

Ombudsman's Determination

Applicant	Mr Y
Scheme	Royal Mail Statutory Pension Scheme (RMSPS)
Respondent	Royal Mail Statutory Pension Scheme Management Team (RMSPS MT)

Complaint Summary

Mr Y complains that RMSPS MT is improperly refusing to pay a full deferred pension to him on retirement from the RMSPS. He says that RMSPS MT is only prepared to pay him the Guaranteed Minimum Pension (**GMP**) which he accrued in the RMSPS from March 1979 to April 1986 as notified by HMRC National Insurance Contributions Office (**NICO**) during a GMP reconciliation exercise.

Summary of the Ombudsman's Determination and reasons

The complaint should be upheld against RMSPS MT because NICO's records indicate that Mr Y retained GMP liabilities in the RMSPS have not been transferred to another pension arrangement. In the absence of any justified reason why Mr Y would have lost his entitlement to a deferred pension, I conclude, on the balance of probabilities, that Mr Y is entitled to a full deferred pension and not just the GMP from the RMSPS.

Detailed Determination

Material facts

1. The Royal Mail Group Pension Service Centre (**PSC**) is responsible for administering the RMSPS.
2. Mr Y was employed by the Royal Mail Group (**RMG**) between 1979 and 1986. He was convicted twice in court for charges brought against him by RMG. Mr Y had to pay a fine for the criminal damage which he caused to RMG property in 1985 and he received an imprisonment sentence of one year suspended for two, for theft in 1986.
3. Mr Y contacted PSC in April 2017 on several occasions to enquire about the benefits available to him from the RMSPS. When PSC told him that it could not find any details of his benefits, he informed it that (a) he had worked for the RMG for around seven years over 30 years ago and (b) there had been a court case brought against him by RMG which resulted in him having a criminal record. He therefore could not understand why PSC did not have any details of his membership in the RMSPS.
4. In April 2017, PSC found whilst undertaking a GMP reconciliation exercise that, according to NICO, Mr Y had been contracted out of the State Earnings Related Pension Scheme (**SERPS**) whilst a member of the RMSPS between 23 March 1979 and 12 April 1986 and was entitled to a GMP of £6.29 per week from age 65.
5. PSC subsequently created a pension record for Mr Y in May 2017 showing that he was entitled to a GMP from the RMSPS and informed him accordingly. When Mr Y notified PSC that he did not agree with its decision that he was only entitled to a GMP, PSC replied that it would try to obtain his employment records from RMG.
6. RMG informed PSC on 2 June 2017 that it no longer held any employment details for Mr Y because it only retained such records for six years after an employee had left service before destroying them.
7. PSC notified Mr Y of what RMG had said and asked him if he could produce any documentary evidence providing details of his RMG employment and/or RMSPS benefit entitlement. It also informed him that if he could not supply such details, its decision that he was only entitled to GMP benefits in the RMSPS would stand.
8. Mr Y was dissatisfied with this decision and appealed it under the RMSPS Internal Dispute Resolution Procedure (**IDRP**).
9. At Stage One of the IDRP, PSC did not uphold Mr Y's complaint. In its letter dated 5 October 2017, PSC informed him that:
 - there was no maladministration on its part because the available evidence showed that he was only entitled to a GMP payable at age 65 from the RMSPS; and

- it was prepared to offer him £50 compensation as a gesture of goodwill in recognition of the misleading and incorrect information provided during its investigation of his complaint.
10. At Stage Two of the IDRP, RMSPS MT rejected Mr Y's complaint but offered him an improved goodwill compensation payment of £100 which Mr Y declined. In its letter dated 25 April 2018 to Mr Y, RMSPS MT concluded that:
- when Mr Y left RMG, its Human Resources (**HR**) department should have been notified of the termination of his employment and, in turn, HR should have informed PSC accordingly;
 - PSC would then have the necessary information to calculate any pension entitlement available to Mr Y from the RMSPS;
 - there were several possible reasons why this did not happen but the most likely one was that RMG had failed to notify PSC via HR of Mr Y's membership in the RMSPS;
 - the evidence supplied by NICO showing that Mr Y had been contracted out of SERPS during his period of employment with RMG did not provide "any indication to his pension scheme status" in the RMSPS;
 - where discrepancies between the GMP records held by PSC and NICO were found during the reconciliation exercise, NICO's records were accepted as correct;
 - PSC therefore created a GMP only record for Mr Y in the RMSPS;
 - without any information of Mr Y's pay and service from RMG, PSC could not calculate his benefit entitlement in the RMSPS and therefore had no "authority to provide a pension for Mr Y other than his GMP only pension";
 - there were probably "legitimate reasons" as to why Mr Y did not qualify for full deferred benefits in the RMSPS for which he was now unaware; and
 - it would be prepared to review its decision if Mr Y could supply "evidence to the contrary" such as letters showing his benefit entitlement in the RMSPS received from RMG or PSC

Summary of Mr Y's position

11. At the time of his RMG employment, it was mandatory for all employees to join the RMSPS once they attained 18 years of age.
12. It is incumbent upon PSC and RMG to maintain accurate and up to date records of his employment and membership in the RMSPS.
13. Following his dismissal by RMG in 1986, his manual employment records including details of his pension benefits were presented as evidence by RMG during a Court

hearing. He contends that as the outcome of this hearing was not the one which RMG was hoping for, it had then improperly destroyed his employment records.

14. NICO's records indicate that he had been contracted out of SERPS whilst a member of the RMSPS and is entitled to a GMP from it on reaching age 65. This evidence, in his view, proves that he is a deferred pensioner of the RMSPS who should be entitled a full pension on retirement.
15. Salaries for postmen in 1978 were in the region of £1,000 pa. For his eight years of pensionable service in the RMSPS, he has estimated that his deferred pension in the RMSPS at his date of leaving was around £133 pa ($1,000 \times 8/60 = 133$) and this would be subject to revaluation during deferment up to age 65.

Summary of the position of RMSPS MT

16. PSC kept accurate membership records which originally did not show that Mr Y was entitled to any benefits in the RMSPS. Moreover, prior to finding out from NICO's records that Mr Y had accrued GMP benefits in the RMSPS, it had carried out an extensive search for Mr Y's deferred pension benefits and found no trace of any.
17. The fact that NICO's records show that Mr Y was entitled to a GMP does not necessarily mean that he should be awarded a full deferred pension in the RMSPS.
18. The Trust Deed and Rules of the RMSPS (**the RMSPS Rules**) permit RMG to reduce Mr Y's pension in excess of his GMP to recoup any monetary loss it has suffered as a result of his criminal activities, if appropriate. The relevant paragraphs from the RMSPS Rules have been reproduced in the Appendix below.
19. According to a "PNC report" which it has obtained from the courts, Mr Y was convicted twice for charges brought against him by RMG. The report showed that Mr Y had to pay a fine for the criminal damage which he caused to RMG property in 1985 and he received an imprisonment sentence of one year suspended for two, for "dishonesty offences" in 1986. It did not, however, show details of any orders made by the courts or an amount for any monetary loss which RMG incurred due to Mr Y's crimes.
20. The onus is on Mr Y to produce evidence of his benefit entitlement in the RMSPS. He has, however, been unable to supply copies of any documents which he should have received such as a deferred benefit statement on leaving RMG and the annual benefit updates sent to all RMSPS deferred members.
21. It is therefore reasonable to conclude that Mr Y has forfeited his pension entitlement in excess of the GMP in the RMSPS and the GMP only record set up for him by PSC shows his correct entitlement in the RMSPS.

Conclusions

22. There is no dispute that Mr Y was dismissed from RMG whilst in its employment. Nor is there any dispute that there were subsequent court hearings which resulted in Mr Y

being fined and receiving a suspended prison sentence. The dispute that arises is whether Mr Y is entitled to benefits in excess of his GMP from the RMSPS.

23. I concur with RMSPS MT that in accordance the RMSPS Rules, RMG could recover any financial losses arising out of Mr Y's criminal activities. However, in order to do so, RMG had to notify the Secretary of State of the monetary amount due from Mr Y. The Secretary of State would then be responsible for reducing the pension benefits payable to Mr Y in excess of the GMP from the RMSPS after taking advice from an actuary. The RMSPS Rules also clearly stipulate that before making any such reduction, Mr Y should have been given a certificate showing the amount of the reduction and the effect of it on his pension benefits in the RMSPS.
24. RMSPS MT has not, however, been able to obtain a copy of this certificate to corroborate its stance that RMG recovered any financial loss caused by Mr Y from his pension in excess of his GMP in the RMSPS.
25. It is not possible to determine solely from the "PNC report" if RMG was seeking to reclaim a monetary amount from Mr Y which warranted the reduction of his excess over GMP pension from the RMSPS to zero during his lifetime.
26. This information would have been shown on the certificate, which I have not been provided with. I therefore do not agree with the reasoning behind RMSPS MT's view that Mr Y is only entitled to a GMP from the RMSPS.
27. RMSPS MT says that RMG and PSC no longer retain employment and pension records for Mr Y in order to comply with the Data Protection Act, one of the principles of which is not to keep personal data longer than necessary.
28. I can only form my opinion on Mr Y's complaint based upon the evidence available. NICO's records indicate that Mr Y retained GMP liabilities in the RMSPS which have not been transferred to another pension arrangement. The fact that the GMP record was missing indicates that the records are not necessarily complete. PSC have not put forward any evidence which explains why the whole value in excess of GMP would have been reduced to zero yet leaving a liability for the GMP which itself was not recorded. In the absence of any justified reason why Mr Y would have lost his entitlement to a deferred pension, this leads me to conclude, on the balance of probabilities, that Mr Y is entitled to a deferred pension and not just the GMP from the RMSPS.
29. The evidence is clear that Mr Y has suffered significant distress and inconvenience dealing with this matter. I note that RMSPS offered Mr Y an improved award for £100 at Stage Two IDRPs in recognition of this. In my view, this amount is much lower than what I would award given Mr Y's circumstances and I consider an award of £500 to be justifiable.
30. I therefore uphold Mr Y's complaint against RMSPS and make the appropriate directions below.

Directions

31. RMSPS MT should, within 28 days of the date of this determination, calculate the revalued deferred pension available to Mr Y at age 65 based on
 - a) his pensionable service between 23 March 1979 and 12 April 1986; and
 - b) his estimated final pensionable salary which can be deduced from Mr Y's contracted out National Insurance contributions history up to the tax year ended 1987 available from NICO which was used to calculate his GMP in the RMSPS.
32. Within this timescale, RMSPS should also provide Mr Y with full details of its calculations and arrange to pay Mr Y £500 in recognition of the significant distress and inconvenience which he has suffered dealing with his matter.

Karen Johnston

Deputy Pensions Ombudsman
13 January 2020

APPENDIX

Relevant RMSPS Rules

Set off for crime, fraud or negligence

16.(1) Subject to sub-paragraph (10) below, this Clause applies where, at any time (whether before, on or after the Cut-Off Date)—

(a) a Section A Active or Section B Active is dismissed by an Employer for misconduct or resigns in order to avoid such a dismissal and he or she has incurred a monetary obligation to his or her Employer arising out of his or her criminal, negligent or fraudulent act or omission;

(b) a Section A Active, Section B Active, Former RMPP Section A Member or Former RMPP Section B Member has caused a monetary loss or incurred a monetary obligation to the RMPP as a result of his or her criminal, negligent or fraudulent act or omission;

(c) a Section A Active, Section B Active, Former RMPP Section A Member or Former RMPP Section B Member has caused a monetary loss or incurred a monetary obligation to the RMSPS as a result of his or her criminal, negligent or fraudulent act or omission; or

(d) a Section C Active or Former RMPP Section C Member owes money to his or her Employer arising from a criminal, fraudulent or negligent act or omission.

(2) Where this Clause applies to a person—

(a) under Paragraphs (1)(a) and (d) above and the Employer notifies the Secretary of State of the amount determined by them of the monetary obligation due to that Employer; or

(b) under Paragraph (1)(b) above and the RMPP Trustees notify the Secretary of State of the amount determined by them of the monetary obligation due to the RMPP, the Secretary of State will reduce the benefits payable to or in respect of that person (including amounts payable by reference to contributions paid by him or her to the RMPP) subject to the following sub-paragraphs of this Clause.

(3) Where this Clause applies to a person under Paragraph (1)(c) above, the Secretary of State may reduce the benefits payable to or in respect of that person (including amounts payable by reference to contributions paid by him or her to the RMPP) subject to the following sub-paragraphs of this Clause.

(4) The amount of the reduction shall not exceed the amount of the monetary obligation due to the Employer or to the RMPP or to the RMSPS (as the case may be) or (if less) the value of the said benefits at the time of the reduction as determined by the Secretary of State on the advice of the Actuary.

(5) No reduction may be made to—

(a) the person's GMP;

(b) in the case of monetary obligation due to the Employer from a Section A Active, Section B Active, Former RMPP Section A Member or Former RMPP Section B Member, to benefits payable or contributions refundable in respect of any service with another employer that has been a participating employer under the RMPP (not being an Employer) for which, before the Cut-Off Date, the RMPP Trustees have granted back service credits or other benefits attributable to such service...

(6) Before making any such reduction the person in question shall be given a certificate showing the amount of the reduction and the effect of it on that person's benefits.

17. Ambiguity, doubt or dispute;

In addition to any specific power in these Rules concerning ambiguity, doubt or dispute, the Secretary of State shall have full power to determine any matters of ambiguity, doubt or dispute concerning the interpretation of the Rules and their application to the benefits and entitlements of any Member or any beneficiary under the RMSPS.