

Ombudsman's Determination

Applicants	Mr N Ms WS, Mr SS, Mr LS, Mrs HY, Mr FS, Mr ET, Mr CE, Mr BN, and Mr BY (together the Additional Applicants)
Scheme	Boots Pension Scheme (the Scheme)
Respondents	The Trustee of the Boots Pension Scheme (the Trustee)

Outcome

1. I do not uphold Mr N and the Additional Applicant'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. Mr N, and the Additional Applicants, have complained that they were not informed, when they joined the Scheme, that they would be contracted out of the State Earnings Related Pension Scheme (**SERPS**).
4. Mr N says that, as a consequence of being contracted-out of SERPS, his state pension has now been reduced and there is no guarantee that the Guaranteed Minimum Pension (**GMP**) he will receive from the Scheme will be equivalent to the state pension he has given.
5. Mr N would like the Trustee to make up any financial loss that has occurred as a result of him being contracted-out of SERPS.
6. We have received nine other complaints against the Trustee which are identical to Mr N's complaint. The Additional Applicants' complaints have been associated with Mr N's complaint and the findings of my determination will apply equally to those complaints.

Background information, including submissions from the parties

7. Mr N and the Additional Applicants joined the Scheme at different times between 1982 and 1997.

8. In November 1977, the employer (Boots Company plc) decided that the Scheme should be contracted out of SERPS. On 25 November 1977, a letter from Boots' staff director was issued to provide official confirmation of the intention to contract out of the Scheme. The letter included a formal notice of the intention to contract out, addressed to:

- all employees included, or to be included, in the Boots Pension Scheme;
- all independent trade unions recognised for the purpose of collective bargaining in respect of the employees concerned; and
- the Trustee of Boots Pension Scheme.

A separate document was also included explaining the prospective changes to the Scheme from April 1978.

9. In February 1988, the Trustee made further changes to the Scheme and published a schedule detailing how it would share information about the new changes.
10. In March 1988, the Trustee issued an employee newsletter that focused on the changes in legislation which meant that staff could choose between being a member of the Scheme, a personal pension or SERPS.
11. In February 1991, a letter was addressed to all members of the Scheme and provided them with copies of the new Scheme booklet.
12. On 10 June 2016, a meeting was held with Mr N and representatives for the Additional Applicants and representatives for the Trustee. During the meeting the features and benefits of Mr N's and the Additional Applicants' Guaranteed Minimum Pensions were discussed and explained.
13. On 3 October 2016, Mr N and the Additional Applicants complained to the Trustee. They explained that when they joined the Scheme it was compulsory to do so, and they were unaware it was contracted out. They also complained about the lack of communication they had received about the Scheme and said that they may now be facing financial detriment.
14. On 10 February 2017, the Trustee issued a response under Stage 1 of its Internal Dispute Resolution Procedure (**IDRP**). It did not uphold the complaint and provided Mr N and the Additional Applicants with examples of communications that had been issued to members over the years. This included a copy of an employment contract from 1987.
15. Mr N and the Additional Applicants appealed the Stage 1 IDRP decision and a response under Stage 2 of IDRP was issued on 8 June 2017. The Trustee explained that they had provided sufficient information about the Scheme's structure and that it did not accept that Mr N and the Additional Applicants had suffered any detriment because the members have paid lower National Insurance Contributions as a result

of the Scheme being contracted-out and, in general, the benefits received from the Scheme are greater than the GMP.

Adjudicator's Opinion

16. Mr N and the Additional Applicants' 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:-
- Various information provided by the Trustee adequately demonstrated that Mr N and the Additional Applicants should have been aware the Scheme was contracted out of SERPS at the time each of the applicants joined the Scheme and throughout their membership.
 - Mr N and the Additional Applicants are only entitled to the correct benefits calculated in accordance with the Rules that govern the Scheme.
 - A copy of an employment contract from 1987 included a section on pensions that referred employees to a separate information booklet. As eight of the Additional Applicants joined after this date it was more likely than not that there would have also been a similar clause relating to pensions in their contracts.
 - The Trustee has provided evidence of a company-wide initiative to make all members aware of changes to the Scheme when membership became optional in 1988. The options at that time were to remain a member of the Scheme, opt-out of the Scheme and transfer to a personal pension or contract back in to SERPS.
 - A statement made by Mr LS in 1994 advised the member to read the statement alongside the Scheme booklet. In doing so the members would have been reasonably aware that the Scheme was contracted out.
 - Mr N and the Additional Applicants have not incurred any loss as a result of the Scheme being contracted-out of SERPS.
17. Mr N and the Additional Applicants did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N and the Additional Applicants provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made for completeness.
18. In response to the Adjudicator's Opinion, Mr N and the Additional Applicants have said:-
- The Trustee is responsible for the well running of the Scheme. From the collection of contributions, to investment and payment of benefits. The Scheme

members rely on the Trustee to ensure the Scheme is well run and benefits are secure.

- There was a large amount of information provided over the years and the applicants became overwhelmed with the information and the responses which has caused the issue in terms of not being fully informed of the way in which the pension was constructed and the link in terms of SERPS and the GMP.
- Details of the Scheme were not provided when their contracts were signed.
- Following the company-wide initiative there is no evidence to show that the Trustee checked that the members had received the information it had provided to them. The Trustee has failed in its role.
- They have started planning ahead for retirement and have now discovered a shortfall that could impact their retirement income.
- Their pensions have not been managed correctly and as a result they will not receive what is due to them.
- Historic communication issues and the way in which unions were interacting with management has not been taken into account.
- Mr N and the Additional Applicants would like confirmation that:-
 - Under the Pensions Act, the Trustee has demonstrated its duty of care to the members.
 - They will be paid a pension in line with the rules of the Scheme.
 - They will not have any reduction in their pension based on SERPS and GMP.
 - The recent High Court ruling enables the Trustee to ensure that equality in terms of SERPS and GMP equate to both men and women.

Ombudsman's decision

19. Mr N and the Additional Applicants have complained that they were not informed, when they joined the Scheme, that they would be contracted-out of the State Earnings Related Pension Scheme (**SERPS**).

20. The decision to contract-out of SERPS was made by the employer and not the Trustee. That decision was made in 1977 and, at the time, membership of the Scheme was compulsory. That position continued until 1988 when members were given options as to whether they wished to remain in the Scheme (and so remain contracted-out of SERPS), transfer to a personal pension or contract-in to SERPS. Therefore, for Mr N and those Additional Applicants who joined the Scheme before 1988 there was no alternative but to be contracted-out of SERPS. Others who joined the Scheme after 1988 would have been given a choice and presumably opted for the benefits of joining the Scheme.
21. The Trustee has provided a large amount of evidence demonstrating the information provided at the time an individual joins the Scheme and also communications that have been given to Scheme members about changes over the years. In particular evidence which demonstrates that the Trustee provided information to Mr N and the Additional Applicants informing them the Scheme was contracted-out of SERPS.
22. Mr N and the Additional Applicants now appear to accept that there was a large amount of information provided over the years. However, they contend that they became overwhelmed with the information and that this has caused the issue in terms of not being fully informed of the way in which the Scheme was constructed and the link in terms of SERPS and the GMP. Whilst, I accept that matters relating to pensions and retirement benefits can often appear complex I note that in the Members Handbook, in the Boots Newsletters and the majority of the other communications that the reader is provided with the contact details of the Boots Pensions Office. Mr N and the Additional Applicants could have contacted the Pensions Office at any time during their membership of the Scheme had they required clarification about the information they had received. The Trustee is not responsible if they chose not to do this
23. Mr N and the Additional Applicants argue that information may not have been available when they signed their contracts or when they received their statements. The wording on the statements and employment contracts indicates that there was additional information available should it be required. Mr N and Additional Applicants were within their right to request the information had it not been provided.
24. I am satisfied that the Trustee has not failed in its duty of care to Mr N and the Additional Applicants. It has provided adequate information in relation to the Scheme being contracted-out of SERPS and information about where advice about the Scheme can be obtained if necessary.
25. Mr N and the Additional Applicants are only entitled to receive the benefits calculated in accordance with the Scheme rules. Which, for Mr N and the Additional Applicants means that those benefits will be calculated taking into account that the Scheme is contracted-out of SERPS.

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26. Therefore, I do not uphold Mr N and the Additional Applicants' complaint.

Anthony Arter

Pensions Ombudsman
22 March 2019