

Ombudsman's Determination

Applicant	Ms D
Scheme	Bank of England Pension Scheme (the Scheme)
Respondents	Bank of England (the Bank), BE Pension Fund Trustees Limited (the Trustee)

Outcome

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

Complaint summary

3. Ms D has complained because she is dissatisfied with the way her spouse's pension has been calculated.

Background information, including submissions from the parties

4. Ms D's husband became an employee of the Bank in April 2013 and he joined the Scheme in April 2015. At the time, Mr D was also a deferred member of the FCA pension scheme (**the FCA Scheme**). In July 2015, when Mr D was ill, he and Ms D contacted the Scheme to find out about the benefits they were both entitled to. They were both informed by the Pensions Manager & Secretary to the Trustee, in an email dated 22 July 2015 that, Ms D would get a guaranteed 30% of Mr D's base salary as a spouse's pension.
5. Mr D passed away in November 2015 and, following his death, Ms D received two letters from the Scheme Administrators (**the Administrators**) dated 16 November and 8 December 2015 respectively. The first letter from the Administrators informed Ms D that the spouse's pension she was entitled to was £6,830.71. The second letter also reiterated the same information but, it also said:

"Following the implementation of the recent benefit review the Bank agreed a spouse's underpin of up to 30% of the member's pensionable salary payable for life having taken into account the amount of spouse's pension that could be secured from the member's FCA DC Pot...The Pension Fund is awaiting

confirmation from the FCA pension administrators of the value of your husband's DC pot and once this is known and the amount of the allowance this will secure we will confirm to you the final amount of allowance payable from the Fund."

6. Following receipt of the December 2015 letter from the Administrators, Ms D contacted the Scheme requesting a detailed explanation of how the spouse's pension is calculated. The Scheme responded to Ms D in May 2016 and, provided her with a background of her husband's employment and also explained how her spouse's pension would be calculated.
7. In June 2016, the Scheme wrote to Ms D informing her of the spouse's pension she was entitled to, after it had taken into consideration, the spouse's pension she could receive from the value of her late husband's FCA pension. Ms D responded to the Scheme providing reasons why she wanted the Trustee to reconsider its decision to reduce her spouse's pension by a third. This included the fact that the majority of the money in her late husband's FCA pension was transferred in from his previous employer's pension scheme. She also questioned whether it was fair and reasonable that the Scheme had calculated the value of her husband's FCA pension fund, using money he had transferred in from his previous employer's scheme. Ms D also reiterated that she had previously been informed that her spouse's pension was a guaranteed 30% of her husband's base salary.
8. In November 2016 the Bank responded to Ms D and explained that the decision of how to calculate the spouse's pension was the Bank's and not the Trustee's and, the Bank explained why it had decided to use its discretion to add an underpin to uplift the dependent's pension for ex-FSA staff members who had joined the Scheme. The Bank said:

"The discretion was always envisioned as an underpin, with the amount of the underpin depending on the amount of base pension from the Fund and the value of the member's DC pot in the FSA's pension scheme..."

The Bank apologised for the communication failings Ms D experienced as a result of the email she had received and also the missing paragraph about the underpin in the first letter she had received from the Administrators in November 2015. The Bank also provided Ms D with details of the Scheme's internal dispute resolution procedure (IDRP).

9. Following receipt of the Bank's letter, Ms D complained to the Scheme at stages 1 and 2 of its IDRP, about the reduction of her spouse's pension. Ms D also said that if she or her husband had been properly informed prior to his death, that the value of his FCA pension would be taken into account when calculating the value of her spouse's pension, he would have transferred his FCA pension to an alternative scheme.

10. At both stages 1 and 2 of its IDRP responses the Trustee recognised that Ms D was provided with incomplete information but the Trustee said that the Bank had confirmed that the incomplete information Ms D received did not result in her incurring a financial loss. The Trustee accepted that the information Ms D and her late husband had received about the spouse's pension, could have been clearer and, in recognition of the distress and inconvenience this has caused, it offered to pay Ms D £1,000.
11. Dissatisfied with the responses she received from the Trustee and the Bank, Ms D referred her complaint to this service and said the main points of her complaint were:
 - Is it fair/reasonable that her spouse's pension should be reduced by a third because of the overall value of her late husband's FCA DC pension, when 70% of the value of the said pension was transferred in from his previous employer's pension scheme.
 - If she and her husband had been properly informed in July 2015, they could have taken steps to reduce the impact, by transferring the pension he had accumulated from his previous employment.
12. In response to her complaint the Trustee and the Bank have jointly said:
 - The Trustee did not decide the policy relating to the discretionary underpin, the Trustee implemented it in accordance with the Bank's decision.
 - The Bank's policy decision is not unreasonable or unfair. The policy decision was made in order to augment the spouse's pension payable under the Fund for death in service where such death occurred within a timeframe between 1 April 2015 and 31 March 2018. The Bank specifically took into account the relevant circumstances when making its decision. There is no basis on which the policy decision could be determined as perverse or irrational.
 - They explained why they considered that the alleged loss of opportunity that resulted from Mr and Ms D not being provided with sufficient information did not result in a financial loss.
 - They provided a summary of the background that led to the Bank's decision to implement the discretionary underpin as well as a summary of the circumstances that led to Ms D making a complaint.

Adjudicator's Opinion

13. Ms D's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Bank or by the Trustee. The Adjudicator's findings are summarised briefly below:-
 - The Adjudicator appreciated that Ms D was disappointed that she is in receipt of a lower spouse's pension than she was originally informed she was going to receive.

However, being provided with incorrect information did not mean that the Trustee was bound to pay Ms D the incorrect sum.

- Mr D joined the Scheme in April 2015 and under the Rules of the Scheme, the spouse's pension was 60% of the member's expected pension at age 65. In May 2014, the Bank's Executive Committee decided to implement a discretionary underpin to increase the benefits of the dependent's pension for ex-FSA members and, that it would take into account the value of the member's pension in the FCA fund, to determine the value of the dependent's underpin. While the Adjudicator understood Ms D's disappointment that the spouse's pension she is receiving is less than she was originally informed she would, it was the Adjudicator's view that the Ombudsman would not uphold Ms D's complaint.
- In the Adjudicator's opinion, Ms D had suffered a loss of expectation and not an actual financial loss as she was never entitled to the higher spouse's pension. In addition, the decision by the Bank to implement the discretionary underpin policy was a commercial decision based on its wish to "be fair and consistent in relation to those members who decided to transfer their pension pots from the FSA pension scheme to the [Scheme]..." For the members who did not transfer their FSA benefits into the Scheme, the Bank decided that a valuation of the member's pot not transferred should be undertaken when calculating the uplift to 30% of the member's basic pay. Therefore, the Ombudsman would not direct the Bank or the Trustee to pay Ms D the higher, incorrect spouse's pension as this would be interfering with the Bank's commercial decision.
- The Adjudicator appreciated that Ms D said that if her husband had been informed that the value of his FCA pension would have been taken into account when the Scheme calculated the spouse's pension he would have made alternative arrangements and may have transferred part of his FCA benefits to an alternative scheme. However, in the Adjudicator's opinion and, from her experience, it was unlikely that the FCA scheme would have allowed Mr D to transfer a proportion of his FCA pension to an alternative pension scheme. The Adjudicator accepted that the majority of Mr D's FCA pension was attributable to a transfer in from his previous employer's pension scheme. However, once that money was transferred to the FCA Scheme, it all became one pension.
- In the Adjudicator's opinion, it was unlikely that Mr D would have been able to transfer a proportion of his FCA pension, if he did not want the value of his FCA pension to be taken into account when calculating Ms D's spouse's pension. Instead, he would have had to have transferred the value of his entire FCA pension to another scheme.
- The Trustee has accepted that, although Mrs D did not incur a financial loss as a result of the incorrect information she was given, this situation had caused her distress and inconvenience. In recognition of this, it offered to pay her £1,000. In the Adjudicator's opinion, this amount was reasonable and the Ombudsman would not

direct the Trustee or the Bank to pay Ms D any more for the distress and inconvenience she has experienced as a result of this situation. Therefore, Ms D should contact the Scheme directly if she wished to accept the offer.

- It was therefore the Adjudicator's opinion that this complaint should not be upheld.

14. Ms D did not accept the Adjudicator's Opinion and in response said:

- She does not consider the Adjudicator adequately addressed a central element of her case, which is, it seems to her to be neither fair nor reasonable for the pension scheme to take account of the fund her husband had accrued with his previous employer before he had started working at the FSA, in January 2012, to determine the reduction of her spouse's pension from the Scheme.
- The Adjudicator's opinion refers to the rules surrounding transfers from the FCA Scheme to the Scheme, but little about the treatment of pension fund monies accumulated by her husband before he joined the FSA. Had her husband not transferred the pension he had accrued from his previous employment, when he joined the FSA, his pension benefits in the Scheme, at the time of his death would have been significantly less.
- The Adjudicator's opinion states that the Bank specifically took into account the relevant circumstances when making its decision. However, at no point has it been made clear to her that the Bank specifically considered an eventuality whereby an employee's pension pot might comprise such a high proportion of funds which had been accumulated in the service of another employer.
- From the information she has received, it is clear to her that the amount of money her husband transferred into the FCA Scheme from his previous employer remained clearly identifiable. The key question for her which remains outstanding is: what would the outcome have been, in terms of her spouse's pension, if her husband had not transferred his previous employer's pension into the FCA Pension Scheme? Ms D contends that if the answer is different from the pension she has been awarded, then people who transferred funds into the FCA Scheme from another employer are being treated differently and unfairly compared with those who did not make such a transfer.

15. I agree with the Adjudicator's Opinion and I will therefore only respond to the additional points made by Ms D.

Ombudsman's decision

16. Ms D's husband made the decision to transfer his accrued occupational pension benefits from his previous employer to the FCA Scheme, prior to starting his employment with the Bank. There will have been multiple factors driving that decision, and I have seen no evidence from which I can conclude that the level of spousal benefit would have played a major part in it. I do not consider that the Trustee or the

Bank can be held responsible for the decision to transfer in benefits. As a result, I do not deem it necessary for the Trustee or the Bank to calculate what the value of Mr D's FCA pension would have been, had he not transferred his accrued benefits from his previous employer's pension scheme to the FCA Scheme.

17. Although the majority of the value of Mr D's FCA pension may have been made up from a transfer he had made into the FCA Scheme, once it was transferred into the FCA Scheme, it became part of his FCA pension. Therefore, it is my view that the Trustee and the Bank's decision to treat Mr D's whole FCA pension as one pension despite the transfers he made into the FCA Scheme is neither unfair nor unreasonable.
18. Therefore, I do not uphold Ms D's complaint and do not direct the Trustee or the Bank to make any further award.

Karen Johnston

Deputy Pensions Ombudsman
15 December 2017