

Ombudsman's Determination

Applicant	Mrs R
Scheme	Old British Steel Pension Scheme (OBSPS)
Respondents	British Steel Pension Fund Trustee Ltd (the Old Trustee); Open Trustees Ltd (the New Trustee)

Outcome

1. I do not uphold Mrs R's complaint and no further action is required by the Old Trustee or the New Trustee.

Complaint summary

2. Mrs R's complaint is that her rights under the OBSPS, which derive from her late husband's membership, were not transferred to the new British Steel Pension Scheme (**BSPS2**) in accordance with her instruction of December 2017. Instead, her rights remained in the OBSPS, which later entered the Pension Protection Fund (**PPF**) assessment period. As a result, she has suffered, and will suffer, a loss in the amount of the annual increases payable under the BSPS2.

Background information, including submissions from the parties

3. Initially, Mr R was a member of the OBSPS. In March 2016, Tata Steel Ltd, owner of British Steel, announced plans to restructure the business, including decoupling the OBSPS. In December 2016, it closed the OBSPS to further accrual from March 2017.
4. A company can apply to The Pensions Regulator (**TPR**) for a "regulated apportionment arrangement" (**RAA**). This allows a financially troubled employer to detach itself from its liabilities in respect of a defined benefit pension, usually if continuing to support the scheme would mean insolvency. If an RAA is agreed, the scheme is separated from the sponsoring employer and usually enters the PPF, which pays reduced benefits to members without sponsoring employers.
5. In May 2017, the PPF announced that terms for an RAA with the OBSPS had been reached. Under the terms, Tata Steel UK, a subsidiary of Tata Steel Ltd, the owner of British Steel and sponsoring employer for the OBSPS, would set up and sponsor a

new scheme, the BSPS2. Members of the OBSPS would be given the chance to move to the BSPS2 before the OBSPS entered the PPF by default.

6. Between October and December 2017, a "Time to Choose" exercise was carried out (**Time to Choose**), to allow OBSPS members to elect to transfer to the BSPS2. On 2 October 2017, an information pack and option form under Time to Choose was issued to Mr R. The exercise was carried out for and on behalf of the Old Trustee by a firm called Real Digital.
7. On 24 November 2017, Mr R sadly died.
8. On 30 November 2017, having received no Time to Choose options form from Mr R, Real Digital issued a reminder letter. On the same day, Mr R's son (**Mr S**) contacted the OBSPS administrator and informed it that Mr R had died. On 1 December 2017, Mrs R contacted the OBSPS administrator to confirm the same.
9. There is evidence that Mrs R telephoned the OBSPS administrator on 18 December 2017. She says she contacted it after hearing about the Time to Choose exercise on the radio. She says she told the administrator that she wished to transfer to the BSPS2; and, was assured that she need not worry and that everything would be "sorted out" in January 2018.
10. On 22 December 2017, the deadline under Time to Choose (**the deadline**) expired.
11. On 5 January 2018, paperwork was issued to Mrs R, by the OBSPS administrator, to register her as a beneficiary of a spouse's pension under the OBSPS. On 23 January 2018, the Old Trustee sent a general mailing to Mrs R, informing her that her pension rights would remain in the OBSPS by default.
12. In March 2018, Mr S, on behalf of Mrs R, complained to the OBSPS administrator.
13. In June and October 2018, the New Trustee responded to Mr S under the OBSPS's internal dispute resolution procedure (**IDRP**). But, the complaint was not upheld and therefore Mrs R referred her complaint to us.

Mrs R's position

14. Mrs R has submitted that:-

- She and Mr S notified the OBSPS administrator of Mr R's death on 30 November and 1 December 2017. But at no time did it inform them of Time to Choose or the deadline. Further, it took the OBSPS administrator five weeks, that is, until 5 January 2018, to issue forms to set up her widow's pension. The New Trustee has acknowledged that, normally, widow's registration forms would have been issued more quickly.
- Had registration forms and Time to Choose forms been issued within ten working days of 30 November 2017, she would have received them by 18 or 19 December

2017. So, they could “comfortably” have been returned by same or next day delivery, that is, before the deadline.

- She strongly objected to remaining in the OBSPS, and therefore entering the PPF by default, because she gave a clear instruction to transfer to the BSPS2, which was acknowledged. She was told she had no reason to worry, and that everything would be sorted out in January 2018, which she took to mean that her rights in the OBSPS would be transferred to the BSPS2.
- This reassurance was given on 18 December 2017, immediately after she found out about the Time to Choose exercise. Had the OBSPS administrator not wrongly told her that she would be transferred to BSPS2, and instead told her she would have to return Time to Choose forms by the deadline, she could have done so.
- The New Trustee said there was no record of a telephone call on 18 December 2017, to it or the OBSPS administrator. But, she had provided a telephone bill, which showed a call was made, at 08:51am on 18 December 2017, lasting about four and a half minutes, to the OBSPS administrator’s number.
- Although Real Digital, not the BSPS administrator, was responsible for issuing the Time to Choose forms and recording member elections, the Old Trustee remained responsible for any delays or poor communication by its agent, Real Digital.

The New Trustee’s position

15. The New Trustee has submitted that:-

- Where a pension scheme enters a PPF assessment period, the trustees are not permitted to allow transfers-out. This is in line with part 135(4)(a) of the Pensions Act 2004 (**the Act**). A transfer to the BSPS2 can only be allowed during the PPF assessment if an error occurred as part of Time to Choose.
- Clear instructions about Time to Choose were issued from the start, in presentations and newsletters. In the letter of 2 October 2017, for instance, it was explained that in order to process a transfer to BSPS2, a written instruction, using an official option form, was required. A reminder was issued to Mr R on 30 November 2017, which re-iterated the option and the election process.
- A Time to Choose information pack was not issued directly to Mrs R, as it was necessary to first register Mr R’s change of status under the OBSPS, once Mrs R had notified the OBSPS administrator of his death. Until Mrs R had been registered as the correct recipient, she would have been unable to make any decisions in respect of the OBSPS or Time to Choose.
- It was not unreasonable, given the Christmas period, and administrative burden of Time to Choose, to take five weeks from Mr R’s death, that is, until 5 January 2018, to issue paperwork registering Mrs R as a beneficiary. On balance, even if Mrs R’s case had been prioritised, with forms issued in a much shorter timeframe,

there would still not have been sufficient time for her to have completed all the necessary steps to make a valid election.

- Had Mrs R received widow's registration forms on 14 December 2017, that is, ten working days after notification of Mr R's death, that would have left only five working days for Mrs R to (1) complete the forms and return them to the OBSPS administrator; (2) be registered by the OBSPS administrator as the correct recipient; (3) receive Time to Choose forms from Real Digital in her own name; and (4) review, complete and return the forms. So, any alleged delay by the OBSPS administrator did not cause her to lose the chance to make an election.
- With regard to the phone call of 18 December 2017, there was no evidence, in the OBSPS administrator's records, or Real Digital's, that Mrs R was told that she would be transferred to the BPS2 by default, that is, without having to make a formal election. The OBSPS administrator had confirmed that it would not have said that a verbal election was acceptable; and, the Time to Choose forms made clear that only a written, signed election was acceptable.
- The OBSPS administrator whom Mrs R called was not, in any case, the correct contact for Time to Choose queries; the correct contact was the member helpline, as outlined in the Time to Choose forms.
- Time to Choose was being managed by Real Digital, not the OBSPS administrator. In this context, the correct process was followed. That is, the OBSPS administrator first took steps to register Mr R's death, and recorded Mrs R's status as a beneficiary under the BPS. As this did not happen, and could not reasonably have happened, prior to the deadline, a valid election could not have been made in time.
- In summary, there was no evidence that an error was made, under Time to Choose, which would override the general position proscribing transfers-out during the PPF assessment period.

Adjudicator's Opinion

16. Mrs R's complaint was considered by one of our Adjudicators, who concluded that no further action was required by the Old Trustee or the New Trustee. His findings are summarised below:-

- The New Trustee was correct in saying that, under the Act, when a scheme enters a PPF assessment period, the trustees can no longer allow transfers-out. Nonetheless, a transfer to the BPS2 would be allowed if an error occurred under Time to Choose process.
- It arguably took too long to issue Mrs R with forms to register her as a widow and thus become entitled to receive a pension under the OBSPS. Even though there was a large, complex exercise going on at the time, Real Digital, not the OBSPS

administrator, was responsible for this; the OBSPS administrator was responsible for day-to-day administration. Whilst there are usually postal delays and staff shortages over Christmas, there was sufficient time to have issued the widow's registration forms before Christmas.

- However, even if the widow's registration forms had been issued more quickly, there still would not have been sufficient time for Mrs R to have received, reviewed, completed and returned the Time to Choose forms before the deadline. This was for the following reasons.
- It was reasonable for it to take up to ten working days to issue widow's registration forms, in line with the OBSPS Administrator's usual timescales. Further, the notional timeline presented by the New Trustee in its submissions (as outlined under para 15 above), was reasonable in the circumstances, so there would not have been sufficient time for Mrs R to make a valid election before the deadline.
- At the time Mr R died, Mrs R only potentially had the right to a pension from the OBSPS; in practice, she had to be registered first. The OBSPS administrator could not issue Time to Choose forms in Mrs R's name until it had confirmed she was the correct beneficiary under the OBSPS. Nor could Mrs R have returned the forms issued to Mr R, as she had no authority before his death.
- Two processes: namely, Mrs R's registration as the correct recipient of a widow's pension, and the issuing of Time to Choose forms in her own name, had to be carried out sequentially; they could not happen concurrently. Even had the OBSPS administrator issued the widow's registration forms on 14 December 2017, there still would not have been sufficient time for all the necessary steps to have been carried out for Mrs R to make a valid election. Therefore, any avoidable delays by the OBSPS administrator did not cause her to lose the chance to transfer her rights from the OBSPS to the BSPS2.
- With regard to the telephone call of 18 December 2017, the Adjudicator was of the view that there was insufficient evidence that Mrs R was told, at that time, there was nothing further she needed to do; and, that her rights in the OBSPS would be transferred to the BSPS2 by default. All the evidence indicated that remaining in the OBSPS was the default choice. Time to Choose required an active choice, by way of a signed, written election; it was not possible to do this verbally.

17. Both the New Trustee and the Old Trustee accepted the Opinion and made no further comments.

18. Mr S, on behalf of Mrs R, provided further comments. They were:-

- He asked whether the Old Trustee was permitted to delegate its fiduciary responsibilities to a third-party firm, Real Digital, as part of Time to Choose? In addition, he said that the Old Trustee had a fiduciary responsibility to act in the best interests of scheme beneficiaries, including those who might benefit from the scheme in future. So, the Old Trustee remained responsible for any actions

performed on its behalf by Real Digital, or the OBSPS administrator, during the exercise. The Adjudicator's findings appeared to suggest otherwise.

- He agreed that Mrs R had no authority to return the Time to Choose forms before Mr R's death. He also agreed that, after Mr R's death, it would be for the beneficiary to decide to whom the benefits should be paid. However, as he maintained that it was the Old Trustee's fiduciary responsibility to act in the best interests of Mrs R during this time, it had fallen short of that duty, putting Mrs R into an inferior scheme was clearly not in her best interests.
- He asked the Adjudicator to clarify how he had determined that the widow's registration forms and Time to Choose forms could not have been issued concurrently, within ten days of notification of Mr R's death. Had that happened, both sets of forms could have been completed and returned by Mrs R before the deadline. The date the forms and documentation needed to be received by the OSBSP administrator was important, not when they would actually be processed.
- The telephone call of 18 December 2017 was contentious. The phone bill clearly showed that Mrs R called the Old Trustee, or the OBSPS administrator, on that date. He asked the Adjudicator to confirm the facts that he considered when determining whether the balance of probabilities should favour the Old Trustee and the OBSPS administrator, or Mrs R, in this regard.

19. The Adjudicator reviewed Mr S's further points but did not believe they changed the outcome he had outlined in his Opinion. In summary they were:-

- Although the Old Trustee was permitted to delegate administration of Time to Choose to Real Digital, it was ultimately responsible for Real Digital's actions, and those of the OBSPS administrator.
- It was the Old Trustee's responsibility to act in the best financial interests of OBSPS members, within the limits of the OBSPS Trust Deed and Rules. But, the relevant question was not whether it was in Mrs R's best interests to be transferred to the PPF; the question was whether a valid election to transfer to BSPS2 could have been made given that, by default, members would transfer to the PPF.
- The Adjudicator remained of the view that two processes, namely, registration and election, had to happen sequentially; they could not happen concurrently. To explain this further, the OBSPS administrator could have taken up to ten working days between notification of death, and the issuing of the widow's pension registration forms, that is, until 14 December 2017. He remained of the view that that left insufficient time for all necessary steps to be carried out in order to make a valid election before the deadline.
- In general, it is for the Claimant to prove her case on the balance of probabilities. In this particular case, the Adjudicator accepted the New Trustee's position that a written election was required to transfer to the BSPS2. So, he would need to see

evidence that the OBSPS administrator contradicted that position; the New Trustee said there was no recording of the telephone call. So, he was unable to conclude that Mrs R was misinformed.

20. Mr S, on behalf of Mrs R, provided further comments. They were:-

- Given the existence of the deadline, Time to Choose forms could and should have been supplied in conjunction with the widow's registration forms. Given that any future benefits under the widow's pension would be dependent on the selected Time to Choose option, there would be negative consequences, to the New Trustee and Mrs R, if election forms were issued separately.
- The New Trustee had confirmed, in correspondence with us, that the issuing of registration forms was delayed beyond ten working days. Had the registration and election forms been issued within ten working days by 14 December 2017, then a further eight days would have been available for Mrs R to have completed and returned her registration and election.
- Mrs R was given misleading information by the appointed administrator in the documented telephone call of 18 December 2017.
- Together, these administrative failings resulted in Mrs R being transferred in to the PPF against her wishes. Therefore, he was unable to accept the Opinion that Mrs R's complaint could not be upheld.

21. Mr S, on behalf of Mrs R, has provided his further comments, as summarised under paragraphs 18 and 20 above; they do not change the outcome. I agree with the Adjudicator's Opinion and will therefore only respond to the main points made by Mr S for completeness.

Ombudsman's decision

22. I agree that the two processes, namely registration and election, had to happen sequentially; they could not happen simultaneously. The OBSPS administrator could not issue the Time to Choose forms in Mrs R's own name until it had confirmed that she was the correct beneficiary under the OBSPS, and had set up her own record. Further, she would have been unable to return the forms already sent to Mr R, as she had no authority to do so prior to his death. In reviewing the notional timeline presented by the New Trustee (see paragraph 15 above), I agree that the OBSPS administrator could have taken up to ten working days to issue widow's registration forms to Mrs R following notification of death. There still remained four further steps that had to be carried out in order for Mrs R's contingent benefits under the OBSPS to be transferred to the BPS2. Unfortunately, I do not believe that there would have been sufficient time. Even had there been no unavoidable delays on the part of the OBSPS administrator, on balance of probabilities, it would still not have been possible for Mrs R to have made a valid election before the deadline.

23. There is no sign that the OBSPS administrator was made aware of Mr R's ill health such that it could have considered how this would impact his ability to make a Time to Choose election.
24. I have considered Mr S's comments concerning the contentious telephone call. However, there is no additional evidence to substantiate what was advised during this call. All the evidence indicates that members were required to make a formal, written election to transfer their benefits from the OBSPS to the BPS2; there is insufficient evidence that the OBSPS administrator verbally contradicted that position, of which it would have been completely aware.
25. I do not uphold Mrs R's complaint.

Anthony Arter

Pensions Ombudsman
9 April 2020