

Ombudsman's Determination

Applicant	Mr N
Schemes	Yorkshire & Clydesdale Bank Final Salary Scheme (Clydesdale Bank Scheme) Bradford & Bingley Staff Pension Scheme 1991 (Bradford & Bingley Scheme)
Respondents	The Trustees of the Clydesdale Bank Scheme (Clydesdale Bank Trustees) The Trustees of the Bradford & Bingley Scheme (Bradford & Bingley Trustees)

Outcome

1. Mr N's complaint is upheld against the Bradford & Bingley Trustees and to put matters right:
 - Bradford & Bingley Trustees shall calculate the deferred pension available to Mr N in the Bradford & Bingley Scheme from the transfer of pension rights from the Clydesdale Bank Scheme and inform Mr N accordingly; and
 - if Mr N elects to receive a backdated retirement pension and lump sum from the Bradford & Bingley Scheme, then they shall also calculate and pay simple interest on the payments due.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N complains that:
 - either he is entitled to a deferred pension in the Clydesdale Bank Scheme and the Clydesdale Bank Trustees are improperly refusing to pay it to him; or
 - if his deferred pension has been transferred to the Bradford & Bingley Scheme, the Bradford & Bingley Trustees have failed to allow for the additional benefits available from this transfer in when calculating the cash

equivalent transfer value (**CETV**) of £25,476.58 which was paid to the HSBC Pension Scheme on 20 April 1995.

Background information, including submissions from the parties

4. In April 2017, Mr N contacted Capita, the administrators of the Clydesdale Bank Scheme, to enquire about the deferred pension which he had accrued between 1975 and 1986 whilst employed by Clydesdale Bank.
5. Capita replied that it did not have any details of his membership in the Clydesdale Bank Scheme and asked Mr N to provide some evidence of this such as his annual benefit statements and deferred pension certificate. In June 2017, Mr N was only able to provide Capita with a copy of his National Insurance records.
6. The Clydesdale Bank Scheme was contracted out of the State Earnings Related Pension Scheme (**SERPS**). As a condition of contracting out, it must provide members with a Guaranteed Minimum Pension (**GMP**) that is broadly equivalent to the pension which they would otherwise have accrued under SERPS.
7. HM Revenue & Customs (**HMRC**) held GMP records for the members of the Clydesdale Bank Scheme and operated an online GMP checker.
8. Capita used this GMP checker and found out that, according to HMRC, Mr N was no longer entitled to a GMP in the Clydesdale Bank Scheme.
9. Capita was undertaking a GMP reconciliation exercise for the Clydesdale Bank Scheme at the time to resolve any discrepancies between its GMP records and those held by HMRC. Its GMP Reconciliation Team had access to HMRC's GMP records and carried out an investigation of Mr N's enquiry. Capita also retrieved the paper files to look for evidence of Mr N's membership in the Clydesdale Bank Scheme.
10. Capita regularly updated Mr N of any developments during its investigation. In April 2018, Capita notified him that it could not find any details of his deferred benefits in the Clydesdale Bank Scheme from the paper files.
11. Mr N was unhappy with this response and made a complaint under the Clydesdale Bank Scheme's Internal Dispute Resolution Procedure (**IDRP**) on 30 April 2018.
12. In May 2018, Capita informed Mr N that its GMP Reconciliation Team found no evidence that he had retained a GMP in the Clydesdale Bank Scheme and concluded that he had most likely transferred out his pension rights.
13. Mr N's complaint was not upheld at both stages of the IDRP in June and September 2018 respectively. According to the Stage One IDRP decision letter, if Mr N supplied relevant documents proving that he was entitled to a deferred pension, the Clydesdale Bank Trustees would then calculate and pay the benefits available to him from the earliest possible date.

14. On receipt of further evidence from Mr N of his employment by Clydesdale Bank, the Clydesdale Bank Trustees informed Mr N in their Stage Two decision letter that:
 - he met the qualifying conditions to receive a deferred pension in the Clydesdale Bank Scheme;
 - the available evidence, however, indicated that he had transferred his pension rights elsewhere; and
 - he was therefore not entitled to any benefits in the Clydesdale Bank Scheme.
15. During my investigation of Mr N's complaint, I contacted HMRC to determine who was now responsible for paying the GMP which Mr N had accrued in the Clydesdale Bank Scheme.
16. In its letter dated 27 September 2019, HMRC said that:

“...Mr N's contracted out history from 6 April 1978 to 13 August 1999.

6 April 1978 to 28 March 1986

Liability was originally accrued with the Yorkshire & Clydesdale Bank Pension Scheme (S0302867Q). This was subsequently transferred to the Bradford & Bingley Staff Pension Scheme 1991 (S1210497D).

6 April 1986 to 17 July 1992

Liability accrued with the Bradford & Bingley Staff Pension Scheme 1991 (S1210497D) was transferred to the HSBC Bank Pension Scheme (S1301823T).

1 September 1992 to 13 August 1999

Liability with the HSBC Bank Pension Scheme (S1301823T) was transferred as a Change of Responsibility Paying Authority (RPA) to the HBOS Final Salary Pension Scheme (S2804526M).”

HMRC provided copies of the relevant RD forms completed by the Staff Department of Clydesdale Bank Plc and the Assistant Secretary (Membership) of Bradford & Bingley Pensions Limited on 8 October 1986 and 26 April 1995 respectively to substantiate what it said above.
17. The RD562A form which the Staff Department of Clydesdale Bank Plc completed to notify HMRC of the transfer of Mr N's GMP liabilities accrued in the Clydesdale Bank Scheme to the Bradford & Bingley Scheme showed that his period of contracted out employment was 6 April 1978 to 28 March 1986.
18. The RD562 form which the Assistant Secretary (Membership) of Bradford & Bingley Pensions Limited filled in showed that the dates upon which Mr N's contracted out service started and ended were 6 April 1978 and 17 July 1992 respectively.

19. In its letter dated 26 November 2019, Deloitte, the current administrators of the Bradford & Bingley Scheme said that:

- it did not have any record of a transfer of benefits from the Clydesdale Bank Scheme either in the form of a service credit or an additional pension benefit for Mr N;
- Mr N's deferred pension in the Bradford & Bingley Scheme was £2,003.04 per annum based on Mr N's pensionable service from 1 April 1986 to 16 July 1992 of 6 years 108 days, a Final Pensionable Salary of approximately £19,090 per annum and a scheme accrual rate of 1/60;
- it could not comment on the transfer of contracted out liabilities from the Clydesdale Bank Scheme to the Bradford & Bingley Scheme because there was no information of such a transfer for Mr N in its records; and
- if Mr N has any documentation concerning his transfer of pension rights from the Clydesdale Bank Scheme, the Bradford & Bingley Trustees would consider the matter further.

Mr N's position

20. Mr N says that:

"I do understand that there is a requirement on my part to have specific evidence to allow them (Clydesdale) to investigate i.e. I worked for them and was in the pension scheme, and I have provided all this. At that point I would expect the burden of proof then falls to the employer to evidence what they did with that pension entitlement, that's all I've ever asked...They deny liability without corroboration...Clydesdale seems to have no responsibly to answer...

I feel it is not correct to allow Clydesdale the benefit of denying liability on the back of information from other institutions' positions. We are asking other providers to not only provide information of their pension liability but also of Clydesdale's liability. It is Clydesdale's legal responsibility to define their liability here or define their evidence to deny it.

I feel their lack of action and the lack of provision of any corroboration of their position is unacceptable...I find the current situation appears to be one where Clydesdale will accept liability subject to certain proof being obtained is unacceptable. I would expect the converse to apply and ask that they are advised to accept responsibility unless they can prove otherwise, and not rely on investigations of other providers."

21. According to his records, none of the correspondence which the Bradford & Bingley Trustees sent him showed that they received a transfer of pension rights from the Clydesdale Bank Scheme for him.

The position of the Clydesdale Bank Trustees

22. They do not dispute that Mr N had been employed by Clydesdale Bank and accrued deferred benefits in the Clydesdale Bank Scheme. The issue was whether Mr N had any retained benefits in this scheme.
23. All the available evidence, however, indicated that Mr N no longer had any entitlement to receive benefits from the Clydesdale Bank Scheme.
24. Capita has kept records of the deferred pensioners in the Clydesdale Bank Scheme from the late 1970s and 1980s. It undertook a thorough investigation of its records and could not find any evidence that Mr N retained any benefits in this scheme.
25. Capita does not have any details of Mr N's transfer of pension rights because it had deleted his record in order to comply with the Data Protection Act, one of the principles of which is not to keep personal data longer than necessary.
26. Capita's GMP Reconciliation Team reviewed HMRC's GMP data and could not find any evidence that the Clydesdale Bank Scheme held a GMP liability for Mr N.
27. According to HMRC, the correct SCON for the Clydesdale Bank Scheme is S0302867Q. Capita used this SCON to establish from HMRC's records whether Mr N still had a GMP in the Clydesdale Bank Scheme via the GMP Checker Service in May 2018 and again in March 2019. Both times the results showed that this scheme no longer held any GMP liability for Mr N.
28. Mr N is currently in receipt of a pension from the HBOS Scheme which includes the GMP that he accrued during the period he was employed by Clydesdale Bank. The only way the HBOS Scheme could now be paying Mr N this GMP would be if he had transferred his pension rights including his GMP from the Clydesdale Bank Scheme to the HBOS Scheme via the HSBC Pension Scheme.

The position of the Bradford & Bingley Trustees

29. They have no record of a transfer of pension rights from the Clydesdale Bank Scheme to the Bradford & Bingley Scheme for Mr N.
30. The CETV of Mr N's deferred pension in the Bradford & Bingley Scheme of £25,476.58 was transferred to the HSBC Pension Scheme on 20 April 1995.
31. They say that:

“...as things stand, it is difficult for the Trustee to form a view on whether the member's contracted out benefits accrued in the Clydesdale Bank Scheme were ever transferred into the Bradford & Bingley Scheme. It appears not given that there is no correspondence confirming this and the administration records do not show such a benefit. Subsequently, on transferring out of the Bradford & Bingley Scheme there was no allowance for the benefits that were supposed to have been transferred in from the Clydesdale Bank Scheme.

As the Trustee can only administer the scheme in line with the benefits granted, the onus falls on the individual to provide further detail and

confirmation that their contracted-out rights within the Clydesdale Bank Scheme were actually transferred into the Bradford & Bingley Scheme. It may be that they need to reach out to the administrators of the Clydesdale Bank Scheme to provide further information”.

Adjudicator’s Opinion

32. Mr N’s complaint was considered by one of our Adjudicators who concluded that further action was required by the Bradford & Bingley Trustees. The Adjudicator’s findings are summarised briefly below:
33. Having carefully considered all the available evidence, it was the Adjudicator’s view that Mr N’s deferred pension rights in the Clydesdale Pension Scheme were, more likely than not, transferred to the Bradford & Bingley Scheme in April 1995.
34. According to the Bradford & Bingley Trustees, they did not receive a transfer of pension rights from the Clydesdale Bank Scheme for Mr N. Furthermore, their records indicate that the deferred pension, which would have been available to Mr N in the Bradford & Bingley Scheme of £2,003.04 per annum, was based only on his pensionable service accrued whilst working with Bradford & Bingley from 1 April 1986 to 16 July 1992. No allowance had therefore been made for Mr N either in the form of a service credit or an additional pension benefit by the Bradford & Bingley Trustees in their calculation of this deferred pension.
35. But the position of the Bradford & Bingley Trustees was not supported by the documentary evidence available from HMRC which clearly showed that:
 - Mr N’s contracted out liabilities for the period 6 April 1978 to 28 March 1986 in the Clydesdale Pension Scheme were transferred to the Bradford & Bingley Scheme;
 - Mr N’s contracted out liabilities accrued in and transferred into the Bradford & Bingley Scheme were subsequently transferred to the HSBC Pension Scheme; and
 - Mr N’s contracted out liabilities accrued in and transferred into the HSBC Pension Scheme were then later transferred to the HBOS Final Salary Pension Scheme.
36. Furthermore, if Mr N’s deferred pension in the Bradford & Bingley Scheme was based solely on his pensionable service from 1 April 1986 to 16 July 1992 accrued whilst working for Bradford & Bingley, the RD562 form completed by Bradford & Bingley Pensions Limited on 26 April 1995 should have shown that his contracted-out service start date was 1 April 1986 and not 6 April 1978.
37. The Bradford & Bingley Trustees have not been able to provide a satisfactory explanation as to why the RD562 form would show that Mr N’s contracted out service commenced on 6 April 1978.

38. Inclusion of the date 6 April 1978 on the RD562 form suggested that Mr N's contracted-out liabilities accrued in the Clydesdale Pension Scheme and consequently his whole deferred pension, were transferred into the Bradford & Bingley Scheme.
39. The Adjudicator could only form his opinion based on the available evidence which has mainly been provided by HMRC. Unfortunately, the Respondents, particularly, the Clydesdale Bank Trustees, now hold scant historic details of Mr N's deferred benefits which would have been available to him from their pension schemes. The Adjudicator appreciated the point which the Clydesdale Bank Trustees had made about deleting Mr N's records to comply with the Data Protection Act.
40. It was the Adjudicator's opinion that the Bradford & Bingley Trustees, more likely than not, had failed to allow for Mr N's transferred in benefits from the Clydesdale Bank Scheme when calculating the CETV of £25,476.58 which was paid to the HSBC Pension Scheme on 20 April 1995. This oversight clearly constituted maladministration on the part of the Bradford & Bingley Trustees.
41. The Bradford & Bingley Trustees did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. The Bradford & Bingley Trustees 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 by the Bradford & Bingley Trustees for completeness.

Ombudsman's decision

42. Having examined all the evidence submitted by the parties involved carefully, it is my opinion that Mr N's deferred pension rights in the Clydesdale Pension Scheme were, on the balance of probabilities, transferred to the Bradford & Bingley Scheme in April 1995.
43. Whilst I fully appreciate the Bradford & Bingley Trustees' points of view on the matter, I cannot disregard the evidence supplied by HMRC which clearly indicates that:
 - Mr N's contracted out liabilities for the period 6 April 1978 to 28 March 1986 in the Clydesdale Pension Scheme were transferred to the Bradford & Bingley Scheme;
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 - Mr N's contracted out liabilities accrued in the Bradford & Bingley Scheme for the period 6 April 1986 to 17 July 1992 and those transferred in from the Clydesdale Pension Scheme were subsequently transferred to the HSBC Bank Pension Scheme; and
 - Mr N's contracted out liabilities in the HSBC Bank Pension Scheme accrued during the period 1 September 1992 to 13 August 1999 and those transferred in from the Bradford & Bingley Scheme were subsequently transferred to the HBOS Final Salary Pension Scheme.

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44. According to HMRC's records, the pension which Mr N is currently receiving from the HBOS Final Salary Pension Scheme consequently includes his GMP accrued whilst he was an active member of the Clydesdale Pension Scheme. This could only have happened if Mr N's deferred benefits in the Clydesdale Pension Scheme had initially been transferred to the Bradford & Bingley Scheme.
45. Therefore, I uphold Mr N's complaint against the Bradford & Bingley Trustees only and make the appropriate directions below.

Directions

46. Within 28 days of the date of this Determination:

- Bradford & Bingley Trustees shall reconstruct the transfer of pension rights from the Clydesdale Bank Scheme, calculate the deferred pension available to Mr N in the Bradford & Bingley Scheme and inform Mr N accordingly; and
- if Mr N elects to receive a backdated retirement pension and lump sum from the Bradford & Bingley Scheme, then they shall also calculate and pay simple interest on the payments due.

Karen Johnston

Deputy Pensions Ombudsman
11 May 2020