

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

Applicant	Mrs Oona Perrett
Scheme	Royal Bank of Scotland Group Pension Fund (the Scheme)
Respondent(s)	RBS Pension Trustee Limited (the Trustees) Royal Bank of Scotland (RBS)

Subject

Mrs Perrett has complained that as a result of RBS Group Pension Services (**GPS**), the scheme administrator acting on behalf of the Trustees, providing inaccurate and misleading information she opted out of the Scheme thereby losing the option to elect Voluntary Early Retirement (**VER**) to her financial detriment.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should be upheld against RBS and the Trustees because they failed in their duty of care to Mrs Perrett in not providing her with clear and readily accessible information to enable her to make an informed decision about whether or not to opt out of the Scheme.

DETAILED DETERMINATION

Material Facts

1. The RBS Redundancy and Early Retirement terms and conditions and the Scheme rules allow for the option of an enhanced pension to be paid to certain employees who elect VER.
2. An employee aged 50 to 54 who joined the Scheme before 3 June 2003 will be eligible for VER and will be offered an immediate undiscounted pension.
3. Mrs Perrett's date of birth is 29 August 1961. She worked for RBS from January 1978 to December 2012 and was a member of the Scheme until 31 May 2011 when she opted out.
4. In September 2010 she had been informed by RBS that her place of employment was under review and might be closed.
5. Mrs Perrett says that in March 2011 she telephoned GPS as she was considering opting out of the Scheme. This followed a conversation with her line manager in which it had been suggested that opting out may be beneficial as it would increase her take home pay.
6. There is no documented record of this conversation, but there followed an email dated 15 March 2011 from GPS to Mrs Perrett. The email said:

"Thank you for your enquiry, the best way for you to get the information you need is to go into:

The Learning Modules for the Group Fund and the RBS Retirement Savings Plan (RSP) which are both on A2L.

It would take about 15 minutes to go through each module, and they would give you all you have asked for plus more so that you can be sure you have thought of everything before making choices".

7. The Learning Modules referred to consisted of 19 pages. On Page 13 under the heading "What happens if I opt out" it said:

"If you opt out, you would:

- Stop building up pensionable service in the Fund.
- No longer receive any increases to your pensionable salary as your salary rises.
- No longer receive free death and disability cover – these would be automatically charged through RBSelect.
- Automatically join the Retirement Savings Plan (RSP).

- Receive 15% pension funding to contribute to the RSP – you would decide how much of this funding you contribute.”
8. On Page 15 under the heading “Taking voluntary redundancy” it said:

“If you are over age 55, and you accept voluntary redundancy, you may be able to take your pension before age 60 without it being reduced for early payment.”
 9. On Page 18 it said:

“The information given is correct for the vast majority of the Fund’s members. Some people may have slightly different benefits, such as a different NPA or redundancy terms. If these apply to you, you will have been told separately.”
 10. On 24 March 2011 GPS wrote to Mrs Perrett. In the letter they said that they understood that Mrs Perrett had elected to opt out of the Scheme. The opening paragraph of the letter said:

“We have been advised that you have elected to opt out of the Group Fund through RBSelect. This is an important decision which you should consider carefully taking into account all the information made available to you. If you are unsure about your decision, you may wish to take independent financial advice.”
 11. Attached to the letter was a Member Opt Out Declaration. The letter advised Mrs Perrett that in order to process her election to opt out she should complete and return the form but only after she had carefully read through and accepted what the changes meant for her and her dependants.
 12. The letter included a section headed “Impact of opting out of the Group Fund” under which were set out five points none of which referred to the situation where the individual to be made redundant.
 13. The Member Opt Out Declaration itself included the following wording:

“I understand that my entitlement to benefits under the Group Fund will be based upon my revised status as a deferred member and, in particular, I will no longer be eligible for the following:-

...(iv) Special early retirement terms if I retire at the request of the Group.”
 14. On 28 March 2011 Mrs Perrett signed and returned the Member Opt Out Declaration.

15. Mrs Perrett says that she found out by chance on 1 August 2011 that VER was an option before the age of 55 and having done so she wrote to GPS on 7 August 2011 to seek reinstatement to the Scheme.
16. GPS responded on 18 August 2011 to say that they had considered Mrs Perrett's query but were unable to reverse her decision to opt out of the Scheme. The letter said:

“I can confirm that when you opted out of the Group Fund, you signed an opt-out form confirming that you understood that you would not be eligible for any special early retirement terms if you subsequently retired at the request of the Group.”
17. On 5 September 2011 Mrs Perrett complained under the Internal Dispute Resolution Procedure (**IDRP**). She said that she had no reason to believe that anything would happen when she reached age 50 which would impact on her pension rights and benefits. She also said that she had only reached the decision to opt out after speaking to GPS, her line manager and a RBS Financial Planning Manager.
18. RBS rejected her complaint in a letter dated 18 October 2011. They pointed out that Mrs Perrett had signed the Member Opt Out Declaration and that in accordance with the Scheme rules she has ceased to be an active member. They said that significant efforts had been made to provide her with the relevant information and to advise her of the importance of her decision. However, they said that it was her responsibility to fully understand the impact of her actions before making important decisions. They added that they could not comment on the information provided by GPS before she opted out but that there was a wide range of information available on 'Insite' (the RBS intranet website) to help members understand the impact of opting out of the Scheme.
19. On 25 February 2012 Mrs Perrett appealed to the Trustees under Stage 2 of the IDRP. She said that the basis of her appeal was that GPS had not provided all the relevant information she needed to make an informed decision and that the information they had provided was misleading inaccurate and incomplete. As a result she had made a huge mistake and potentially suffered enormous and life-changing consequences.
20. She said that she would not have opted out of the Scheme had she been aware of the possibility of taking VER and that GPS had failed to advise her that this

option was available despite a conversation during which she had advised them of her situation. She asked why she would have taken the decision to opt out of the Scheme just three months before her 50th birthday knowing that her department was earmarked for closure.

21. The Trustees responded on 2 April 2012. They dismissed her complaint repeating the points that RBS had made in their letter of 18 October 2011.
22. On 17 January 2013 RBS wrote to Mrs Perrett following a meeting which had taken place on 17 December 2012 convened in accordance with their 'Resolving Issues at Work' policy.
23. Much of this letter repeats points previously made during the IDRP. They said also that they had obtained copies of the RBS Group Pension Fund's newsletters for 2009 and 2010 which referred to the fact that legislation had increased the minimum age at which pension benefits could be claimed to 55 from April 2010. However, the 2010 newsletter had noted that there were some exceptions including "...in most cases retirement from the group as a result of redundancy over age 50".
24. The letter also said that at the time of the announcement of possible redundancies in September 2010 a Business Services webpage was launched entitled "Supporting you through change" to assist staff with questions that they might have had regarding their own situation when faced with possible redundancy. This had included clear information that detailed the option to take VER from age 50.
25. Mrs Perrett asked the Pensions Advisory Service (**TPAS**) to intervene on her behalf. However, as they were unable to obtain a satisfactory outcome she referred her complaint to this office.
26. RBS and the Trustees have provided a joint formal response to the complaint.
27. They accept that GPS's handling of Mrs Perrett's enquiries was not satisfactory. But they say that whilst they agree that the information made available to her was inadequate and incomplete, they argue that Mrs Perrett had not been provided with misleading or incorrect information.
28. They say that she had been correctly advised by GPS that the earliest date on which she could choose to take her pension from the Scheme would have been

her 55th birthday. They have added that as she was a member of the Scheme immediately prior to 6 April 2006 ('A Day') she was entitled to benefit from transitional provisions which protected her right to take voluntary redundancy from the age of 50 without actuarial reduction in accordance with the rules of the Scheme set out in 2003. But they say that GPS cannot provide a member with financial advice affecting his or her pension and point out that Mrs Perrett was advised to seek financial advice in the letter from GPS dated 24 March 2011 as well as referred to the relevant Learning Modules.

29. They also say that it is not the responsibility of the Trustees, or GPS to provide financial or other advice to Mrs Perrett. In support of this argument they cite the case of Nottingham University v Eyett [1999]. They say that she could have sought a copy of the relevant rules of the Scheme or if she had sought financial advice that it was highly likely that the adviser would have been able to ascertain the position.
30. They add that 'Insite' provided a detailed explanation of the implications of redundancy and early retirement which was clear in explaining the position of a member aged between 50 and 54 who benefits from the transitional provisions.
31. They say that Mrs Perrett was put on notice that special early retirement terms may apply to her and that she should have made enquiries as to what these terms were and whether they applied to her. They point out that Mrs Perrett was advised in September 2010 that her job was under review and that this should have convinced her to review her options in the light of a possible redundancy.
32. They refer to the wording on Page 18 of the Learning Modules quoted in 9 above but add that in practice Mrs Perrett had opted out of the Scheme before her redundancy had been confirmed and that she was not advised of the special terms. They add that the Opt-Out form signed by Mrs Perrett noted that she would no longer be entitled to "Special early retirement terms" if she retired at the request of the Group. In answer to Mrs Perrett's argument that she did not understand that this included redundancy they point out that she had not thought to enquire further. Furthermore they say that the letter sent with the Opt-Out form made it clear that opting out was an important decision and that Mrs Perrett should seek advice. They argue that Mrs Perrett should have sought

clarification as to the meaning of the term “special early retirement at the request of the employer” and that had she made enquiries she would have been made aware that this term included employees who were made redundant.

33. They state that Mrs Perrett should have been aware that ‘Insite’ contained pension information. They say that it is a general source of information about the RBS Group including employment terms, HR policies and pension rights.
34. They say that they believe that the prime driver for Mrs Perrett’s decision to opt-out was financial. They point to an email from Mrs Perrett to TPAS in which she noted that she opted out as she was facing an uncertain financial future and thought she would be better off if she opted out. They say that they believe that this decision was influenced primarily by the fact that she would receive an increase to her salary as she would have received up to 15% pension funding added to her monthly salary.
35. They say that they are unable to comment on the conversation that Mrs Perrett had with her line manager or on the telephone call she made to GPS in March 2011; in particular whether or not she fully explained her position. They add that the position upon redundancy is well appreciated by employees working in GPS.
36. Finally they say that there is no evidence to suggest that Mrs Perrett received confirmation that she would be entitled to an immediate and undiscounted pension on redundancy following her decision to opt out. They add that had this been the case she would have been reinstated to the Scheme when she originally raised her complaint via the IDRP process.
37. Mrs Perrett says that she outlined her potential redundancy situation and age to GPS in March 2011 before she opted out but that they made no reference to VER or other pension considerations at that time.
38. Mrs Perrett says that the 2009 and 2010 newsletters were not received by her either at her home or former office address. She also says that she was unaware of the Business Services webpage “Supporting you through change” and that she had spoken to her line manager who was also unaware of this site.

Conclusions

39. There is no documented record of the conversation that Mrs Perrett had with her line manager but it appears from what she says that this was more of an informal discussion between work colleagues rather than a formal meeting as part of any redundancy programme.
40. I have no doubt that the prime driver for Mrs Perrett's consideration of opting-out was financial. Given that she was likely to be made redundant in the near future it is understandable that she would have weighed up the relative merits of earning a few months' additional pension that she thought would not come into payment for another ten years against an additional 15% of her salary in her monthly pay.
41. Having reached the decision that opting-out was something that she wished to consider she telephoned GPS in March 2011 to discuss this further. Again, there is no documented record of this conversation, but it is apparent from the wording of the email from GPS dated 15 March 2011 that during the conversation Mrs Perrett asked what the implications of opting-out would be. They said "...the best way for you to get the information you need..." and directed her to the Learning Modules.
42. Given that she asked for this information I find it difficult to believe that she would not have explained her circumstances and why she was considering opting-out at all after so many years of membership. Mrs Perrett says that this is what she did and in the absence of any evidence to the contrary I am inclined to believe her version of events.
43. RBS and the Trustees argue that this suggests that she had some understanding of her situation and the importance of making further enquiries. And that, if so, it is not clear why she would then have failed to make further enquiries or sought financial advice on reading in the Learning Module that "some people may have slightly different benefits such as redundancy terms". However, that wording goes on to say "If these apply to you, you will have been told separately". As Mrs Perrett had not been told that different benefits applied to her there was no reason for her to think that she was subject to anything other than the standard terms.

44. RBS and the Trustees say that GPS cannot provide a member with financial advice. I do not disagree with this statement, but Mrs Perrett was not seeking financial advice; she was simply seeking guidance on where she could find out more about her options.
45. The email from GPS said that the Learning Modules would “...**give you all you have asked for plus more so that you can be sure you have thought of everything before making choices**”. This is an unambiguous statement that would have given Mrs Perrett confidence that the information contained in the Learning Modules was both comprehensive and accurate.
46. RBS and the Trustees say that whilst this statement was incorrect it did not create an entitlement to an undiscounted pension for the member following opt out. They argue that a reasonable person would understand that a Learning Module by its nature would provide relatively generic information and that it should not have been relied on as a basis for such an important decision. I disagree. It was not Mrs Perrett who decided that the Learning Module could be relied upon, but GPS in their statement. As I have said in 45 above, the words “give you all you have asked for plus more so that you can be sure you have thought of everything before making choices” would clearly lead any reasonable person to believe that they required no further information before making a decision.
47. Page 15 of the Learning Modules indicated that the early payment of pension on accepting voluntary redundancy could take place only after age 55. There is nothing in the Learning Modules to suggest otherwise.
48. Page 18 of the Learning Modules said that some people may have slightly different benefits such as redundancy terms, but added that if that applied Mrs Perrett would have been told separately. But Mrs Perrett was not told that her benefits were different, as RBS and the Trustees admit, and so she had no reason to believe that these terms did not apply to her.
49. RBS and the Trustees say that ‘Insite’ provided a detailed explanation of the implications of redundancy and early retirement, and they suggest should have been aware of this. They say that she had worked as a Special Complaints handler in one of the customer complaints departments and that she was a long standing employee. They add that they would have expected any reasonable

person in Mrs Perrett's position to have referred to the information available on 'Insite' as it was well known to employees for the information it provided about HR, pensions and employment and also that it was highly visible on all computer screen home pages. They say that it would be very surprising if Mrs Perrett did not refer to 'Insite' and that, had she done so, she would have seen the full explanation about pension implications upon redundancy.

50. I have no doubt that 'Insite' was an established source of wide-ranging information relating to RBS and its staff. But Mrs Perrett had been explicitly told by GPS that the Learning Modules would give her all that she had asked for plus more. So she had no reason to suppose that 'Insite' would provide anything that she had not already seen and taken into account in reaching her decision. Therefore, it is not surprising at all that she did not refer to it. As RBS and the Trustees point out, Mrs Perrett was a long standing employee who had worked as a Special Complaints handler for some time. It can perhaps therefore be assumed that she was a "reasonable person".
51. RBS and the Trustees argue that had Mrs Perrett sought financial advice as had been suggested that it was highly likely that the adviser would have been able to ascertain the position. But she had no reason to seek financial advice. As far as she was concerned, having read the Learning Modules, she was not able to receive her pension.
52. Furthermore, it is by no means certain that an adviser would have been any more successful in obtaining the correct information than Mrs Perrett herself unless he had detailed knowledge of the Scheme.
53. RBS and the Trustees argue that it is not their responsibility to provide financial or other advice to Mrs Perrett and they cite Nottingham University v Eyett in support of this argument. That case indeed related to the provision of advice, but that is not the issue here. Mrs Perrett was seeking information and RBS and the Trustees had a duty of care to ensure that she was provided with accurate information which enabled her to make an informed decision.
54. RBS and the Trustees may say that they did this because the information she required was made available on 'Insite'. But in my view it is not sufficient to simply make the information available without providing guidance to the member on where to find it. This was the issue considered in Scally v Southern Health and

Social Services Board [1992]. The Court found that it was "not merely reasonable, but necessary, in the circumstances postulated, to imply an obligation on the employer to take reasonable steps to bring the term of the contract in question to the employee's attention, so that he may be in a position to enjoy its benefit." In my view there was an obligation on RBS and the Trustees to take reasonable steps to bring all the consequences of opting-out to Mrs Perrett's attention and in not referring her to the relevant section of 'Insite' they failed to do so.

55. There was relevant information available in the 2010 Group Pension Fund newsletter and also on the Business Services website. However, Mrs Perrett recalled in 2013 that she did not receive either the 2009 or the 2010 newsletter and she had not been aware of the existence of the website.
56. I have no doubt that this statement is honestly given but it seems to me unlikely that a current employee and member of the Scheme would not have received the newsletters. Furthermore, I would have expected that a website which is aimed specifically at staff whose jobs are at risk would have been brought to the attention of Mrs Perrett and colleagues who were in this very situation.
57. However, this would have clearly been a very stressful and difficult time for Mrs Perrett and it is perhaps understandable that she would not recall all the information made available to her some years after the events in question.
58. So I have some sympathy with the argument that Mrs Perrett should have perhaps been more aware of the position with regards to her pension in the event of redundancy. Nonetheless I consider that the advice from GPS would have given her sufficient reason to believe that no other source of information needed to be consulted.
59. RBS and the Trustees also point to the wording of the Opt-Out form which referred to the member not being eligible for "Special early retirement terms if I retire at the request of the Group". They argue that any reasonable person would understand that the phrase would cover any enhanced pension benefits that are available prior to Normal Retirement Age. I disagree. This is not a wording that appears elsewhere and would not be immediately construed as relating to the position on redundancy. Therefore I do not consider it

unreasonable that Mrs Perrett failed to understand that this phrase was relevant to her situation.

60. They also argue that it was open to Mrs Perrett to query with GPS what this wording meant before signing the opt-out form and that in signing and submitting the form she confirmed that she had read and understood the declaration that she was giving. But given that her confirmation was based upon incomplete and inaccurate information provided by GPS it cannot be considered enforceable.
61. Therefore, Mrs Perrett should be returned to the position she would have been in had she not opted out of the Scheme.

Directions

62. I direct that RBS and the Trustees shall reinstate Mrs Perrett to active membership of the Scheme with effect from 31 May 2011.
63. Mrs Perrett is to be provided with an undiscounted pension based on her service to December 2012.
64. Mrs Perrett will need to pay any missing personal contributions for the period of reinstatement.
65. The pension shall be put into payment as soon as practicable and backdated to 1 January 2013. Simple interest, calculated in accordance with the rate declared from time to time by the reference banks, is to be paid on each instalment from the due date of each payment to the actual date of payment.
66. There may be some adjustment required to the redundancy payment taken by Mrs Perrett to take account of the fact that she will now be receiving an immediate pension with no reduction. I will leave RBS to agree with Mrs Perrett how this adjustment is made. I shall leave RBS and the Trustees to agree how the costs of the above shall be apportioned.

Jane Irvine
Deputy Pensions Ombudsman

18 November 2014