

Ombudsman's Determination

Applicant	Mr R
Scheme	British Steel Pension Scheme (the BSPS)
Respondents	B.S Pension Fund Trustee Limited (the Trustee): and Open Trustees Limited (Open Trustees)

Outcome

1. I do not uphold Mr R's complaint and no further action is required by Open Trustees.

Complaint summary

2. In connection with the restructuring of Tata Steel (UK) Limited, BSPS members were offered the choice of transferring into the new BSPS (**the New BSPS**) or remaining within the BSPS, which was likely to enter into the Pension Protection Fund (**the PPF**). This choice was communicated to members during the Time to Choose exercise.
3. Members were provided an option form where they could choose whether they wanted to remain within the BSPS or transfer into the New BSPS. Mr R selected to transfer into the New BSPS, however he did not sign the option form. Because the option form was incomplete, the Trustee did not accept Mr R's request and he remained within the BSPS.
4. Mr R has complained that he was not transferred into the New BSPS.

Background information, including submissions from the parties

5. The Trustee appointed Real Digital to assist with the Time to Choose exercise.
6. On 2 October 2017, Real Digital wrote to Mr R and explained the options available to members through the Time to Choose exercise. As well as background information, the letter enclosed an option form. The option form offered the choice of remaining within the current BSPS or transferring into the New BSPS. The deadline for response was 11 December 2017. The documentation explained that if a completed option form was not received prior to the deadline, the member would remain in the BSPS and move into the PPF.

7. On 22 November 2017, the Trustee sent Mr R a newsletter which included information about the Time to Choose exercise (**the Newsletter**). It reiterated the deadline and said that if an option form was not received by then, the member would automatically move with the BSPS into the PPF. It also said that members would be given confirmation of safe receipt of their option form within 14 days of receipt.
8. On 30 November 2017, Real Digital sent Mr R a reminder option form. It confirmed that the deadline had been extended to 22 December 2017. A further reminder was sent on 12 December 2017.
9. On 19 December 2017, Mr R's Time to Choose option form was received. It is clear that Mr R ticked the box to confirm that he wanted to switch to the New BSPS. However, the form was not signed.
10. On 21 December 2017, the Trustee wrote to Mr R. It said that it had received his option form, but it could not tell whether he wanted to move into the New BSPS or not. It enclosed a fresh option form and said:

“Please take the time to make your choice again and complete the form carefully. Don't forget to tick one of the boxes at the top, sign the form at the bottom and send it back to us.”
11. On 23 January 2018, the Trustee wrote to Mr R and explained that, as it had not received a completed option form, he would be moving with the BSPS into the PPF. It said that it was now too late for him to transfer into the New BSPS.
12. On 29 March 2018, the Trustee was replaced by Open Trustees. Open Trustees has been joined to this complaint as the current trustee of the OBSPS.
13. In April 2018, following the BSPS' move into the PPF, Mr R received his first payment of reduced benefits. He immediately questioned this and, subsequently, raised a complaint. He argued that he should have been transferred into the New BSPS in accordance with his selection on the option form.
14. On 29 August 2018, Open Trustees provided a response under stage one of the Internal Disputes Resolution Procedure (**IDRP**). It said:-
 - While Mr R completed and returned an option form by 19 December 2017, which indicated a desire to switch to the New BSPS, he had not signed the form.
 - Members were required to provide their formal (and legally binding) agreement before they could be legitimately switched from the BSPS to the New BSPS. Therefore, option forms needed to be signed to allow the Trustee to switch members into the New BSPS.
 - The requirement for a signature was outlined on multiple occasions during the Time to Choose exercise, including during the reminder letter issued on 21 December 2017.

- BSPS entered the PPF assessment period on 29 March 2018, so Open Trustees were not permitted to transfer Mr Foster's benefits to the New BSPS.
 - There had been no administrative error, so the complaint could not be upheld.
15. On 25 October 2018, Open Trustees provided its stage two IDR response. It said:-
- The Trustee wrote to Mr R and confirmed that it had not received a complete option form. It provided a replacement form and highlighted the need for care when completing it. It said, "don't forget to tick one of the boxes at the top, sign the form at the bottom and send it back to us."
 - In addition, the Newsletter explained that members would receive confirmation once it received their selection. The Trustee did not send a confirmation to Mr R, so he should not have assumed that his selection had been received.
16. On 5 March 2019, Mr R brought his complaint to this office. He said that he wanted to join the New BSPS and that he could not afford to live on the reduced benefits.
17. On 21 June 2019, Open Trustees provided further comments, it said:-
- It made it sufficiently clear to all members that they were required to complete, sign, and return an option form before the Time to Choose deadline if they wished to switch to the New BSPS.
 - It wrote to Mr R to explain that the Time to Choose option form had been incorrectly completed and provided a replacement.
 - It had made it clear that a signature would be required alongside the Time to Choose selection. Furthermore, it wrote to Mr R to confirm that it could not accept the previous option form, and that it would require a further one. Therefore, no administrative errors occurred.
18. On 10 July 2019, Mr R provided some further comments, he said:-
- As soon as he was aware that he had moved into the PPF, he contacted the BSPS administrator and asked to be moved into the New BSPS. The Trustee has been unwilling to move him into the New BSPS, which he said was an unfair way to treat someone who has been a member for 40 years.
 - The Trustee was overemphasising the timeline of events. He said he was not ignoring any of the Time to Choose correspondence, but he did want to take the maximum time allowed to make an informed choice.
 - Although, he did not receive it at the time, he said that the Trustee's letter of 21 December 2017 showed that members were being treated as "numbers" not individuals. The letter said that his choice was not clear, so the Trustee required a further option form. He said that this was incorrect, his choice was clear but he

had not included a signature. He argued that the Trustee should have provided personalised letters.

- His option form was sufficiently clear to show that he wanted to join the New BSPS. The Trustee should have contacted him to clarify his choice prior to 31 March 2018, the date that the BSPS moved into the PPF.

Adjudicator's Opinion

19. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by Open Trustees. The Adjudicator's findings are summarised briefly below:-

- The Adjudicator was of the view that there had been no maladministration in the way the Trustee communicated with Mr R during the Time to Choose exercise.
- On 2 October 2017, Real Digital provided Mr R with the Time to Choose information pack and his option form. The option form was a page long and split into five steps, one of the steps was to sign. Therefore, the Adjudicator was of the view that Real Digital, on behalf of the Trustee, made it absolutely clear that a signature was required in order for Mr R to transfer into the New BSPS.
- The Adjudicator did not agree with Mr R's argument that his form made it sufficiently clear that he wished to join the New BSPS. Mr R said that the Trustee should have clarified his position prior to the BSPS joining the PPF. The Adjudicator disagreed and explained that the Trustee did write to Mr R on 21 December 2017 and explained that his option form was not clear and should be re-submitted. The Adjudicator was satisfied that the Trustee did attempt to clarify Mr R's choice after he had submitted an incomplete form. Mr R has said that he did not receive this letter. However, the letter was addressed to the correct address, so the Adjudicator was of the view that the Trustee had acted appropriately.
- Mr R has also argued that the letter dated 21 December 2017 showed that the Trustee was treating members as a number and not dealing with them on an individual basis. In the Adjudicator's opinion, this argument would not succeed. The letter encouraged Mr R to take his time when confirming his options and to ensure that the form was signed at the bottom. While the letter may have derived from a template, the instructions contained within it were applicable to Mr R.
- Following BSPS' move into the PPF, members benefits were reduced. Mr R said that he only became aware that he had not moved into the New BSPS when his benefit reduced. He said that the first thing he did was contact BPS' administrator and requested to be transferred into the New BPS. He said that the Trustee would not allow this, which was an unfair way to treat someone who had been a member for 40 years. However, once the BPS joined the PPF, the Trustee was not permitted to allow transfers. This is in accordance with Section

135(4)(a) Pensions Act 2004 (Appendix), so the length of Mr R's membership is not relevant.

- In response to Mr R's comments that the Trustee was too reliant on the timeline of correspondence, the Adjudicator said that the timeline was important as it highlighted that members were given sufficient time to make their decisions.
20. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
21. Mr R provided his further comments which do not change the outcome. He said:-
- When he transferred to the PPF it caused him to lose 10% of his benefits, which was a significant financial loss. This loss meant that his income no longer met his outgoings.
 - He had already retired due to concerns relating to his health but, had to return to employment due to his financial difficulties.
 - That the Trustee cannot successfully argue that it required his signature, because his benefits moved into the PPF without his signature.
22. I note the additional points made by Mr R but I agree with the Adjudicator's Opinion.

Ombudsman's decision

23. I can only uphold Mr R's complaint if the Trustee committed maladministration that caused financial loss, distress or inconvenience.
24. It is clear that Mr R failed to sign his Time to Choose option form, which meant that it was not considered by the Trustee. This caused him to remain in the BSPS, which was subsequently transferred into the PPF. Consequently, his benefits were reduced by 10%.
25. I do not find that the Trustee acted in a way that amounted to maladministration. On 2 October 2017, Real Digital provided Mr R with a Time to Choose information pack and his option form. The option form was set out clearly and had a five-point checklist. Step four instructed members to sign the form before returning it. Consequently, I find that Real Digital communicated the requirements adequately and Mr R should have known that his signature was required in order for his benefits to transfer into the New BSPS.
26. I also disagree with Mr R's argument that his option form made it sufficiently clear that he wished to join the New BSPS and that the Trustee had a duty to follow his wishes. In order to complete his selection, Mr R was required to sign the option form. He did not do so and without it the Trustee could not accept his submission.

27. The Trustee acted quickly when it informed Mr R that his option form was not sufficiently clear. The Trustee wrote to Mr R two days after it had received his option form and said that his selection was not clear, so he would need to re-submit a further option form. Mr R has said that he did not receive this letter. However, during the Time to Choose exercise, Mr R was also sent the Newsletter which explained that the Trustee would acknowledge option forms within ten working days of receipt. So, Mr R should have been expecting a confirmation letter. When he did not hear from the Trustee, it was his responsibility to contact the Trustee to ensure his option form had been progressed.
28. Mr R has said that, if the Trustee can allow his benefits to go into the PPF without a signature, it should be able to transfer his benefits into the New BSPS without one. Mr R's benefits remained within the BSPS, so no signature was required. The BSPS transferred into the PPF following the Time to Choose exercise. So, it is not the same as transferring his benefits out of the BSPS. Therefore, I do not accept this argument.
29. I have sympathy for Mr R's position, and I appreciate that the 10% reduction in his benefits has caused him financial distress. I understand that this reduction was the reason why Mr R cancelled his retirement and returned to work. However, I can only uphold a complaint where there has been maladministration. In this case, I do not find any maladministration.
30. I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman
29 January 2021

Appendix

Pensions Act 2004

135 Restrictions on winding up, discharge of liabilities etc

(4) During the assessment period, except in prescribed circumstances and subject to prescribed conditions –

- (a) no transfer of, or transfer payments in respect of, any member's rights under the scheme rules are to be made from the scheme, and...