

Ombudsman's Determination

Applicant	Mr R
Scheme	University of Bristol Pension and Assurance Scheme (the Scheme)
Respondents	University of Bristol (the University) The Trustee of University of Bristol Pension and Assurance Scheme (the Trustee)

Outcome

1. I do not uphold Mr R's complaint and no further action is required by the Trustee and the University.

Complaint summary

2. Mr R has complained that:-
 - He could not take his pension benefits at age 65.
 - Contracted Out Deductions (**CODs**) have been taken from his State Earnings Related Pension Scheme (**SERPS**) pension from 2015, but he has not received his pension or Guaranteed Minimum Pension (**GMP**) from the Scheme.
 - The Scheme should not have been approved in 1978 as the Scheme rules do not allow him to claim his GMP at age 65.
 - He had lost the majority of his pension.
 - He had lost faith in the pension system and suffered immense stress.

Background information, including submissions from the parties

3. Mr R was a member of the Scheme and qualified for deferred pension benefits when he left the Scheme on 6 October 1978.
4. As the Scheme was contracted out of SERPS Mr R paid reduced National Insurance contributions in exchange for his entitlement to SERPS. Mr R's SERPS pension then

became subject to CODs for the period of time he was in the Scheme. As a condition of contracting out the Scheme was required to provide Mr R with a GMP as an equivalent benefit to his SERPS pension.

5. In March 1978, Mr R was sent a letter from the University confirming “improvements” to the Scheme. The letter said, among other things, that the pension benefits on leaving would be payable from State Pension Age (**SPA**) which at that time was 65.
6. When Mr R left the Scheme in October 1978, he was issued with a withdrawal statement which said his pension would be paid on the retirement date of 24 August 2015 (Mr R’s 65th birthday). The withdrawal statement quoted a yearly pension of £20.14 per year and a one-off lump sum of £60.42.
7. The Trustee’s records contained an alternative withdrawal statement that was not issued to Mr R. This said the GMP would be paid from SPA and quoted a lower pension and lump sum with a note which said, “Original figures incorrect will have to honour.” This alternative withdrawal statement also confirmed the Normal Retirement Date (**NRD**) as 31 July 2016 (the July following Mr R’s 65th birthday).
8. On 22 July 2015, Mr R wrote to the University asking for details of his pension.
9. On 14 October 2015, the University wrote to Mr R saying the NRD of the Scheme was the 31 July after a member’s 65th birthday. He could take payment earlier than this date, but it would be treated as early retirement and be subject to an actuarial reduction. The pension estimate was £169.38 per year, including a GMP, and a lump sum of £60.42. As the benefits were less than £10,000 Mr R had the option of taking a one-off lump sum of £2,974.71 at NRD.
10. On 8 November 2015, Mr R asked the University for an explanation of the figures and if the GMP would take account of the CODs being deducted from his SERPS pension.
11. On 14 December 2015, the University wrote to Mr R saying that the GMP at Mr R’s date of leaving was £7.80 per annum and this would increase by 8.5% per annum until he was 65, and said, “The GMP is an element of your state pension resulting from you paying Contracted Out contributions.”
12. On 20 April 2016, the University wrote to Mr R confirming that his pension was due to come into payment on 1 August 2016 and asked him to complete and then return the enclosed forms along with his birth certificate.
13. On 29 June 2016, the University chased Mr R for a reply to its letter of 20 April 2016.
14. On 5 July 2016, Mr R said CODs had been taken from his SERPS pension since August 2015, but he had still not received any pension from the Scheme. He considered that any GMP that he was paid was cancelled out by the CODs and he did not consider there had been any point in contributing to the Scheme.

15. On 19 July 2016, the University replied and said:-

- The GMP was introduced on 6 April 1978 and the Scheme contracted out which meant Mr R paid reduced NI contributions and the GMP made up part of his Scheme pension.

- Mr R's pension benefits were confirmed as:-

“Your benefits on 6.10.78:

Annual pension: £20.14 of which £7.80 is GMP

Lump sum: £60.42

Your benefits revalued to 31.7.2016:

Annual pension: £169.38 of which £147.04 is GMP

Lump sum: £60.42”

- The CODs were deducted in respect of Mr R's SERPS pension and he should contact the Department of Work and Pensions (**DWP**), as they administered the State pension scheme.

16. On 23 August 2016, HM Revenue & Customs (**HMRC**) confirmed to Mr R the CODs were £2.83 per week and were in relation to his membership of the Scheme in 1978.

17. On 5 October 2016, the University chased Mr R for the forms required to pay his pension.

18. On 25 November 2016, Mr R wrote to the University and said he had been told by the DWP that his GMP was due from age 65.

19. On 7 December 2016, the University wrote to Mr R and agreed to backdate his GMP of £147.16 per annum to his 65th birthday and sent him the forms required to pay the GMP.

20. In August 2018, Mr R asked the University for further details of his pension.

21. On 15 August 2018, the University replied to Mr R and explained that his pension details had been issued in June 2016, July 2016, October 2016 and December 2016. Mr R was asked to confirm in writing which option he wished to take and to provide his bank details so that payment could be made.

22. On 18 September 2018, Mr R wrote to the University saying he wished to complain about not being paid his pension and GMP from 2015, and for this to be dealt with under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).

23. On 27 September 2018, the University replied saying Mr R's GMP had been revalued to age 65 and then the GMP had been increased by 1/7th of a percent every week so

Mr R had not lost out because of the GMP being paid from July 2016 instead of his 65th birthday. The pension would be paid by cheque each month and the first cheque would be backdated to 1 August 2016. The pension lump sum of £60.42 would also be paid.

24. On 29 September 2018, Mr R wrote to the University and said he considered his whole pension should be payable from his 65th birthday, not just his GMP.
25. On 10 October 2018, the Scheme administrator acknowledged receipt of Mr R's complaint.
26. On 20 November 2018, Mr R wrote to the Scheme administrator and acknowledged that he had received the lump sum but said he was previously told this would be paid annually.
27. On 10 April 2019, following a request from Mr R, HMRC confirmed that it had checked his National Insurance record and provided him with a copy of the Notice of Termination and end of year tax return sent in by the University in 1978.
28. On 18 April 2019, Mr R wrote to HMRC asking questions about the end of year tax return sent to him.
29. On 5 June 2019, HMRC said that it now believed that the end of year tax return document sent on 10 April 2019 was a "wage slip" from 1978, but this was not certain as all such documents were set out differently but in answer to Mr R's questions:
 - “1. Combined contribution is usually the total amount of national insurance that both yourself and usually your employer must pay overall for that pay period.
 2. Employees contribution is usually the amount of national insurance that you yourself must pay based on what your employer has calculated, that you earned.
 3. Employee's contracted out contribution is usually the amount you need to pay on a regular pension plan that has been contracted out.”
30. On 11 July 2019, Mr R wrote to the Scheme administrator saying he had been paying CODs from his SERPS but had still not received his pension from the Scheme.
31. The Trustee's position is:-
 - The Scheme administration moved externally from the University in October 2018. The request to the Scheme administrator for the complaint to be dealt with under IDRPs was not passed to the Trustee.
 - The pension lump sum cheque was cashed by Mr R, but no pension was put into payment.
 - It acknowledged that no response was sent to Mr R following his letter of 20 November 2018.

- The withdrawal statement issued to Mr R gave the NRD as Mr R's 65th birthday. However, this was an illustration and was not legally binding.
- The Trustee's file contained a second statement with a lower pension and showed an NRD of 31 July 2016. This version was not issued as it provided a lower pension figure and the Scheme administrator at the time took the view that the first statement should be honoured as it contained the more generous pension.
- The note on the withdrawal statement indicated that the Scheme did offer the option for the GMP to be paid from SPA. However, there are no copies of the Scheme rules from this time, so the Trustee is unable to verify this.
- On 7 December 2016, the University did offer to backdate the GMP to Mr R's 65th birthday.
- As a gesture of good will the Trustee was also willing to back date Mr R's pension as well as his GMP to his 65th birthday.
- The payment of any CODs was not a matter for the Trustee.
- Any increases to the GMP for late payment are set by legislation so there has been no maladministration by not paying the GMP from Mr R's 65th birthday.
- Mr R is now 68 and has not received a pension, however, offers were made to pay his pension on a number of occasions.
- It acknowledged there were delays in replying to the complaint but wanted to reassure Mr R that his pension had not been lost.
- The case had become protracted and Mr R was likely to have suffered distress as a result of the Scheme's failure to follow good practice. The Trustee offered £1,000 for the distress and inconvenience caused to Mr R.
- There was no issue in the Scheme contracting out in April 1978 and the Scheme had always complied with contracting out requirements.
- There was no historic issue with the Scheme when contracting out stopped on 6 April 2016.
- The Trustee noted that the cash sum was paid outside the time limits prescribed by the Finance Act 2004 and HMRC may therefore deem the payment to be unauthorised. The Trustee agreed that it would take full responsibility for addressing this matter with HMRC and would pay any unauthorised payment charges that may be due.

32. Mr R's position is:-

- When he requested that his complaint was looked at under the IDRPs it was treated as “some kind of joke”.
- He had to join the Scheme as it was part of his contract of employment.
- He had paid CODs of £147 per annum from his SERPS pension since August 2015, and the Scheme pension only provides a £147 GMP in return. Therefore, his pension was being reclaimed by CODs.
- His version of the withdrawal statement should stand as it was issued seven months after SERPS began.
- He cannot see how the CODs is a matter for the DWP.
- The pension was mis-sold as CODs were not mentioned in the Scheme literature in 1978.
- He considered the legislation was being used in a criminal way and if the GMP is increased by £10 per annum due to late payment as suggested by the Scheme administrator, it would take between 30 and 60 years to repay the CODs already taken.
- He needed to know why contracting out was allowed knowing the GMP would not be in payment when CODs were taken from his SERPS pension.
- As the Trustee admitted that there was no surviving copy of the Trust Deed and Rules, he assumed that the only answers will be found with the Pensions Ombudsman.
- He is still not receiving his pension and GMP.
- He wanted to know what happened to the contracted out contributions he paid in and provided a “wage slip” showing he had made duplicate contributions.

Adjudicator’s Opinion

33. Mr R’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the University or the Trustee. The Adjudicator’s findings are summarised below:-

- The Trustee acknowledged that it did not reply to Mr R’s complaint and this amounted to maladministration.
- The Scheme was contracted out of SERPS and membership in 1978 was compulsory, so Mr R had no choice but to join the Scheme and to be contracted out of SERPS. Therefore, he was not mis-sold the pension as he had no alternative but to join the Scheme.

- The Scheme NRD is the 31 July following a member's 65th birthday so Mr R's pension was not payable when he reached age 65. The Adjudicator considered that the Trustee's offer to backdate Mr R's pension and his GMP to his 65th birthday and pay any unauthorised payment charges was reasonable, taking into account that Mr R's complaint was that his pension and GMP should have been paid when he reached age 65.
- Mr R's pension included both GMP and non-GMP benefits and while the amount of pension in excess of the GMP was small that did not mean Mr R's pension benefits have been lost, or that there was an issue with the Scheme contracting out in 1978.
- Mr R was given a number of opportunities to put his pension into payment to allow him to offset the CODs being deducted from his SERPS pension.
- The offer of £1,000 in recognition of the distress and inconvenience Mr R suffered as a result of the maladministration was reasonable.

34. Mr R did not accept the Adjudicator's opinion and the complaint was passed to me to consider. Mr R said:-

- He wanted to know where his pension from the Scheme was, based on 1/80th of his salary.
- He had "paid" for his GMP "four times". He had paid from his pension, his SERPs pension, the COD and his contracted out contributions.
- The "wage slip" provided by HMRC showed he had paid the contributions more than once.
- He had not been paid his pension for four and half years and wanted decisions on the following points:
 - What had happened to his contracted out contributions, as this is where his GMP should have come from?
 - Whether his pension should have been paid from age 65?
 - Whether he was mis-sold his pension?
 - Should the University have been able to pass on the Scheme administration if it did not have a copy of the rules?
- The letter from the University dated 14 December 2015, confirmed his GMP came from paying contracted out contributions.
- The letter from HMRC of 10 April 2019, provided him with the "wage slip" and explained that contracted out contributions were usually paid into a pension plan. He wanted to know if the contracted out contributions passed to the DWP were put into his pension.

35. The Trustee confirmed that it would pay Mr R a pension of £159 a year of which £147 a year was GMP. The pension would be backdated to age 65.
36. I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Mr R completeness.

Ombudsman's decision

37. The main crux of Mr R's complaint is that he considers he should have received his pension, including the GMP, from age 65. He is unhappy that he is still not receiving his pension when his SERPS pension has been reduced by CODs since 2015.
38. The Trustee accepts that the Scheme administrator did not reply to Mr R's complaint. I find that this amounts to maladministration. The Trustee has acknowledged this and also that the complaint has become protracted, so, the Trustee has made an offer of £1,000 for the distress and inconvenience this matter will have caused Mr R.
39. Although, Mr R considers that he might have been mis-sold membership of the Scheme that is not the case. In 1978, Scheme membership was compulsory. Therefore, Mr R had no choice but to join the Scheme and, as a consequence, to be contracted out of SERPS.
40. I appreciate that Mr R is unhappy that he did not receive his pension from age 65 but the Scheme's current NRD is the 31 July following a member's 65th birthday. There was no obligation therefore for the Trustee to put Mr R's benefits into payment before 31 July 2016.
41. The Trustee has acknowledged that there were discrepancies in Mr R's withdrawal statements when he left the Scheme in 1978 and also that a copy of the Scheme rules from that time is not available. As a result, the Trustee has offered to backdate Mr R's pension and his GMP to his 65th birthday. Whilst copies of former Scheme rules would normally be part of a Scheme's historic records, taking into account what has occurred, I find the Trustee's offer is reasonable.
42. I do not consider that because a copy of the 1978 Scheme rules is unavailable that this should have stopped the administration changing to an external Scheme administrator. This was an administrative choice that the Trustee was entitled to make.
43. Mr R considers that he has 'lost' his pension from the Scheme as he is only entitled to the amount equivalent to the CODs being taken from his SERPS pension. As the Scheme was contracted out of SERPS the University and Mr R paid reduced contracted out National Insurance contributions. In exchange for contracting out, the University had to provide a pension at least equal to the pension that would have been paid had the member not contracted out. For a final salary pension like the Scheme, this was treated separately and known as the GMP. The Trustee has explained that Mr R's pension is made up of both GMP and non-GMP benefits and

that from age 65 his annual pension is £159 of which £147 is the GMP. I do not agree that Mr R can argue he has lost his benefits from the Scheme.

44. Mr R contends that he has paid for his GMP four times. I appreciate that what different parties have told Mr R will have confused him and that contracting out is a complex matter. In addition to the basic state pension, the State previously provided a second-tier top-up pension, based on how much you earned, the additional state pension. This was introduced in 1978 and was originally called the State Earnings Related Pension Scheme (SERPS). Employees were allowed to 'contract out' of this additional State pension and paid lower National Insurance contributions. In exchange they gave up part or all of their additional State pension and received extra pension, known as the GMP, from their occupational scheme or personal/stakeholder pension instead.
45. The CODs from Mr R's additional State pension are as a result of him being contracted out of SERPS. The £2.83 per week COD is equivalent to the annual GMP of £147 (52 x £2.83) and this is in line with the Scheme guaranteeing to pay him a pension at least as good as his SERPS pension (the GMP) because of the lower National Insurance contributions paid.
46. Mr R also correctly paid pension contributions to the Scheme and, as a result, he is entitled to an annual pension of £159 which includes the GMP of £147. He will receive the Scheme pension if he completes the paperwork to allow the Trustee to put his pension into payment. Mr R should contact the Trustee directly about this.
47. The Trustee has offered Mr R £1,000 in recognition of the distress and inconvenience he has experienced. I find this is reasonable considering that Mr R's complaint was not dealt with in a timely manner. If Mr R wishes to accept the offer to backdate his pension to his 65th birthday and accept the £1,000 for non-financial loss, he should make direct contact with the Trustee.
48. I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman
30 June 2020