

Ombudsman's Determination

Applicant	Mr Y
Scheme	Ulster Bank Pension Scheme (the Scheme)
Respondents	Royal Bank of Scotland (RBS) Ulster Bank Pension Trustees Ltd (the Trustees)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by RBS and the Trustees.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y disagrees with RBS and the Trustees' interpretation of the Scheme rules and their decision that he was made voluntarily redundant from his employment with Ulster Bank. He says that his role was at risk of redundancy and therefore this makes him eligible for unreduced retirement benefits from the Scheme.

Background information, including submissions from the parties

4. In February 2012, Ulster Bank (as part of RBS) began a redundancy programme which included voluntary redundancy (**VR**) packages. At this time, Mr Y was over age 50 and had a protected pension age. Under the rules of the Scheme (see Appendix for an extract of the relevant rules), if he left employment at the employer's request he would have been eligible for an immediate pension. The relevant rules specifically states that a member may receive early retirement benefits if they retire "if the Bank asks him for any reason" or "voluntarily with the consent of the Bank". If the member retires voluntarily, the Trustees will reduce the member's pension with the consent of the employer.
5. Also in February 2012, Mr Y says he had a meeting with senior management and was told that his role was "at risk" and he should therefore take VR. There are no documents in relation to this meeting.
6. On 17 May 2012, Mr Y made an application for VR.

7. In September 2012, Mr Y says he had another meeting with senior management where he was again told that his role was “at risk”. Again, there are no documents in relation to this meeting.

8. On 5 October 2012, Mr Y was sent a letter from Ulster Bank which said:

“Further to your recent request to be considered for Voluntary Redundancy, I am now pleased to be able to advise you that your request has been approved in principle. We will write to you again shortly setting out full details of the Bank’s offer. You will be asked to confirm that you wish to accept the offer and proceed...

...

What happens next?

- ... will arrange a meeting to provide you with full details of the Voluntary Redundancy terms and the steps you will need to take in order to accept the Voluntary Redundancy offer.
- ... will also be available to answer or progress any queries you might have.”

9. On 16 October 2012, Ulster Bank wrote to Mr Y confirming that it had accepted his application for VR (“I am now writing to you to confirm that your request to leave Ulster Bank ... under the terms and conditions that apply to the current Voluntary Redundancy programme has been approved”). Redundancy details were provided and, in relation to pension, the letter said:

“If at the date of leaving you have completed more than 2 years’ pensionable service, then you will be entitled to a preserved pension, payable at Normal Retirement Age. You may leave this within the Scheme or transfer it to an alternative provider. Group Pension Services will advise you if you have the option to consider having your preserved pension paid early on a discounted basis in accordance with the terms of the relevant scheme.”

10. The letter invited Mr Y to sign and an attached Voluntary Redundancy form confirming that he understood and accepted the terms of the offer. It went on to state

‘this letter overrides and supersedes all prior discussions, representations and understandings concerning your redundancy arrangements, the redundancy package on offer to you and the conditions for acceptance of this offer.’

11. Mr Y completed the form, accepted the VR offer and left employment on 30 June 2013.

12. In 2015, Mr Y said that he was made aware from another former employee that RBS and the Trustees were reviewing the pensions of former employees who had left on redundancy grounds and had accepted a reduced pension. Following this, Mr Y made a complaint to Ulster Bank that he ought to have been provided with an unreduced early retirement pension, as he had left employment due to his role being

“at risk” and he was over 50 at the time. Mr Y agrees that he never received a letter from Ulster Bank confirming that his role was “at risk”, but, on leaving employment, his former role ceased to exist.

13. The complaint was considered under both states of the internal dispute resolution procedure (**IDRP**). RBS responded under Stage 1 of the IDRP. RBS explained the redundancy process as follows:

“One of the ways that Ulster Bank has minimised disruption caused by restructures in the past, is by agreeing with the union and the mediator that before any employees are “put at risk”, a voluntary redundancy window is opened to allow employees to opt to leave with a redundancy package. The very nature and purpose of a voluntary window is to minimise the serious impact of putting employee roles “at risk”. Once the number of employees taking up the offer under the voluntary window is known, the bank can then make an informed assessment of the number of roles that remain filled and which of those will be put at risk in the future. If an employee’s role is formally placed at risk, the employee is always notified by letter and by their line manager and the status of the role and the employee is recorded on a register. In the event that the role is in fact made redundant, and there is no alternative role available or offered to the employee, the employee is then formally requested to leave on an individual basis. In this scenario, the employee would be entitled under the rules of the Scheme to an undiscounted pension.”

14. RBS did not uphold Mr Y’s complaint under the IDRP. Its decision was made on the basis that Ulster Bank had made the redundancy process available online (including guides, FAQs, calculators and application forms which were available on the internal website and the employee guidance pack which was written and made available from July 2012) and it did not recognise the meeting Mr Y says took place in February 2012 as a formal “at risk” meeting. It also confirmed that Mr Y’s role was never made formally “at risk” as he took VR prior to any assessment as to whether or not the role would be abolished.
15. The Trustees considered Mr Y’s complaint under Stage 2 of the IDRP. It concluded that there was not sufficient evidence to show that Mr Y’s role was placed at risk of redundancy. Before doing so, it sought further information from RBS as well as independent legal advice. As part of this investigation, the Trustees were asked to provide details of that advice which is as follows:

“1. **The legal interpretation of the rules.** We were advised (but in another context and affecting other members) how the relevant rule (rule 5.1.1 Provident Fund section) should be interpreted. Our conclusions on this interpretation (which the bank accepts) were set out in our letters to TPAS and Mr Y. The member’s entitlement to an unreduced pension depends upon whether he was asked by the bank to retire other than for cause (e.g. misconduct). We were advised that if the member’s role was placed at risk of redundancy by the bank and he then took voluntary redundancy, this condition would be satisfied. On satisfying this

condition, payment of an unreduced pension is automatic. We have no discretionary power to withhold or change this entitlement.

2. Whether as a matter of employment law an employee's role could be placed at risk through a verbal communication from a person with appropriate authority. We were advised that this was possible. While a written communication was not necessary, the bank's procedures required members to be given an "at risk" letter to confirm the position."

16. Mr Y remained unhappy with the response from both RBS and the Trustees and therefore made a complaint to this service.

Adjudicator's Opinion

17. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by RBS and the Trustees. The Adjudicator's findings are summarised briefly below:-
 - There is no evidence of what was said at the meetings Mr Y says took place in February and September 2012 and it would therefore not be possible to make a finding as to whether or not Mr Y was informed that his role was "at risk". It was also noted that RBS confirmed that, even if this was the case, the procedure was to have followed this up with a letter confirming this. Not only that, but considering whether his role was "at risk" would only have been considered after the conclusion of the VR process, rather than before.
 - The letter sent on 16 October 2012 is very clear that Mr Y had made an application for VR and that this had been accepted by the employer. It also provided information about his pension entitlement. Mr Y was therefore aware that he was leaving service voluntarily (not at the request of his employer) and that, just because RBS and the Trustees had reviewed other members' cases, this did not automatically mean that this changes the choice Mr Y made in 2012.
 - The Adjudicator did not agree with Mr Y's argument that his role should be considered "at risk" because it ceased to exist after he left employment. The Adjudicator felt this was an argument made with hindsight. RBS had explained that Mr Y's decision to take VR was made before his role was assessed as to whether or not it should be "at risk". With no staff left to fulfil the role after the VR process, it is not unreasonable that RBS then decided that the role should no longer exist and this is the purpose of the redundancy process, whether voluntary or compulsory.
 - The Adjudicator also agreed that the Trustees had correctly interpreted the relevant scheme rules and considered that they should not be criticised for having sought, and then relied on, legal advice.

18. Mr Y disagreed with the Adjudicator's Opinion and submitted the following, in summary:

- His role had been put at risk in February 2012 and the Trustees agreed that this could have been done verbally. Therefore, his complaint hinges on the discussions that took place with senior management in February and September 2012 and those present at the meeting should be questioned further. Mr Y requested that the Ombudsman call an oral hearing to determine this issue.
- He says that: "... I was at no time made aware of the detrimental impact on my pension by relying on the verbal directions of Senior Management who had apparent authority to give it. If it had been made clear, I would of course have waited for receipt of a formal letter." He also states that the employee guidance pack was compiled at a much later date and continues to provide misleading information.
- He feels that the Adjudicator's suggestion that the complaint is one of hindsight is unfair, as he was also told in a general staff meeting that his role was being abolished as part of the bank's planned reorganisation.

19. As Mr Y does not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Mr Y's further comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr Y.

Ombudsman's decision

20. My role is to determine if there has been any maladministration in relation to pension schemes and, if so, to put the matter right. It should be made clear that I cannot consider, or comment on, matters that relate to employment or employment law.

21. What Mr Y is essentially asking me to consider is whether or not he was told in two meetings in 2012 that his role was "at risk" and therefore that he is entitled to an unreduced pension from age 50. I cannot decide whether or not the redundancy process adopted by his employer was correct. What I can decide is whether there has been an error of law or maladministration in the way that RBS or the trustees have approached Mr Y's pension entitlement.

22. Mr Y has asked me to hold an oral hearing to question those that were present in the meetings he says took place in February and September 2012. However, I do not think this is appropriate in this case and consider that a decision can properly be made on the papers that have been submitted. I do not consider that verbal evidence would alter the inferences to be drawn from the documentary evidence which is available.

23. From this it can be seen that Mr Y made an application for VR of his own volition. He cannot argue that he did not understand the "detrimental impact" of the decision to do

this without receiving formal notification that his role was “at risk” or that he was not informed of how the VR process worked. He was offered a meeting with human resources to discuss the VR process via the letter of 5 October 2012. The letter he received dated 16 October 2012 explains that he would not receive an immediate pension and that he would be contacted if he was eligible for a discounted early retirement pension. As Mr Y did not leave until 30 June 2013 he had plenty of opportunity to raise it with his employer if he did not think this was correct and that he was in fact formally “at risk” of compulsory redundancy, before accepting the terms of his VR.

24. The section of the employee guidance pack that Mr Y is referring to says: “Where an employee is placed ‘at risk’ and will be aged 55 years or over at date of leaving they will be eligible to request to be considered for both VR or VER (voluntary early retirement)”. I do not agree that this is misleading. What this is saying is that an employee whose role is formally “at risk” can request to take VR or VER rather than awaiting a decision about whether or not he will be made compulsorily redundant. It would be between the employee and the employer to discuss the precise terms on which he leaves employment. In Mr Y’s case I am satisfied that the evidence demonstrates that he was a volunteer to the process by which he left work and I do not consider that the passage quoted is significant to the complaint that Mr Y has raised. RBS have confirmed that the document was written in July 2012 (before Mr Y accepted VR) and was made available to staff. However, even if Mr Y did not receive a copy, I consider that the 16 October 2012 letter were clear about the process and the terms on offer to Mr Y.
25. I agree that none of the parties to the complaint have been able to provide categorical evidence of what was said in the meetings which took place with senior management in 2012. However, there is no follow-up correspondence to support Mr Y’s argument that he was told his role was formally “at risk”. He was never provided with a formal letter, as per RBS’ policy, he was not put on the “at risk” register, as per RBS policy, and he requested and accepted the offer of VR, with knowledge that he would not receive an enhanced benefit for doing so. In other words, whatever was or was not said at the meetings was not followed up with the employer’s normal redundancy procedures. This, together with the timing of the voluntary redundancy exercise, suggests that it is more likely than not that Mr Y’s role was never formally “at risk”.
26. While Mr Y may have been informed that his role would not exist after he left employment, there is nothing within the evidence submitted to show that RBS ever reached the point of considering it formally “at risk”. As the Adjudicator highlighted in her Opinion, it is highly unlikely that an employer would make a decision to put a role “at risk” while the VR process was still underway. The purpose of accepting voluntary redundancy is to cut various roles from the workforce to reduce the number which have to be put at risk. If no one was left to fulfil a particular position after the VR process, then it is logical that the role might cease to exist but that does not shed light on the method by which the last post holder left it.

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27. I agree that the Scheme rules have been applied correctly to Mr Y and that there is no evidence to support that he left employment at his employer's request. Therefore, he is receiving his correct entitlement from the Scheme and I do not uphold Mr Y's complaint.

Karen Johnston

Deputy Pensions Ombudsman
28 November 2017

Appendix

Ulster Bank Ltd Provident Fund

5 Pension before Retiring Age

5.1 Early retirement in good health

5.1.1 This Rule 5.1.1 applies to a member (other than a Permanent Clerk) who leaves Pensionable Service:

- (a) before Retiring Age;
- (b) after reaching Normal Minimum Pension Age; and
- (c) who does not satisfy the Ill-Health Condition in Rule 6.2; and
- (d) is retiring either:
 - (i) if the Bank asks him for any reason other than:
 - (aa) dishonesty;
 - (bb) disobedience of reasonable orders;
 - (cc) immoral conduct;
 - (dd) drunkenness after due warning; or
 - (ee) criminal or grave misconduct;
 - or
 - (ii) voluntarily with the consent of the Bank.

...

5.3 Reduction for early payment

The Trustees will reduce the Pension of a Member retiring voluntarily with the consent of the Bank:

- (a) by an amount decided by the Trustees with the advice of the Actuary; or
- (b) by a lesser or no reduction, if the Bank so directs.