

Ombudsman's Determination

Applicant	Mrs S
Scheme	Barclays Bank Retirement Fund (the Fund)
Respondents	Barclays Pension Fund Trustees (the Trustees), Willis Towers Watson (the Administrator)

Outcome

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

Complaint summary

3. Mrs S' complaint concerns the way the Administrator dealt with her late husband's request to have his pension transferred from the Fund. Mrs S considers that its actions amounted to maladministration which resulted in her incurring a financial loss.

Background information, including submissions from the parties

4. Mrs S' husband, Mr S, was a deferred member of the Fund and, his normal retirement date (**NRD**) was 28 June 2005, which was his 60th birthday. In March 2015, while living in Australia, Mr S requested a transfer statement from the Administrator. In response, the Administrator sent him a letter dated 1 May 2015, with a transfer quote showing the transfer value of his benefits to be £121,112. The letter also informed Mr S that the transfer value was guaranteed for three months from 30 April 2015. Included with the letter was information regarding transfers to Qualifying Recognised Overseas Pension Schemes (**QROPS**).
5. On 8 June 2015, Mr S replied to the Administrators and said that he had only requested a transfer statement so he was surprised to receive documents for an overseas transfer. He said that if he decided to transfer it would have been to another UK scheme and he queried if it were possible for him to do such a transfer. He also queried if there was any flexibility in the requirement for him to obtain independent financial advice if he decided to transfer his benefits from the Fund.

6. The Administrators responded to Mr S on 15 June 2015 and explained that it was its standard practice to issue an overseas transfer pack if the member resided overseas. It informed Mr S that it was possible for him to transfer his benefits to another UK scheme, and that he could request the relevant forms from the Administrator's website (**ePA**) or from the relevant department. It also asked Mr S if he wanted the relevant forms to be sent to him.
7. On 16 June 2015, Mr S emailed the Administrator again, to query if he needed to obtain independent financial advice in relation to his pension transfer. He said, "I would prefer to avoid the delays and cost of independent advice that I would ignore...". The Administrator responded to Mr S on 23 June 2015 and said "...there is no flexibility in regards to [him] seeking independent financial advice before transferring [his] benefits."
8. On 30 January 2016, Mr S emailed the Administrator informing it of his terminal medical prognosis and that he wanted to transfer his benefits to Equitable Life. He also requested the relevant forms to complete the transfer. Mr S did not receive a response to the said email from the Administrator, so on 26 March 2016, he sent a further email to the Administrator querying if his email of 30 January 2016 had been received. The Administrator responded to Mr S on 4 April 2016, requesting additional information to confirm his identity.
9. On 5 April 2016, Mr S emailed the Administrator the further information and on 6 April he emailed the Administrator thanking it for the new password it had sent him on 5 April, which enabled him to access the ePA website. In the same email, Mr S reiterated that he wanted to transfer his benefits to Equitable Life and he re-requested that the necessary forms be emailed to him as soon as possible. Mr S passed away on 14 April 2016 and his deferred benefits remained in the Fund.
10. On 16 May 2016, Mrs S complained to the Trustees, through the Fund's Internal Dispute Resolution Procedure (**IDRP**). Mrs S considered the Administrator's maladministration resulted in her incurring a financial loss as it had prevented Mr S from transferring his pension prior to his death. Therefore, she was unable to receive his pension as a tax free lump sum.
11. In the IDRP one response, dated 13 September 2016, the Trustees partly upheld Mrs S' complaint. They gave a background of the events that led to Mrs S' complaint and explained why they did not consider that the Administrator's actions resulted in a delay that prevented Mr S from transferring his benefits, prior to his death. The Trustees accepted that there was maladministration by the Administrator when it failed to answer Mr S' specific questions, and by the Administrator providing him with QROPS transfer forms, although he had previously informed the Administrator that he wished to transfer to a UK based pension scheme. The Trustees did not consider that the maladministration resulted in Mrs S incurring a financial loss but it offered her £500 for the poor level of service she and Mr S had received.

12. In October 2016, Mrs S appealed against the Trustees' response and progressed to stage two of the Fund's IDRPs. In her appeal letter, Mrs S explained that Mr S had requested a transfer to Equitable Life in 2015 and it was from 2015 that the maladministration by the Administrator commenced. She considered that if the correct paperwork had been sent when it was requested in 2015, her husband would have had sufficient time, prior to his death, for the transfer to have been completed.
13. Mrs S explained that the 2015 maladministration was her primary complaint but the IDRPs stage one response only focused on the maladministration that occurred in 2016. She considered that the Administrator could have expedited Mr S' request for a transfer, as it was aware of his illness. She considered the service she and her husband received was appalling and resulted in him suffering stress and worry. Mrs S also considered she had incurred a financial loss because if it were not for the maladministration, Mr S would have transferred his benefits to a competitive UK based scheme and she would have been able to inherit a tax free lump sum and perhaps enjoy a small annuity, if that was an essential element of any new arrangement.
14. In the final IDRPs response, dated 4 May 2017, the Trustees explained that they did not consider it was helpful for them to speculate on what benefits Mr S or Mrs S would have received, had Mr S transferred his benefits, as that was dependent on several factors. They also did not consider that the failure of the transfer was due to the Administrator's actions. The Trustees explained that although the Administrator had informed Mr S, in the email of 15 June 2015, that a UK transfer was permissible, and offered to send him the relevant UK transfer pack, Mr S did not respond to that offer. He also did not make a separate request to the Administrator for those forms to be sent and, the log of all activity on Mr S' ePA account did not show any record of him trying to access the system between June 2015 and March 2016.
15. The Trustees explained that they had investigated and substantiated the non-receipt of Mr S' 30 January 2016 email to the Administrator. They confirmed that the said email was not received and was therefore not overlooked. The Administrator did not receive any further correspondence from Mr S until 26 March 2016.
16. The Trustees informed Mrs S that they had noted that the Administrator had confirmed to Mr S, in 2015, that for his transfer to proceed, independent financial advice was required. However, this was incorrect because although the Pensions Schemes Act 2015 (**the 2015 Act**) introduced a requirement for Trustees to check that a member had obtained the appropriate independent advice before transferring the member's benefits, this requirement came into effect for requests made after 5 April 2015. Mr S' request was made prior to 5 April 2015 and transitional arrangements enabled transfer quotations, which were guaranteed for three months, to proceed without the requirement to obtain independent financial advice.
17. The Trustees explained that they were satisfied that any failure in progressing Mr S' transfer was not due to any maladministration by the Administrator. They said that while there were definite shortcomings in the standard of service that was provided,

those shortcomings did not cause any failures. The Trustees informed Mrs S that they aimed to provide a 'Right first time' service to their members and to prioritise cases where death and ill-health are involved, acknowledging the sensitive nature of such cases. Therefore, they were sorry to learn that Mr S' experience was below this standard. The Trustees also explained that Mr S was unable to obtain a transfer quotation from the ePA website because he had passed his NRD. Therefore, a separate actuarial team had to manually calculate his transfer quotation.

18. The Trustees informed Mrs S that although they were not upholding her complaint for financial loss due to the maladministration, they were increasing their goodwill offer from £500 to £3,000 in recognition of the poor service she and Mr S had received.

19. Mrs S did not accept the Trustees' goodwill offer. Consequently, she referred her complaint to this Office and made the following submissions:-

- If the transfer had proceeded as it should have in 2015, the whole of the £121,112 would have been available to her tax free as her husband died before the age of 75.
- Her husband experienced a lot of distress when his knowledge of the legal requirements relating to QROPS and IFAs was challenged by the Administrator. Financial matters were of great interest to him and he was proud of his knowledge. A year after his death the Trustees confirmed that he was correct.
- Being incorrectly informed that he needed to obtain independent financial advice and being unable to obtain the forms from the ePA prevented her husband from transferring his benefits in 2015.
- She was treated with disrespect when she requested that the Trustees listen to one of her recorded calls with the Administrator. She now lives in an area where she has no family or friends as the South of England is too expensive for her.
- She wants to be put back into the position she would have been in, but for the maladministration.
- Although Mr S had intended to transfer his benefits to his Equitable Life pension, it may not have been possible for him to do so by the time he had received a transfer quotation. Therefore, he may have transferred his benefits to his James Hay SIPP.

20. In response to the complaint, as well as reiterating what they had said in their IDRPs responses, the Trustees made the following points:-

- The log of activity on Mr S' ePA account does not show any log in attempt successful or unsuccessful, between 1 April 2015 and 27 March 2016. The Trustees are of the view that Mr S did not attempt to access the transfer forms online. Had he done so, he would have realised that he could not and he would have received an automated message informing him to contact the administrative team.

- The Rules of the Fund do not contain any provision for a lump sum benefit to be paid on the death of a deferred member. The Rules state that a deferred pension commences at normal pension age, which was age 60 for Mr S. There is no provision for this to be postponed.
- Mr S' pension should have been put into payment when he reached age 60. Therefore, it is appropriate that Mr S is treated as a deferred pensioner under the Rules and that back payments of his pension are paid to his estate. Under the Rules, Mrs S is entitled to a spouse's pension.
- The Trustees accepted that there were errors in the information provided to Mr S but they did not accept that the errors caused Mrs S to suffer any financial loss. The Trustees have offered to pay Mrs S £3,000 by way of compensation for any distress and inconvenience she may have suffered.
- The Administrator confirmed that it had nothing further to add to the Trustees' response.

Adjudicator's Opinion

21. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Administrator or the Trustees. The Adjudicator's findings are summarised briefly below:-

- It is accepted that the Administrator incorrectly provided Mr S with information regarding QROPS when he requested a transfer valuation of his benefits in 2015. Mrs S asserts that the Administrator incorrectly informing Mr S that he needed to obtain independent financial advice to facilitate the transfer, coupled with the Administrator incorrectly informing him that he could obtain the transfer forms from the ePA website, precluded him from completing the transfer of his benefits in 2015.
- The Adjudicator reviewed the timeline of events that occurred in 2015. The Trustees, in the IDR stage two decision said that Mr S was incorrectly told, by the Administrator, that he needed to obtain independent financial advice before the transfer could be processed. However, what the Trustees said in the IDR stage two decision would only be correct if Mr S had continued with a transfer within the three month time limit.
- In an email to the Administrator dated 8 June 2015, Mr S said "...My request was for a transfer statement and I didn't anticipate that you would also send related documents especially for an overseas transfer...**If I do request a transfer, I would prefer it to be to another UK based scheme one – is this acceptable?**" It was clear that the transfer quotation Mr S requested in March 2015 was for information only and not a definitive request to transfer out. Therefore, unless he changed his mind and went ahead with a transfer straight away, within the three month window, any request to have his benefits transferred out would have followed a fresh

transfer request and so made after the date the new Rule was implemented under the 2015 Act. In this scenario the Administrator would have correctly informed Mr S that he needed to obtain independent financial advice before his benefits could be transferred. However, the Administrator should have informed Mr S that no financial advice was required if he were able to transfer his fund within three months of his initial transfer request, which was made in March 2015. Given the timing of the advice which was given in June 2015, almost at the end of the three month window, the Adjudicator did not believe that there was material maladministration in this respect.

- The Adjudicator appreciated that when the Administrator responded to Mr S' query on 15 June 2015, regarding his ability to transfer his benefits to a UK based pension scheme it could have included the relevant transfer forms for UK transfers. However, while it did not include the forms, it did inform Mr S that he could obtain such forms from the ePA website or from the relevant department upon request. Additionally, the Administrator said, "Please let me know if you wish us to send you the relevant transfer forms for transferring your benefits to a UK pension arrangement."
- Mrs S asserts that Mr S had tried to obtain the relevant forms from the ePA website on numerous occasions but was unable to do so. Although this would have been frustrating for Mr S, the Trustees have said that a log of Mr S' ePA account does not evidence that he attempted to log in to the system in 2015. The Trustees also said that they had no record of Mr S contacting the relevant department at any time after 15 June 2015, to request the UK transfer forms.
- The Adjudicator acknowledged that Mrs S had said that Mr S had spoken to the Administrator after 23 June 2015. However, if Mr S had intended to transfer his benefits in 2015, and had been unable to access them from the ePA website, it would not have been unreasonable for him to have followed this up to request the relevant forms and email the Administrator, which he did in 2016. Also, if no forms were received following his request, which Mrs S said he had made in a telephone conversation with the Administrator, after 23 June 2015, then again, why was this not followed up in an email?
- Therefore, while there is no dispute that there was maladministration by the Administrator in relation to it incorrectly sending Mr S QROPS forms, the Adjudicator did not feel that it could be held responsible for Mr S not transferring his benefits in 2015.
- The Adjudicator also considered the timeline of events in 2016, to establish if the actions of the Administrator resulted in Mr S not being able to transfer his benefits prior to his death.
- Mr S had sent an email to the Administrator in January 2016, informing it of his terminal illness and that he wanted to transfer his benefits. However, the Administrator has said that his email was not received. Therefore, while she

appreciated Mrs S' disappointment that the Administrator did not action Mr S' request after he had sent the said email, the Adjudicator was unable to say with certainty that the Administrator had indeed received the email but had ignored it.

- Mr S sent a further email to the Administrator on 26 March 2016, and it took the Administrator a week to respond to Mr S. As Mr S had informed the Administrator of his ill health in the said email, Mrs S said that it would have been reasonable for it to have expedited his request for the relevant transfer forms.
- Although the Administrator could have expedited Mr S' request for the relevant forms to be sent to him, following receipt of his March 2016 email, its failure to do so did not result in Mrs S incurring a financial loss. This is because, for the transfer to have been successfully completed, Mr S would have needed to obtain independent financial advice in accordance with the 2015 Act, he would also have needed to inform the Administrator where he intended his benefits to be transferred and an Actuary would have had to calculate the value of his benefits.
- Informing the Administrator that he wished his benefits to be transferred to Equitable Life was not sufficient to allow the Administrator to facilitate the transfer. It would not have been in receipt of the receiving arrangement paperwork in time to enable a transfer to proceed.
- Additionally, there was no guarantee that Mrs S would have received Mr S' full transfer payment as a tax free lump sum following his death, as the benefits she would have been entitled to receive would have been dependent on the Fund Rules relating to payment of death benefits and whether or not Mr S had crystallised his benefits prior to his death.
- Therefore, Mrs S' loss was one of expectation because she was unable to access her late husband's pension as a death benefit lump sum. Mrs S will receive the correct spouse's pension calculated in accordance with the Rules of the Fund.
- The Trustees have accepted that the service the Administrator provided to Mr and Mrs S was below standard and that it would have caused them distress and inconvenience. In recognition of this they have offered to pay Mrs S £3,000. Mrs S had no entitlement to a lump sum death benefit as if the transfer had taken place. Therefore, the Adjudicator did not consider that an Ombudsman would make any further award if the complaint was finally determined.

22. Mrs S did not accept the Adjudicator's Opinion and in response made the following points:-

- Her husband had spoken to the Administrator after the email of 23 June 2015, but the Administrators claim to have no record of this. She has previously asked if the individual her husband spoke to after 23 June 2015 still worked for the Administrator, and if the individual had been consulted about the telephone calls she had with Mr S. She received no response.

- She knows that her husband telephoned and emailed requests for the necessary paperwork to be emailed or posted to him in 2015, but they were never sent. If the Administrator say that it did not receive an email it is believed. How does the Adjudicator think a pensioner should progress their need for a response when every request is ignored? She knows her husband tried on many occasions but was ignored but she cannot prove it. However, the Trustees have acknowledged that three emails she had saved were ignored and it was also confirmed to her that the ePA does not service members past retirement.
- Her husband was incorrectly advised that he could only transfer to an overseas fund and that he could access the online system to get the relevant forms. Eventually, she received a statement from the Trustees confirming that he could not access the online forms because he had passed his NRD.
- The Adjudicator assumed that her husband's use of the word "if" indicated that he was not committed to transferring out of the Fund but was merely floating some vague enquiry. She refutes this assumption and suggests that he used the word "if" rather than "when" because the email was written after her husband had been considerably startled by an unequivocal statement in 2015 from the Administrators.
- Her husband had a brain tumour but that did not degrade his intelligence or his capacity to think. He did occasionally have difficulty in retrieving the correct words to express his thoughts. He had been anticipating the law on pension changing and his intention to transfer was supported by the provision of a copy of his passport to the Administrator.
- An urgent request received by the Administrator, dated 26 March 2016, was incorrectly serviced on 1 May 2016. Nothing appropriate for a UK transfer was received. Both she and her husband were British citizens with no permanent residency visas for any other country and he was 70 years old with a brain tumour. It should not have been too challenging for anyone to understand why he most definitely did not want his pension transferred to an overseas scheme.
- The transfer pack sent to her husband after his death had an incorrect value stated. Still, the integrity of the Administrator's system is being treated as more credible and less prone to errors than the honesty and integrity of she and her husband. Giving incorrect quotations for pensions must surely be a serious issue.
- The Adjudicator believes that a system that does not service scheme members past their NRD, has sufficient integrity to maintain accurate records of the non-servicing of those members. She does not share such confidence in the Administrator's computer system. It was clear that the systems were not entirely accurate back in 2014 when her husband received a letter suggesting that he had asked to retire in 2005.

23. The complaint is referred to me to be determined. I agree with the Adjudicator's Opinion for broadly the same reasons and will therefore only respond to the key points made by Mrs S for completeness.

Ombudsman's decision

24. Mrs S maintains that the Administrator's maladministration prevented her husband from transferring his benefits prior to his death.
25. When a complaint is referred to me and the respondents and complainants provide conflicting information about what occurred and there is insufficient documentary evidence to confirm what actually happened I must decide, on the balance of probabilities, what is likely to have occurred.
26. I accept that the Administrator had made several errors in terms of sending Mr S incorrect forms, and other administrative errors, which are completely unacceptable and I completely understand Mrs S' considerable frustration. However, the Trustees have recognised and accepted that those errors occurred. Therefore, I find that on balance, if the Administrator had indeed received a request from Mr S for the relevant forms to be sent to enable him to complete a UK transfer in 2015, but had ignored it, the Trustees would have held the Administrator accountable for its maladministration. Also, I find that they would have done the same, if the Administrator had received Mr S' 30 January 2016 email but had ignored it.
27. It is accepted that the Administrators provided Mrs S with very poor customer service and that it had sent Mr S the incorrect forms in May 2016, and that the forms also had incorrect values. However, while it is unacceptable that the Administrator had sent Mr S incorrect information in May 2016, this maladministration occurred after Mr S had passed away. Therefore, those errors would not have prevented him from transferring his benefits.
28. The Trustees accept that this situation has caused Mrs S extremely significant distress and inconvenience and in recognition of this they have offered her £3,000. Based on the evidence and the comments that each party to the complaint have made, it is my view, that the Administrator cannot be held accountable for Mr S not transferring his benefits. Therefore, I find that the goodwill gesture the Trustees have offered Mrs S, is reasonable in these particular circumstances.
29. Mr S' benefits in the scheme were in place to provide a pension income for life, or a spouse's pension on his death. His fund is not a "death" benefit, although from 6 April 2005, it is potentially possible for individuals to access their defined benefits as cash. Therefore, I find that Mrs S has lost nothing other than expectation. The value of Mr S' pension benefits is being used to provide Mrs S with a spouse's pension, which is what she is entitled to under the Rules.

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30. I do sympathise with Mrs S' frustration and her belief that a transfer would have been possible in 2015 had she or Mr S been given the correct information at the outset. However, I do not find, on the balance of probabilities, that the Administrator's maladministration actually prevented Mr S transferring his benefits if he had been determined to do so, consequently, I do not uphold this complaint and do not direct the Trustees or the Administrator to make any further award. If Mrs S wishes to take up the Trustees offer of the £3,000, she should arrange this with them directly.

Anthony Arter

Pensions Ombudsman
5 June 2018