

Ombudsman's Determination

Applicant	Mr N
Scheme	Tate & Lyle Group Pension Scheme (the Scheme)
Respondent	Willis Towers Watson (WTW)

Outcome

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

Complaint summary

3. Mr N disagrees with WTW that he has no pension entitlement from the Scheme.

Background information, including submissions from the parties

4. According to records provided by WTW, Mr N started employment with the Tate & Lyle Group (at the time, the company was McIntyre's Ltd, which was bought by the Tate & Lyle Group in 1976) on 17 December 1975.
5. From 5 April 1978, contracting-out was introduced. Pension schemes that met certain conditions to provide benefits in place of the State Earnings Related Pension Scheme (**SERPS**). For members and employers, this meant that lower National Insurance Contributions were paid. When reaching state pension age, members' state benefits would be reduced to reflect that benefits were being provided by their pension scheme.
6. Mr N left employment via redundancy on 10 October 1980. Following this, the Tate & Lyle Group paid a Contributions Equivalent Premium (**CEP**) of £660.10. This was to reinstate Mr N back into SERPS for the period he was contracted out between 6 April 1978 and 10 October 1980.
7. WTW provided a copy of Tate & Lyle Group's employment records for Mr N dated 1 April 1981. These records show:
 - A starting employment date of 17 December 1975
 - A pensionable service commencement date of 1 April 1978

- An employment end date of 10 October 1980
 - No details of any benefits owing from the Scheme
8. On 26 August 1981, the first Trust Deed replaced an Interim Trust Deed of 18 January 1978. The Scheme was set up to comply with contracting-out legislation and the trustees had two years in which to set up the scheme. Rule 16¹ relates to members with five years or more pensionable service being able to retain pension benefits in deferment.
9. Leading up to his state retirement age, Mr N contacted WTW to claim a benefit from the Scheme. On 24 January 2017, WTW wrote to Mr N to say his case had been discussed with the Scheme Trustees and confirmed that under the Scheme rules he had no entitlement to any benefits:

“The scheme rules, at the time you left service, required for members to complete at least five years of pensionable service in order to be eligible for a deferred pension in the scheme. The minimum age to join the pension scheme was 20 years of age, any employment with Tate & Lyle before reaching age 20 would not count towards the term of pensionable service.

Please note the Tate & Lyle Group Pension Scheme was non-contributory so all contributions were paid by the employer, unless a member had paid additional voluntary contributions (AVCs).

The records we have state that you joined McIntyre’s on 17 December 1975 and then left Tate & Lyle on 10 October 1980. Unfortunately, this service period is just short of the 5 years’ service that you would have needed at the time to qualify for a pension.

There is no evidence to suggest that the pension arrangements under your McIntyre employment did not have a service requirement. It would have been extremely unusual for a pension scheme at that time not to have a service requirement rule.

The records you have provided for your service with Tate & Lyle from HMRC suggests that you were bought back into the State Scheme (SERPS) from the period 1978 to 1980. This would have been normal practice if you did not meet the minimum service requirements for a pension entitlement under the Scheme.”

10. Mr N disagreed and proceeded with the Scheme’s internal dispute resolution procedure (**IDRP**). Mr N’s complaint was not upheld under the IDRP, essentially for the same reasons provided in the letter of 24 January 2017.
11. Mr N remained dissatisfied and made a complaint to this service. As part of the investigation of Mr N’s complaint, HMRC were contacted and confirmed the following:

¹ See Appendix I

“I can confirm that from 6 April 1975 to 5 April 1978, there was no formal contracting out. Our records show Mr N was with the same employer from 1975 but he did not contract out until 6 April 1978. As confirmed by the current scheme administrators, the scheme paid a Contributions Equivalent Premium (CEP) of £660.10 to reinstate Mr N's contracted out membership back into the State Earnings Related Pension Scheme (SERPS) for the period 6 April 1978 to 10 October 1980. Mr N's state pension is therefore higher as a result of the CEP payment.”

Adjudicator's opinion

12. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by WTW. The Adjudicator's findings are summarised briefly below:-

- Mr N had not provided any evidence, such as a leaving certificate, to show that he had an entitlement from the Scheme. Merely being contracted-out for a period did not prove that he had benefits remaining in the Scheme.
- The Scheme rules support WTW's assertion that there was a five year minimum amount of service required to retain benefits in the Scheme and the employment history provided by WTW showed that Mr N had not accrued enough service to qualify for a deferred benefit. The Adjudicator felt that there was no evidence provided to show that there was another scheme that Mr N was a member of or that that scheme would not have had a minimum service requirement (as was standard at the time).
- On the balance of probabilities, the Adjudicator felt that it is more likely than not that Mr N was a member of the Scheme and that he did not accrue enough pensionable service to be entitled to a benefit.
- Following the information from HMRC, the Adjudicator agreed that there were no benefits owing to Mr N from the Scheme for the period between 1978 and 1980. As there was no further evidence of any other pension scheme, she concluded that he was not a member of a scheme between 1975 and 1978.

13. Mr N was unhappy with the conclusions drawn by the Adjudicator. His reasons for disagreeing, in summary, are:

- He disagrees with the starting date of his employment and the details held in the employment record. He questions why the employment record is dated six months after he left employment.
- He disagrees with the Scheme rules provided by WTW as these are dated 1981, after he left employment in 1980. He stated that there are other members who worked for McIntyre Ltd and questioned whether they would fall outside of the five year rule under the Scheme.

- That his terms and conditions of employment would have transferred under TUPE and therefore his pension entitlement must also have transferred.
 - He never received a leaving certificate as his original employer was bought out by the Tate & Lyle Group.
 - The Adjudicator made an assumption rather than a fact that he was not a member of a pension scheme prior to 1978 and asked for a former colleague to be contacted.
 - He became a member of other schemes after he left employment and was a scheme member from the day his employment started.
14. As Mr N did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Mr N's further comments do not change the outcome. I agree with the Adjudicator and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

15. I can only make a decision based on the evidence submitted and draw conclusions based on that evidence. Despite Mr N's protestations, he has not been able to provide any evidence to show that the records provided by WTW are incorrect. Therefore, on the basis of the information submitted, it would appear that Mr N did not become a member of the Scheme until April 1978. While Mr N may have been a member of another pension scheme before this date, no supporting evidence has been submitted to show that there is an entitlement stemming from such membership.
16. Mr N has raised a number of issues which are not wholly relevant to his membership of the Scheme including whether or not he was TUPE transferred. Due to the passage of time, and that there is no legal requirement for the employer or WTW to keep detailed records of ex-employees for more than six years, it will not be possible to make a decision in relation to TUPE. This did not form part of the original complaint, which is about Mr N's pension entitlement, so I am unable to comment on this further. I also cannot comment on what may have happened to other Scheme members, as the complaint is solely about Mr N's position.
17. Mr N is right that the Adjudicator was incorrect that contracting-out applied before April 1978. Mr N has also commented on relying on Scheme rules dated after he left service. However, this does not change the outcome of his complaint. WTW were correct in their letter of 24 January 2017 that the payment of the CEP to HMRC is evidence that Mr N did not meet a pension service requirement of five years. This in itself is evidence that there was a requirement under the rules of the Scheme (which are the 1981 Trust Deed and rules which replaced the 1978 Interim rules, which were in place when Mr N joined the Scheme) that there was a minimum service requirement. It is clear from the employment history provided that Mr N did not

accrue enough service from his employment start date nor his date of joining the Scheme to meet a minimum service requirement.

18. In relation to the leaving certificate, I disagree with Mr N that this was not issued to him because of his original employer being bought out by the Tate & Lyle Group (which was four years before he left employment). As a CEP had been paid to HMRC to reinstate Mr N back into SERPS, this meant that he no longer had any rights to benefits from the Scheme (if the Scheme had been contributory, Mr N would also have received a refund of any contributions he had made). As he no longer had an entitlement under the Scheme, there was no need for a leaving certificate to be issued. The fact that one was not provided to Mr N is further evidence that there was no further benefits payable to Mr N after he had left service.
19. As to the date of the records from WTW being six months after Mr N left employment, this is not unusual or suspicious. Mr N joined the Scheme on 1 April 1978, which would have been the anniversary date of the Scheme. It would not have been unusual for scheme administrators to have updated member records on the scheme's anniversary date. Therefore, I cannot agree that the date of the records has any overall relevance to the complaint.
20. I cannot comment on other schemes that Mr N was a member of after he left the Scheme. However, the Adjudicator was correct that the majority of occupational schemes up to the early and mid 1980s had a minimum service level requirement. While a member could start membership from the date of employment, if a member left before the minimum period, benefits would be lost. Contracted-out schemes would pay CEPs to HMRC. Many schemes also had rules that included minimum age or salary requirements before a benefit could be accrued. As there is no evidence of Mr N being a member of the Scheme before 1 April 1978, nor what the rules of any other scheme may have been, I can only base my decision on the evidence to hand. That shows that Mr N was not a member of the Scheme until 1 April 1978 and, as he did not meet the minimum service requirement when he left in 1980, a CEP was paid to HMRC, extinguishing any rights he had to a benefit from the Scheme.
21. Therefore, I do not uphold Mr N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
18 April 2018

Appendix I

Trust Deed and Rules of the Tate & Lyle Group Pension Scheme

LEAVING SERVICE

16 (a) A Member who leaves Service before Normal Retirement Date and otherwise than by death and without becoming entitled to an immediate pension under Rule 6 or Rule 7 shall be entitled to a deferred yearly pension commencing at Normal Retirement Date (if he is then living) and payable to him until his death of an amount calculated as if Rule 5 applied but related to his Final Pensionable Earnings at, and Pensionable Service completed to, the date of ceasing to be an Eligible Employee;

provided however that (subject to the provisions of Rules 26, 27 and 28):-

- (i) Subject to proviso (v) in this sub-rule if the Member's Qualifying Service commenced before 6th April 1975 and is 5 years or more and he ceases to be an Eligible Employee before 6th April 1980 he shall the option to take in lieu of such deferred yearly pension a Contributions Refund except that if the Member is aged not less than 26 years this option shall not be available in respect of so much (if any) of his contributions as is attributable to that portion of his Pensionable Service which was contracted-out employment and he shall remain entitled to so much of such a deferred yearly pension as the Trustees (acting with the advice of the Actuary) determine to be attributable to the said portion of his Pensionable Service