growth.
13. On 11 October 2021, the Trustee responded to Mr R's stage one IDRP complaint. It said:-
 - Under the Rules, because Mr R had been a member for less than two years, the Plan would have offered him a cash transfer sum of the full value of his savings to take to another registered pension arrangement of his choice.
 - RBS did not retain copies of individual letters dating back over a long period of time. It was standard practice at the time to issue a letter to all leavers immediately after their departure, setting out the requirement for them to transfer their benefit within a specific timescale (no more than three months after leaving service), or lose the right to any benefit under the Plan.
 - RBS would have sent Mr R a reminder letter if he had not responded to the first letter setting out the requirement to transfer any benefit.
 - The letters would clearly have set out the consequences for Mr R if he did not accept the offer of a transfer within the required timescales.
 - Unfortunately, the fact that Mr R said he did not recollect receiving the letters did not alter its position.
 - Upon joining RBS, the bank would have directed Mr R to the Plan Member's booklet which said:-

“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 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 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 the scheme, you will lose the right to this benefit.”

- As Mr R did not make any election to transfer the accumulated value of his Plan savings to an alternative arrangement when the Plan offered this option to him, Mr R had lost the right to any benefit under the Plan.
- Mr R had the right to ask the Trustee to look at the complaint under the Plan’s IDRP stage two process.

14. On 1 December 2021, Mr R submitted a stage two IDRP complaint to the Trustee under the Plan’s IDRP process.
15. On 7 February 2022, the Trustee sent Mr R its stage two response. It upheld the stage one decision for the same reasons and stated that:-
16. The Trustee was required to administer the Plan benefits in accordance with the terms of the Rules.
17. The Trustee had taken account of all the relevant considerations by referring to Mr R’s correspondence, the records it held on its file and the terms of the Rules. The Trustee reached its decision only after careful investigation and having taken advice.
18. As noted in the stage one response, if a member left the Plan with less than two years’ membership (as in Mr R’s case), the Rules provide that the Plan will offer a member a transfer value of the full value of their account to take to another registered pension arrangement. Where a member does not select this option within the required timescales, they lose the right to any benefit under the Plan. The Member Booklet clearly stated this Rule.
19. As Mr R had not elected to transfer his benefits within the specified time period, he had lost the right to any benefit under the Plan. The Trustee is not authorised under the Rules to reinstate Mr R’s benefits.

Summary of Mr R’s position

20. Mr R said:-

- The Trustee had failed to recognise his underlying vulnerability at the time. He could not have known that the Plan required him to transfer his benefits within a short period of time after leaving his RBS employment.
- He felt that the Trustee had stolen his pension funds.
- He does not accept the Trustee's claim that RBS sufficiently explained the transfer requirement to him. He had no recollection of receiving its letters and it had no proof that RBS sent the letters to him.

Summary of the Trustee's position

21. The Trustee said:-

- Section 71 of the Pension Schemes Act 1993 required a scheme to make provision for a member to have preserved benefits once they have two or more years' Qualifying Service. Rule 7.1 and Rule 7.3 of the Rules state:

"7.1 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."

and

"7.3 A Member satisfies the preservation requirements if...the Member leaves Service with at least two years' Qualifying Service."

- However, Mr R did not have two years' Qualifying Service in December 2010 (there had also not been a transfer into the Plan from his personal pension plan- Rule 7.3.2) and, therefore, Mr R did not meet the preservation requirements. So, Mr R had no entitlement to any Plan benefits.
- Furthermore, Rule 7.2 of the Rules states that:

"A Member who leaves Service without becoming entitled to...preserved benefits may...require the Trustee to provide a Cash transfer...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 (scheme)."
- This provision was very clearly set out to Members in the Member Booklet page 9. Upon joining RBS, it would have referred Mr R to the Member Booklet as a matter of course. The provision stated:

"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 any benefit."

- It is therefore clear that, at the very least, Mr R knew, or should have known, that he would lose the right to any benefit/transfer value if he “did not complete the transfer within a specified time after leaving service.”
- It was standard practice when Mr R left service, in 2010, for a letter to be issued to Members immediately on departure setting out the Plan requirement to transfer within three months of leaving or lose their entitlement to any benefit. The Trustee referred to a sample letter it had sent, which The Pensions Ombudsman shared with Mr R.
- A reminder letter would also have been issued to Mr R as a matter of course when he did not respond to the first letter.
- Due to the time that has passed, RBS has not retained copies of these letters from more than a decade ago.

Adjudicator’s Opinion

22. 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 Adjudicator would not expect a pension scheme trustee to necessarily retain copies of its correspondence with members going back over a long period of time. It has been 14 years in this case. In his opinion, on the balance of probabilities, it is more likely than not that RBS wrote to Mr R in 2010 at the address it held for him during his employment to inform him that he needed to transfer his Plan benefits to another provider. RBS has been able to provide evidence of the template letter it used at that time which sets out clearly what would happen with Mr R’s Plan benefits. The Adjudicator also considered that it was more likely than not that RBS would have followed this letter up with a reminder letter in line with its set process.
- In the Adjudicator’s opinion, after a new member of staff had commenced their employment, RBS would have made them aware of the Plan Member’s Booklet when they were enrolled into the Plan. Mr R was therefore able to look at the Member Booklet and check its main features. This would have shown information about a member leaving employment before and after they had two years’ qualifying service.
- Given that information was readily available to Mr R in the Member Booklet, in the Adjudicator’s opinion, it could be argued that Mr R ought reasonably to have known that the Plan should give him the option of transferring his benefits if he left his job before he had two years’ qualifying service. Mr R could have contacted the Plan administrator or RBS staff member after 2010 to question why it had not offered him a transfer if he had not received any notifications.

- Mr R's employer paid contributions into the Plan through a salary sacrifice scheme. The Adjudicator could see why Mr R might think that the sacrificed element of his salary was an employee contribution. However, certain pension schemes, like the Plan, are set up so that members can benefit from tax and National Insurance contribution advantages (lower payments). The Employer reduced an employee's entitlement to cash pay, usually in return for a non-cash benefit-in this case, a pension contribution. 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 HM Revenue and Customs' (HMRC's) Employment Income Manual.
- In particular, HMRC's Employment Income Manual (EIM42785) confirmed 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, under the Rules, Mr R was not entitled to a refund of contributions because, they were non-cash benefits and HMRC did not consider such payments as employee contributions.
- While the Adjudicator acknowledged Mr R's comments about his vulnerability and inexperience, the Trustee was legally obligated to follow the relevant Plan rules applicable to his benefits once he had left his employment with RBS. Unfortunately, Mr R did not transfer his salary sacrifice benefits to another provider as set out in the Rules and so he lost any entitlement to them. The Adjudicator appreciated that this would have been very disappointing for Mr R. However, he was satisfied that Mr R had access to the Member Booklet setting out the Rules and it was likely on the balance of probabilities that RBS wrote to Mr R, and sent him a reminder, telling him he needed to transfer his benefits because he had less than two years' qualifying service.

23. Mr R did not accept the Adjudicator's Opinion and in response he made the following points: -

- RBS and the Trustee had not provided any evidence that they had notified him of the 30-day transfer deadline. Without proof that he had received the letter and reminder, he did not consider it fair to assume that he had been made aware of the transfer deadline.
- He had found three other similar complaints against the Trustee which he considered raised doubts about whether the Trustee had followed the "standard practice" in all cases.
- RBS and the Trustee had not supported or properly informed him regarding his pension options nor told him about the consequences of him not complying with the 30-day transfer requirement.

24. The complaint was passed to me to consider. I have noted Mr R's further comments which do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

25. Mr R has argued that he should receive a refund of the £162.86 contributions to the Plan, with investment growth, or a reinstatement of his Plan benefits to enable him to transfer them to his current pension provider.
26. Mr R's employer made contributions to the Plan through a salary sacrifice scheme. This means that the employee agrees to reduce their earnings by an amount equal to their pension contributions. In exchange, the employer then agrees to pay the total pension contributions to the Plan.
27. When Mr R joined the Plan, he agreed to a lower level of salary so his employer could pay the total pension contributions. However, importantly, the payments count as employer contributions, rather than employee contributions. I find that Mr R is not entitled to a refund of contributions because he did not make any contributions.
28. Broadly, reflecting overriding legislation, the Rules allow a member with more than three months', but less than two years', pensionable service to opt to take a cash transfer sum. However, this option must be taken in a reasonable period after his pensionable service has come to an end and he has been informed of the right to a cash transfer sum. In this case, Plan rule 7.2 states that if a member leaves with less than two years' 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 R did not make any of his own contributions to the Plan, he is ineligible to receive a refund.
29. I have considered all the information that would have been available to Mr R at the time he left the Plan in 2010. I note there is no conclusive evidence that RBS sent the letter and reminder to Mr R notifying him of his pension options. I note that RBS did have a process in place at the time, and there is no evidence that RBS held incorrect information on Mr R's address at that time. So, I find it is more likely than not, on the balance of probabilities, that RBS did correctly send the standard letter that it kept on its systems informing him of the time limited, right to take a cash transfer sum.
30. Separately, the Plan Member Booklet would have informed Mr R that if he left his RBS employment before two years' service, the Trustee would offer him the transfer value of the full value of his account to take to another registered pension arrangement of his choice. However, if Mr R did not complete the transfer within a specified time after leaving service, he would lose the right to this benefit. As Mr R did not give any such notice to the Trustee within the specified time period, he has lost his entitlement to the benefit.
31. I do not uphold Mr R's complaint.

CAS-88262-V3F7

Dominic Harris

Pensions Ombudsman

14 April 2025

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.”