

Ombudsman's Determination

Applicant	Mr R
Scheme	Vodafone Pension Scheme (the Scheme)
Respondent	Willis Towers Watson (WTW)

Outcome

1. I do not uphold Mr R'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 R's complaint is that he believes he is entitled to a deferred pension in the Scheme, due to his membership of the Racal Pension Scheme from September 1977 to September 1981. However, WTW, the Administrator of the Scheme, says that he no longer holds any benefits in the Scheme.

Background information, including submissions from the parties

4. Mr R was a member of the Racal Pension Scheme (now part of the Scheme) from September 1977 to September 1981, when he emigrated abroad.
5. In March 2017, as he was approaching retirement, Mr R contacted WTW to find out about his deferred benefits in the Scheme.
6. WTW informed him that it had no record of him having any benefits in the Scheme. It said that it was likely that he received a refund of contributions when he left in 1981.
7. Mr R disputed receiving a refund and provided a copy of his final payslip dated 30 November 1981. This showed that he had made contributions into a pension scheme. Mr R said that the payslip did not show that any contributions had been repaid to him, as it should do if he had received a refund. He said that it was the responsibility of WTW to retain records demonstrating that he had received a refund and, in the absence of any such evidence, he was entitled to a pension from the Scheme.

8. WTW said that the payslip indicated that Mr R contributed in the Scheme at the time but, on leaving the Scheme with less than five years' service, he would have received a refund of his contributions. It said that the Scheme was not obliged to maintain records after this length of time.
9. Mr R remained unhappy and brought his complaint to us. He said that he left the country shortly after leaving employment and the Scheme would not have been able to contact him to make a refund as he did not leave a forwarding address. He said that he purposely retained the final payslip, so that he could make a claim for his pension. He said that it was possible that the Scheme may have tried to return his contributions, and possibly sent a cheque to his last known address. However, deleting his records means that the Scheme cannot prove that he has received a refund. He then said that he asked for a refund of contributions when he left in 1981 but the Scheme refused.
10. WTW says that there was no legal requirement to provide a deferred pension to Mr R when he left the Scheme in 1981, as he had less than five years' pensionable service. It believes that a refund of contributions would have been paid, which would have extinguished the Scheme's liability to provide benefits to him. This refund is likely to have been made as a separate payment to Mr R and not reflected in his payslip. WTW says that it checked with the National Insurance Services to Pensions Industry (**NISPI**) who confirmed that there is no Guaranteed Minimum Pension liability held by the Scheme for Mr R.

Adjudicator's Opinion

11. Mr R'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:-
 - At the time he left the Scheme, a member with less than five years' service would only have been entitled to a refund of contributions, therefore, it is not expected that he would have retained a deferred pension.
 - It is unlikely that a refund would have been paid via payroll and be reflected on the payslip.
 - Mr R left the Scheme over 35 years ago. There is no obligation on the Scheme to retain records for that length of time for former members without any benefits in the Scheme.
 - There is no evidence that a refund was paid to Mr R but, equally, there is no evidence that he retains a benefit in the Scheme.
12. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided his further comments, but these 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 R for completeness.

Ombudsman's decision

13. Mr R says that he would have been out of the country at the time - if any refund was made, there is no evidence of such a payment, and it is unlikely that the administrator had details of his bank account or address. In his view, the deliberate action by the Scheme of deleting his pension records, has led to the situation where there is no longer any evidence of what occurred. He says that deleting the records of former members is bad practice and records should be kept for 85 years.
14. Mr R's complaint relates to events that occurred over 35 years ago. In this respect, it is not surprising that no records remain of his membership of the Scheme. There are no legal obligations on the Scheme to retain records on former members for this length of time after they have left the Scheme. However, if Mr R had retained a deferred pension in the Scheme, then I would expect that records would be available confirming his entitlement.
15. It has already been pointed out that, due to the legislation in place in 1981, Mr R would not have automatically been entitled to deferred benefits in the Scheme. Therefore, any contributions he made ought to have been refunded to him. I appreciate that the Scheme has not been able to provide evidence of a refund but, on the balance of probabilities, that is the most likely scenario
16. Mr R says that he retained a copy of his final payslip so that he could ultimately make a claim for his benefits. However, if he was under the impression that he retained benefits in the Scheme, he should also have ensured that the Scheme was able to keep in contact with him by providing his up to date correspondence address – something he accepts he did not do. Mr R says that he has extensive experience maintaining pension funds, so it is surprising that he did not feel the need to notify the Scheme for over 35 years that he had changed address.
17. During the course of our investigation, Mr R informed my office that he actually asked for a refund but was refused. However, there is no evidence of this either, and there are no reasonable grounds on which the Scheme would have been able to refuse the request.
18. Moreover, Mr R's final payslip is dated 30 November 1981, although his last day of employment was 11 September 1981. As he was still able to receive his final salary payment in November 1981, it is equally plausible that he was able to receive his refund of contributions within the same period. However, such a refund is unlikely to have been via payroll.
19. Overall, there is insufficient evidence on which to base a finding that Mr R is entitled to benefits in the Scheme. I find that he would have been entitled to a refund of

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contributions in 1981 which is likely to have taken place under circumstances which he has now forgotten about.

20. Therefore, I do not uphold Mr R's complaint.

Karen Johnston

Deputy Pensions Ombudsman
29 September 2017