

Ombudsman's Determination

Applicant	Mr D
Scheme	British Steel Pension Scheme (the Old Scheme)
Respondent	Open Trustees Limited (the Trustee)

Outcome

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

Complaint summary

2. Mr D has complained that he has been incorrectly retained in the Old Scheme despite returning a completed 'Time to Choose' option form to transfer to the New British Steel Pension Scheme (**the New Scheme**). As a result, he has now been transferred to the Pension Protection Fund (**PPF**) and is receiving a lower level of pension.

Background information, including submissions from the parties

3. The complaint concerns the restructuring of Tata Steel (UK) Limited (**TSUK**) and its separation from the Old Scheme under a Regulated Apportionment Arrangement, with members of the Old Scheme offered the choice of transferring into the New Scheme or remaining within the Old Scheme, which was expected to enter the PPF. This choice was communicated to members during the 'Time to Choose' exercise.
4. Mr D says, that in October 2017, he received a Time to Choose option form which he completed and returned stating that he wished to transfer to the New Scheme.
5. On 22 November 2017, Mr D was sent a Time to Choose newsletter.
6. On 30 November and 12 December 2017, Mr D was sent a reminder letter and Time to Choose Option form.
7. On 19 January 2018, the Old Scheme sent Mr D a letter saying he would be moving to the PPF as it had not received an option form to transfer to the New Scheme.
8. On 31 January 2018, Mr D emailed Pension Enquiries and said that he had received a notification that he would be transferring to the PPF, but he had returned an option

form to say he wished to transfer to the New Scheme. He enclosed a copy of the option form that he had completed.

9. On 15 February 2018, Mr D phoned the helpline and sent a further copy of his completed option form. Mr D says he was told nothing could be done. On the same day Mr D raised a formal complaint.
10. Mr D completed both stages of the Old Scheme's Internal Dispute Resolution Procedure and the complaint was not upheld.
11. The Trustee says:-
 - To switch to the New Scheme, members of the Old Scheme were required to make a positive election by completing, signing and returning a Time to Choose option form. No other form of response was acceptable for this purpose as the election needed to be legally binding.
 - Members were initially asked to provide their response by 11 December 2017, although this deadline was later extended to 22 December 2017. Members who did not respond to the Time to Choose exercise by 22 December 2017 remained in the Old Scheme by default.
 - The Time to Choose exercise was undertaken on behalf of the Old Scheme by a professional service company, 'Real Digital'. Although Mr D has provided a signed option form which he says he submitted in October 2017, Real Digital has no record of any signed option form being received within the required timescales.
 - To cater for the possibility of option forms being lost in the post, members forgetting to return them altogether or other problems arising from the return process, Real Digital issued reminder letters to Mr D on 30 November and 12 December 2017. Real Digital has no record of Mr D responding to these reminder letters.
 - When a pension scheme enters the PPF assessment period, as a matter of law, the trustees of that scheme are no longer permitted to allow members to transfer to another pension scheme (that is to the New Scheme) (section 135(4)(a) of the Pensions Act 2004).
 - Nonetheless, where an error has occurred in relation to a member during the Time to Choose exercise, the New Scheme may be prepared to accept that member being switched into it from the Old Scheme. Otherwise this is not possible.
 - The Newsletter, issued to all members in November 2017, confirmed that members would receive confirmation that the completed Time to Choose option form had been received and said:-

"We'll write to you to confirm we've received your option form. If we received your completed option form by 6 November, you should get a confirmation letter from us by 13 November. If we receive it after 6

November, you should get a confirmation letter in no more than 10 working days.”

- Various other member communication channels (including the Scheme microsite, the postcards which were included with the reminder option forms and the Time to Choose helpline) also confirmed that confirmation letters would be sent to members upon receipt of a duly completed option form.
 - It was made sufficiently clear throughout the Time to Choose exercise that a confirmation letter would be sent to the member on receipt of a duly completed option form. The Trustee does not consider that any administrative errors were made by the former trustee, British Steel Pension Fund Trustee Limited (**BSPFTL**) or Real Digital. Instead they took reasonable steps to assist Mr D and all members in the Time to Choose exercise. In summary, by:
 - issuing clear instructions on the process from the start and during all associated member roadshows and newsletters about the Time to Choose exercise;
 - sending Mr D a Time to Choose information pack and reminders on 30 November and 12 December 2017 when no correct form had been received;
 - running and operating a dedicated Time to Choose website throughout the Time to Choose exercise which provided members with an overview of the process, contact information and a detailed question and answer section (based on questions received from members); and
 - operating two free and impartial member helplines in respect of the Time to Choose process where members could speak to experts about the options available to them.
12. Following the completion of the Time to Choose exercise, BSPFTL became the trustee of the New Scheme and Open Trustees Limited were appointed the trustee of the Old Scheme.
13. Mr D says that after returning the option form he received no further letters regarding the Time to Choose exercise. He did not receive the reminder letters, issued on 30 November and 12 December 2017, or the newsletter issued on 22 November 2017. He was not aware that a confirmation letter would be sent.

Adjudicator’s Opinion

14. Mr D’s 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.
15. Mr D’s complaint is concerned with the Time to Choose exercise conducted by BSPFTL in relation to the restructuring of the then British Steel Pension Scheme. The

restructuring of TSUK was reported extensively in the media and the Time to Choose exercise also attracted interest.

16. Members of the Old Scheme were given the option of transferring to a New Scheme or remaining in the Old Scheme which would transition to the PPF. Members were issued with Time to Choose option packs in September/early October and given some time to make their decision.
17. There is no dispute that Mr D received the Time to Choose option pack and he says he returned an option form in October 2017. But Real Digital have no record of this option form being received. A Time to Choose newsletter was also issued to Mr D in November 2017, as well as reminder letters on 30 November and 12 December 2017. Mr D says he did not receive these.
18. The newsletter issued in November 2017 included a message that if the option form was received after 6 November 2017 members should receive a confirmation letter in no more than 10 working days. If members did not receive a confirmation letter, then they should contact the helpline.
19. Mr D says he did not receive the newsletter and was unaware that a confirmation letter would be sent once a completed Time to Choose option form had been received.
20. In the Adjudicator's view there are two areas of conflict in the complaint. The Trustee says that reminder letters were issued on 30 November and 12 December 2017 which, if received, would have alerted Mr D to the fact that his option form had not been received. Mr D says he did not receive any further notifications after he returned the option form in October 2017. Similarly, Real Digital have no record of the October 2017 option form being received.
21. There is a general expectation that once a letter is put in the post it will arrive at its destination. In this instance four separate notifications (the reminder letters and the newsletter from the Old Scheme) as well as Mr D's option form appear to have gone astray, which is unusual. The Adjudicator checked the addresses for the communications sent to Mr D and all were addressed correctly. On the balance of probabilities, the Adjudicator expected one or more of the notifications to arrive at its destination.
22. The Adjudicator was aware of the Trustee's view that the New Scheme will only accept a transfer from the Old Scheme where it can be shown that an error has occurred in relation to a member during the Time to Choose exercise.
23. The Adjudicator having considered the above sequence of events was of the opinion that BSPFTL took all reasonable steps to alert Mr D to the importance of getting confirmation of the receipt of the option form. If the option form was not received by BSPFTL or Real Digital, then this is possibly due to the postal system and not the fault of BSPFTL or Real Digital. So, the non-receipt of the option form cannot be

classed as an administrative error and provide a reason to now allow Mr D to transfer to the New Scheme.

24. While the Adjudicator sympathised with the position that Mr D finds himself in, it was his opinion that the complaint should not be upheld.
25. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr D.

Mr D says that he understands that the Trustee has provided copies of the reminder letters and newsletter which it says were sent, but he never received these. He returned all the documents he received in a timely manner. It looks as though the problem of non-delivery is a one-sided view, so he formally requests that this problem is reviewed by me.

Ombudsman's decision

26. Mr D has asked that I review the issue of the non-delivery of communications from the Old Scheme.
27. The Adjudicator has considered the complaint from the perspective of whether the Old Scheme took reasonable steps to inform members of the need to return the option form, and to obtain confirmation that this had been received. As outlined in paragraph 17 above, the Old Scheme took a number of steps to inform members of the process including member roadshows, a dedicated Time to Choose website and member helplines.
28. I also find that the steps taken by the Old Scheme to inform members of the process were reasonable. Mr D had every opportunity to inform himself of the process and the need to ensure that he received confirmation that his option form had been received. Mr D says that he returned the option form in a timely manner but for whatever reason it was not received by Real Digital. Similarly, it would appear that the further communications sent by the Old Scheme (the reminder letters and the newsletter) were not received by Mr D.
29. The Trustee has pointed out that the New Scheme will only accept a transfer from the Old Scheme where it can be shown that an error has occurred in relation to a member during the Time to Choose exercise. I do not find that the non-delivery of the further communications sent to Mr D is the fault of the Old Scheme or that an administrative error has occurred, and provides a reason to now allow a transfer to the New Scheme.

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30. While I sympathise with the position that Mr D finds himself in, I do not uphold his complaint.

Anthony Arter

Pensions Ombudsman
2 December 2020