

## Ombudsman's Determination

Applicant	Mr L
Scheme	Royal Bank of Scotland Group Pensions Fund ( <b>the Fund</b> )
Respondents	Willis Towers Watson ( <b>WTW</b> ) RBS Pension Trustee Limited ( <b>the Trustee</b> )

## Outcome

1. I do not uphold Mr L's complaint and no further action is required by WTW or the Trustee.

## Complaint summary

2. Mr L says WTW and the Trustee refused to provide him with a projected illustration of benefits and so he was unable to make an informed decision about his selected retirement date.

## Background information, including submissions from the parties

3. On 13 October 2017, WTW (as administrators of the Fund) wrote to members to inform them that the Fund's actuarial factors would be changing from 1 February 2018. It announced that a lower level of Late Retirement Factors (**LRF**) would apply, as well as a lower level of early retirement factors. This meant members delaying taking their benefits after normal retirement age (**NRA**) would receive a lower rate of increases, while those that took benefits before normal retirement age would receive less of a reduction for early payment.
4. The letter went on to offer members the opportunity to request retirement quotes based on the current retirement factors. It also noted that a request based on the new factors could be requested on or after 1 February 2018.
5. In relation to Mr L, he fell into the "special member category". Included in the letter was an explanation of the impact applicable to Mr L:

"Members who joined the 'Retiring Age 65' Schedule on or after 1 October 2012 have a Normal Pension Age of 65 but can take their pension built up before this from age 60 without reduction. If such a member chooses to start their pension

after reaching age 60 but before age 65 the pension built up before joining the Retiring Age 65 Schedule will be increased for late payment while the pension built up since joining the Retiring Age 65 Schedule will be reduced for early retirement.

**If you are in this schedule, the impact of the changing actuarial factors will be unique to your individual circumstances and your pension could be higher or lower as a result of the changes.”**

6. The letter also gave an example of how the LRF would apply before and after the changes in February 2018.
7. Following receipt of this letter, Mr L raised a query with WTW. It responded on 27 October 2017, giving further details of how the benefit would be calculated after 1 February 2018, in relation to LRF. It also provided a breakdown of the percentage increases that would apply each year the benefit was deferred after NRA.
8. Mr L then requested a quotation of benefits. These were provided by WTW on 7 December 2017. Two quotations were provided. One gave details of his benefits, should he retire at NRA on 2 September 2019, and the other gave details of his benefits at a selected retirement date of 31 January 2018. Both quotations were based on the actuarial factors in force at the date the quotation was calculated and this was made particularly clear on the NRA quotation.
9. Mr L says that he tried to get further information from WTW as to a projected estimate of his benefits taking into consideration the new actuarial factors. He also says that he was unable to get any advice from an independent financial advisor (**IFA**) as to which option would be in his best interests. As a result, on 8 January 2018, Mr L emailed the Chief Executive of the Royal Bank of Scotland (**the Bank**), asking for assistance.
10. Mr L's request was passed to the Bank's HR department and a pension specialist replied on 9 January 2018. The advice received was based on the retirement figures provided by WTW and stated:

“I am sorry for the service that you have received from WTW, unfortunately they are not able to calculate the benefits on the new basis until that basis is in force. To do so would have required updates to their systems which at that point they were not able to do and the Trustees of the Fund approved this. For most people the change is fairly clear, if you are retiring early you are better off but if you are retiring late you will be worse off. Unfortunately there are a small number of people in your position who could be worse off. If you were to take your pension on 1 February, you would be worse off as a large amount of your pension is being treated as having a normal pension age of 60 so the reducing of the late retirement factors more than offsets the improvement in the early retirement factor.”
11. Mr L took decided to retire before 1 February 2018. However, he was unhappy that WTW had not provided him a retirement quotation based on the new actuarial figures for retirement at NRA after 1 February 2018. He wrote to WTW on 14 August 2018,

setting out his complaint. In particular, he felt that he had not been given the opportunity to make an informed choice and the failure to do so caused an immense amount of distress and anxiety. He mentioned that he felt he had no choice but to contact the Bank's Chief Executive.

12. WTW replied on 3 September 2018. It did not uphold Mr L's complaint on the basis that he was provided with three months notice of the changes in the factors in order to consider the changes, despite there being no legal obligation to inform members. It highlighted that it informed Mr L at the time that it would not be able to provide the quotation that he was seeking.
13. Mr L remained dissatisfied and made a complaint to The Pensions Ombudsman (TPO). In making the complaint he confirmed that he was happy with the choice that he had made, but was still aggrieved at what he felt was a failure in WTW's duty to provide him with the information he had requested in order to make an informed choice.
14. During TPO's application process, Mr L extended the complaint to include the Trustee. The internal dispute resolution procedure (**IDRP**) was completed with the Trustee's Stage 2 IDRP decision reached on 1 March 2019. The Trustee acknowledged the distress the situation had caused Mr L, but did not uphold the complaint. It reiterated that there is no legal obligation for it to provide members with notice of the change to actuarial factors. Therefore, in providing Mr L with advance notice of the changes and how it might affect his benefits, it had already given more information than it was required to do. It noted that Mr L's IFA would have been able to provide a "reasonably accurate estimate" of his pension, which is what the Bank's HR service did.

### **Adjudicator's opinion**

15. Mr L's complaint was considered by one of our Adjudicators who concluded that no further action was required by WTW or the Trustee. The Adjudicator's findings are summarised below:-
  - The Adjudicator noted that there was no obligation on the Trustee or WTW to make Mr L aware of the changes in actuarial factors, or to provide him with the specific benefit quotation he had requested. There was no requirement under The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, that members should be provided with projected forecasts to allow a comparison in benefits.
  - The Adjudicator agreed that WTW had made it clear that it would not be able to provide the information Mr L was seeking and this was supported by the Trustee. The Trustee had also stated that there was sufficient information provided to allow Mr L to seek independent financial advice and, ultimately, this was provided by the Bank.

- The Adjudicator highlighted a similar complaint relating to the communication of LRF to members (PO-19282). That case was not upheld by the Ombudsman on the grounds that there was no legal obligation on the scheme manager to inform members of the changes to LRF.
  - While the Adjudicator recognised that the matter had caused Mr L distress, there had not been any maladministration by either of the respondents. The Ombudsman can make an award to recognise distress and inconvenience, but this is only when there has been a finding of maladministration. As the Adjudicator's view was that there was no maladministration, no direction for an award for non-financial injustice could be made in relation to Mr L's claims for distress and inconvenience.
16. Mr L was unhappy with the Adjudicator's opinion and submitted the following, in summary:-
- He never disputed that the respondents have a right to change the actuarial factors, but instead that the decision to not provide full financial information was wrong and that this is maladministration.
  - He feels that it is maladministration in that his IFA was unable to provide advice and that he then felt forced to contact the Bank's Chief Executive. The HR service was able to provide the information he needed within a short time frame, even when WTW said that it was not possible to provide the information he had requested.
  - The respondents have a duty to act in the best interests of the members and in order to have done this, he ought to have been provided with the information he requested.
  - He intimates that WTW were not honest when he telephoned and made a request for information of his benefits post 1 February 2018. He says, "When I asked for a[n] estimate under the new actuarial factors as at 2/9/2019, they refused to answer the specific question, even though I know from the RBS Pension Consultant that this information must have been available."
  - Mr L detailed the amount of distress the matter had caused him.
17. As Mr L did not accept the Adjudicator's opinion, the complaint has been passed to me to consider. Mr L's comments do not change the outcome. I agree with the Adjudicator and I will therefore only respond to the main points made by him for completeness.

### **Ombudsman's decision**

18. There is general agreement that Mr L is not complaining about the respondents' right to change the actuarial factors applying to the Fund. The relevance of highlighting the previous Determination to Mr L was that, although the complaint was about the

scheme managers right to change the factors, it was found that there was no legal obligation to inform members. Therefore, the respondents in Mr L's case had already gone beyond their legal obligations in providing members with three months warning of the changes and offering to provide additional retirement quotations. While Mr L sees it differently, there is no maladministration in the refusal of the respondents to provide the specific information requested by Mr L, when in fact it need not have provided any information to members at all.

19. Mr L claims that it must be maladministration because his IFA was unable to provide advice and he feels that he was compelled to seek assistance from the Bank's Chief Executive. However, the failure of his IFA to give Mr L advice or seek further information directly from the respondents does not fall within my remit to consider. WTW and the Trustee provided members with three months notice of the changes, thus giving ample opportunity to seek independent advice from whatever source the member felt was appropriate. There is nothing wrong with making contact through his employer and, in the end, this worked in Mr L's favour as the HR service was able to use the information provided by WTW to give Mr L the answer he was seeking. He was able to use that resource to make an informed decision based on the information provided by WTW. While this may have caused Mr L an inconvenience, it is not maladministration.
20. I also note that WTW are not regulated to provide financial advice to members and must be careful that the information it does provide cannot be construed as advice. Mr L is correct that trustees have a duty to act in the best interests of members, but it cannot be seen to give unregulated advice. Nor does it have to provide information above its statutory and legal obligations.
21. Mr L has also implied that WTW had access to the information, but refused to provide it. This is not supported in the documents provided as part of the investigation. WTW made clear throughout the process that it would not be able to provide projections for retirement dates after 1 February 2019, until the actuarial changes had been made. This is confirmed in the email from the Bank's HR service which states that WTW did not have the software upgrade to provide the calculation. Hence it had based its advice on the information WTW had provided to Mr L about his benefits on 31 January 2018 and the uplifts that would apply. I do not agree that WTW failed in its service to members and clearly managed expectations by explaining from the outset that it would not provide the specific calculations Mr L was requesting.
22. I do not agree that the respondents have acted outside of its duty of care to Mr L. While I empathise with Mr L concerning the stress he says he suffered because of the need to make a decision by a set date, this is not enough to make a finding that there was a specific act of maladministration that caused an injustice.

PO-25932

23. I do not uphold the complaint.

**Anthony Arter**

Pensions Ombudsman  
29 November 2019