

## Ombudsman's Determination

Applicant	Mrs N
Scheme	The Royal Bank of Scotland Group Pension Fund ( <b>the Fund</b> )
Respondent	RBS Pension Trustee Limited ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

3. Mrs N's complaint is that she has been told she is not entitled to pension benefits from her employment up to 1983. She believes that as she turned 26 years old whilst on maternity leave, she is eligible for a preserved pension and so would like her pension benefits paid to her.

## Background information, including submissions from the parties

4. In March 1979, aged 21, Mrs N was employed by The Royal Bank of Scotland (**RBS**), and she joined the Fund. She went on maternity leave in September 1983, during which time, in March 1984, she reached age 26. At that point, she had the intention of returning to work.
5. Unfortunately, Mrs N experienced health problems which prevented her from returning to work at RBS until 1990, however, she has explained that her annual leave was accredited for her previous service.
6. On 6 June 2015, Mrs N wrote to the Trustee to enquire about her pension with the Fund. The Trustee responded on 11 June 2015, the Trustee informed Mrs N that she had not qualified for a preserved pension when she left employment in 1984. This was because she had not met the requirements of reaching 26 years of age, with five years qualifying service. Mrs N was also informed that because of this, a Contributions Equivalent Premium was paid by the Fund in order to reinstate her in the State Earnings Related Pension Scheme (**SERPS**). As a result of this response, Mrs N complained to the Trustee.

7. The complaint was received by the Trustee on 12 July 2016 and considered under the Fund's internal dispute resolution procedure (**IDRP**). The Trustee issued its response on 23 August 2016, and explained that it did not believe Mrs N had completed the minimum period of qualifying service. However, it had stated incorrect dates for when Mrs N had gone on maternity leave.
8. Mrs N contacted the Trustee to indicate her dissatisfaction with its stage one response, and she highlighted how the quoted dates were wrong. The Trustee issued a letter of apology on 10 October 2016. It explained that despite this, Mrs N had still not met the criteria to be eligible for preserved pension benefits, so the Trustee's position had not changed. As a result, Mrs N completed the Trustee's stage two IDRP application form, which the Trustee received on 2 December 2016.
9. On 10 February 2017, the Trustee responded to Mrs N under stage two of the IDRP. It reiterated the criteria needed to be able to have a preserved pension and focused on when Mrs N had left pensionable service. It considered the RBS' maternity policy, operating from 1983, which explained that the period of maternity absence would not count for pension rights. Thus, the Trustee concluded, Mrs N's pensionable service stopped when she went on maternity leave, meaning it did not change its position on her complaint.
10. On 15 September 2017, Mrs N complained to this Office. She explained that she believed she should have been informed of the loss in pension benefits. Had she known, she said she would have returned to work during the qualifying period, or would have considered making another pension provision. However, she also believes that by reaching 26 years during her maternity leave, she is entitled to the pension benefits. The complaint has led her to question why her previous work was factored in to her annual leave when she returned to work in 1990, but not her pension benefits.

## **Adjudicator's Opinion**

11. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-
  - To be eligible for a preserved pension, Mrs N would have needed to have been 26 years old, with five years qualifying service, as set out in the Social Security Act 1973. At the time Mrs N went on maternity leave, she had not reached age 26. However, she turned 26 whilst on maternity leave. Therefore, it is necessary to establish whether maternity leave was included in pensionable service.
  - The maternity policy dated 29 March 1983, explained that the period before and after the individual's maternity absence in terms of pension rights, shall be regarded as continuous. This provides a clear indication that the leave does not count towards pension rights.

- Although there was no copy of the Fund's Rules from 1983, the Trustee provided a Supplemental Trust Deed from 1988. This clarified that the period before and after maternity leave would be considered as continuous, to comply with the Employment Protection (Consolidation) Act 1978. However, this could be altered if the employer asked the Trustees to do so. Given the RBS's policy on maternity leave in 1983, the Adjudicator did not believe it would have done.
  - Taking this into consideration, maternity leave did not contribute towards pensionable service. As Mrs N had left pensionable service prior to turning 26, and because she was not in a position to return to work in 1984, she was not eligible for a preserved pension.
  - In terms of being notified, the Trustees would not have known about Mrs N leaving employment until after the event. Additionally, whilst it may have been helpful to have been informed about the criteria for a preserved pension, the employer is not required to provide this level of advice. Nonetheless, the information was likely to have been available for Mrs N to review at the time and in any event, Mrs N was not able to return to work in 1984.
  - Whilst RBS may have considered previous service when Mrs N returned to work in 1990 for annual leave benefits, this would be subject to a separate employment policy. As such, based on the information provided, the Trustee has acted correctly.
12. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs N for completeness.
13. The Trustee provided further information for consideration; its submission is summarised below:-
- Taking into account the governing documentation and legislation at the time, Mrs N is not entitled to a preserved pension under the Fund, as her pensionable service ended in September 1983. At this point Mrs N had not accrued 5 years' service and had not reached age 26. As such, the Fund paid a Contributions Equivalent Premium to reinstate her SERPS's membership.
  - The Trustee is satisfied that the pension arrangements were adequately explained to members and that the information was available to Mrs N. In any event, Mrs N could not have returned to work due to ill health, so the Trustee cannot see how she would have returned to work even if she had been aware.

### **Ombudsman's decision**

14. I understand Mrs N believed that she had accrued pension benefits from her employment with RBS up to 1984. In order for that to be the case, Mrs N would have

needed to satisfy the preserved pension criteria of a minimum five years' qualifying service, as well as being at least 26 years old.

Mrs N joined the Fund in March 1979, therefore, the earliest Mrs N could have met the preserved pension criteria would have been on her 26<sup>th</sup> birthday. Mrs N was on maternity leave at that point, with the intention of returning to work. However, she was unable to do so due to health complications. In order to accept Mrs N's claim, I would need to be satisfied that maternity leave was considered as qualifying service.

15. I find that the information provided by the Trustee is clear on this point. Both the maternity policy and the Supplemental Trust Deed set out the position in respect of maternity leave; the period before and after the maternity leave is treated as being continuous. This clarification alone indicates that maternity leave creates a gap and the period is not counted towards pensionable service. Unfortunately, as Mrs N was unable to return to work in 1984, her qualifying service ended in September 1983, prior to her satisfying the preserved pension criteria.
16. I appreciate Mrs N is under the impression that her pension has been taken away from her. However, Mrs N was never entitled to both the pension benefits and the ability to defer them, as the criteria had not been met. Additionally, I can see that the Trustee reinstated Mrs N's SERPS membership, which means that she has not suffered a financial loss.
17. Lastly, when the employee joins the Fund the employer is required to provide information about the Fund, or inform the employee of where this information is located. There is no further requirement on an employer to consider and/or provide additional information regarding the pension implications of maternity leave, unless the internal policy or regulations were changed. I do not find that the Trustee has made an error in its interpretation of legislation, the maternity policy or the Fund rules.
18. Therefore, I do not uphold Mrs N's complaint.

**Anthony Arter**

Pensions Ombudsman  
31 July 2018