

Ombudsman's Determination

Applicant	Mrs E
Scheme	Crédit Agricole CIB Legacy Pension Scheme (the Scheme)
Respondent	Crédit Agricole Corporate & Investment Bank (the Bank)

Outcome

1. I do not uphold Mrs E's complaint and no further action is required.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs E says the Bank did not provide her with a Scheme booklet, which would have enabled her to enquire about joining the final salary section of the Scheme, (the **FSS**), at the time of her appointment in November 2000. The Bank has since refused her entry into the FSS, and has allowed inequality to exist among its employees by giving some - but not all, the opportunity to join the FSS.

Background information, including submissions from the parties

4. Between November 1999 and 9 November 2000, Mrs E worked at the Bank (then Crédit Lyonnais), while employed by an agency.
5. On 9 November 2000, she was offered permanent full-time employment with the Bank with effect from 13 November 2000. Mrs E accepted the offer.
6. The offer letter said the Bank operates a new non-contributory money purchase section of the Scheme (**NMPS**), which she would automatically be enrolled in - unless she notifies the Bank that she does not want to become a member. The letter said the other sections of the Scheme were not open to employees who had joined the Bank on or after 1 July 1999. The letter said full details were set out in the Scheme booklet, which she will be given when she joins the Bank (the **Offer Letter**).
7. Mrs E was entered into NMPS.
8. Mrs E says the Offer Letter did not provide details about the other sections of the Scheme, and the Bank failed to provide her with the Scheme booklet. Consequently,

she did not have access to information about the Scheme at the time. Mrs E contends that, had she been given a copy of the booklet, she could have enquired about the Scheme and possibly negotiated the terms and conditions of her employment.

9. Mrs E says the Bank treated her unfairly by not making her aware that there was a final salary section - still open to new entrants at the time. And by not offering her the opportunity to join it.
10. The Bank says, prior to July 1999, the Scheme had two sections: a money purchase section (the **MPS**), and the FSS. The Bank says new employees were automatically entered into the MPS but had the option to join the FSS.
11. The Bank says in 1999, it made a policy decision to close the FSS to employees joining the Bank after 1 July 1999. Those employees were not given the option to join the FSS (the **Policy**).
12. The Bank says the removal of the option to join the FSS, and thus the closure of the FSS to new joiners, was made by amending contracts of employment of all Post July 1999 joiners to expressly remove any right to join the FSS. This was also to make it clear that, on accepting employment, the employee was agreeing to be eligible for only the NMPS. The Bank says the closure of the FSS to new joiners was later documented in a formal amendment to the Scheme rules (the **Rules**) in January 2001.
13. The Bank has provided a copy of an anonymised employment contract dated February 1999, as an example of a contract it says evidences the wording used in contracts issued before July 1999 (the **Pre July 1999 Contract**).
14. The Pre July 1999 Contract states that unless the employee gives notice that they do not wish to be entered into the MPS, or that they want to join the FSS, they will automatically be entered into the MPS.
15. The Bank has provided a copy of an anonymised contract dated July 1999 as an example of the wording used in contracts it says were issued after July 1999 (the **Post July 1999 Contract**).
16. The Post July 1999 Contract states the Bank operates a money purchase scheme. It says that the Bank's existing final salary scheme is not open to employees who joined the Bank after 1 July 1999.
17. The Bank has provided a copy of a report showing the joining dates of all members the Scheme administrators say were enrolled into the FSS on or after 1 July 1999. With the exception of one entry, the company joining dates are dates earlier than 1 July 1999.
18. An email from the Scheme administrators to the Bank, in August 2016, indicates that an employee switched from the 'defined contributions' section to the FSS on 1

January 2003 having previously left the Scheme to work overseas. And that the decision was to grant him backdated membership of the FSS.

19. A consolidated deed made on 9 January 2001 (the **January 2001 Deed**) states:

“The Trustee and the Principal Employer wish to replace the provisions of the ... [rules that currently govern the Scheme] by provisions of this Consolidated Trust Deed and Rules with effect from the date of its execution in order to:

- (i) close the Final Salary Section of the Scheme to new members;
- (ii) record the rules of the new money purchase section [the NMPS], established with effect from 1 July 1999...”

20. Rule 2.2 of the Rules says, on joining (or re-joining) the Scheme on or after 1 July 1999, each employee becomes a member of the NMPS unless the Bank invites the employee to elect to join another section of the Scheme.

21. In December 2015, Mrs E asked to join the FSS but was refused entry.

22. Mrs E says the Bank has since decided to close the FSS to future accrual, this demonstrates that the Bank is trying to ensure equality for all employees in regard to pension provision. But it ought to address the irregularities in employment contracts issued between 1999 and 2001.

23. Further comments from Mrs E are set out below.

- She would have joined the FSS had she been given the choice.
- Backdated membership of the FSS would be reasonable compensation. But as a concession, she will consider an offer similar to that apparently made to members affected by the proposed closure of the FSS [to future accrual].

24. Further comments from the Bank are set out below.

- All but one employee permitted to join the FSS after 1 July 1999, joined the Bank before that date. The Bank cannot currently locate either the contract of employment or pre-joining information for that employee. It is likely they were treated as a special case because their offer of employment was made before 1 July 1999.
- With the exception of that one employee, Mrs E was treated the same as other permanent employees recruited after July 1999.
- Mrs E’s offer of employment was made, and accepted by her, on the basis that she would not have access to any other sections of the Scheme. It is not now open to her, some 17 years later, to change the terms on which she was employed and argue retrospective entry to the FSS.

Adjudicator's Findings

25. Mrs E's complaint was considered by one of our Adjudicators who concluded that no further action was required. The Adjudicator's findings are summarised briefly below:
- The legal duty to provide basic information to individuals about a pension scheme only relates to information that is relevant to that individual.
 - While Mrs E says she was not given details about the FSS, given that she was not offered membership, there was no legal obligation on the Bank to provide those details.
 - The Scheme booklet would likely have been made available to her had she requested it.
 - At the time Mrs E asked to join the FSS, she was not eligible to join that section and did not have a legal or contractual right (whether written or implied) to join.
 - There was (and still is) no legal requirement for employers to provide the same pension benefits for all its employees. In this regard there is no evidence that she has been treated unfairly.
26. Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs E has provided further comments but these do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs E for completeness.

Ombudsman's decision

27. Mrs E says that while the Offer Letter stated that other sections of the Scheme were not open to employees who joined the Bank on or after 1 July 1999, the FSS is not explicitly mentioned. Mrs E contends that the Bank's failure to provide her and other employees with the Scheme booklet seems to have been a deliberate attempt by the Bank to avoid being queried about the FSS.
28. Mrs E says there may have been 'a selection bias', if the sample contracts provided were not selected from a random sample of contracts issued between July 1999 and January 2001. Mrs E, says contracts, randomly selected, would provide a clear indication on whether contracts for all new recruits (as opposed to some) were amended.
29. Mrs E says the Bank communicated that the FSS had closed after 1 July 1999. But the deed formally effecting the change was not made until January 2001. Mrs E says if the FSS had in fact closed in 2001 then she would have qualified for admission.
30. Mrs E says the Bank has repeatedly given contradictory data in regard to the eligibility criteria for the FSS. Mrs E says the Bank advised that only one new recruit joined the FSS after 1 July 1999. But on another occasion, advised that a number of

employees were admitted. Mrs E questions why employees were enrolled after the final 'joining window'.

31. Mrs E says the way the Bank applied the Policy was inconsistent and not transparent. While it should have been the case that all new starters from 1 July 1999, should not be eligible to join the FSS, the Bank allowed new recruits to join (covertly). This contradicts the Bank's assertion that the terms of the employment contracts were altered to only allow entry to the NMPS. Furthermore, individual employees were allowed to switch to the FSS. Mrs E has highlighted the case of the employee permitted backdated membership of the FSS, despite having been enrolled into the money purchase section and having previously left the Scheme.
32. Mrs E says she is not seeking a change in the Rules but rather to be allowed to transfer to the FSS in the interest of fairness and equality. She says if other employees were allowed entry, despite its supposed closure, she would like to be given the same consideration.
33. The January 2001 Deed closed the FSS to new members, and established with effect from 1 July 1999, the new money purchase section.
34. Mrs E signed the Offer Letter. In doing so she confirmed her agreement to its terms.
35. The Offer Letter made it clear that she would only be eligible to join the NMPS. Consequently, there was no contractual obligation on the Bank to offer her membership of the FSS at that time, or any other time. There is no evidence to support that the terms in the Offer Letter were superseded by a subsequent offer which gave Mrs E the option to join (or switch) to the FSS. Mrs E's complaint is fundamentally about the terms of her employment rather than the administration of the scheme which she was contractually entitled to join.
36. Therefore, I do not uphold Mrs E's complaint.

Karen Johnston

Deputy Pensions Ombudsman
26 May 2017