

## Ombudsman's Determination

Applicant	Mr H
Plan	Royal Mail Pension Plan ( <b>the Plan</b> )
Respondents	Royal Mail Group Limited ( <b>Royal Mail</b> )

## Outcome

1. I do not uphold Mr H's complaint and no further action is required by Royal Mail.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr H complains that Royal Mail failed to enrol him in the Plan, or inform him at the relevant time of the option to transfer in benefits to meet the eligibility criteria for new entrants aged 55 or over. Mr H would like backdated Plan membership and a consequential Plan pension in respect of his service with Royal Mail. Mr H has also complained about the time taken by Royal Mail in responding to his complaint.

## Background information, including submissions from the parties

4. On 7 April 1997, Mr H joined Royal Mail on a six-month fixed term contract until 27 September 1997. Term 14 of the contract said, "You are not eligible to join the Post Office Pension Scheme (POPS)."
5. On 29 September 1997, Mr H became a permanent employee and signed a new contract. The contract stated that:

"You are eligible to join the Post Office Pension Scheme (POPS) between the ages of 18 and 55. ... Details of the scheme are set out in the enclosed booklet."

For personal pension plan holders, it also said:

"Under present pension law you cannot be a member of POPS while contributing to a Personal Pension Plan (except in certain circumstances) and therefore you may have to choose one of them. If you require further

information on this you should contact your Personnel Section. In the meantime, it will be assumed that you wish to join POPS.”

6. On 31 July 2004, aged 65, Mr H retired.
7. In November 2012, Mr H complained to Royal Mail Pension Service Centre (**the Administrator**). He said that:
  - when he commenced employment, he was told he could not join the Plan as he was 57 years and 8 months old, and the retirement age was 60;
  - this had always been “a bone of contention”, as he stayed in service for nearly 7 ½ years and would have continued to work, if he was allowed to do so; and
  - since he retired his financial situation was becoming worse, and a pension from the Plan would have helped ease the burden.
8. The Administrator responded stating that to be eligible to join the Plan, applicants had to be able to achieve the minimum level of 5 years’ service, by transferring in benefits from a previous plan, or agreeing to purchase additional service within the Plan. It said even though Mr H went on to work for Royal Mail for over 7 years, most of his service was after the normal retirement age of 60.
9. Mr H argued that it should be taken into consideration that he was asked to, and willingly continued his employment up to the state pension age of 65. He said he was not previously made aware that he could purchase additional service, and was told he was not eligible to join the Plan. Mr H asked why he was not given the opportunity to join the Plan when his service was extended by 5 years. He summarised that he felt let down by Royal Mail and was misinformed about his eligibility to join the Plan, when he first joined the company.
10. In May 2013, the Administrator summarised Mr H’s complaint, that he remained unhappy as he was unable to join the Plan despite being employed for more than 7 years. The Administrator said that:
  - he did not meet the criteria of being 55 or under, and assumed he was not able to transfer benefits from a previous plan at the time;
  - members could buy up to 40 years of service through a pay deduction, and that the maximum deduction was 9%;
  - after considering Mr H’s circumstances, there was insufficient time for him to purchase the additional years of service he required before his 60<sup>th</sup> birthday; and
  - due to his age, lack of benefits that could be transferred into the Plan, and limitations around the purchase of additional service, Mr H was not eligible to join the Plan.

11. Mr H did not accept that this was the correct position. He said that:
  - he was unaware additional service could be purchased and said that the assumptions made were incorrect;
  - he had a pension pot of around £50,000 at the time that was available to be transferred;
  - he had asked his line manager about joining the Plan a few weeks after he had commenced employment, and his manager explained that Head Office had stated he was not eligible; and
  - he had concluded that he was eligible to join the Plan, and that Royal Mail had failed to advise him of this.
12. The Administrator emailed Mr H and confirmed that his complaint had been passed to the Trustee of the Plan, as it makes the decisions about eligibility for Plan membership.
13. In August, as Mr H had not heard from the Administrator, he wrote to request a response and included a summary of his complaint. The Administrator confirmed his complaint had been passed to the Trustee.
14. In November, Mr H chased for a response from the Administrator. He explained that as he was yet to receive a response he would contact Royal Mail directly.
15. In December 2013, Royal Mail replied saying that.
  - Due to the length of time that had passed it did not have a record of specific communications from the time Mr H was employed, nor was it able to reconstruct his pay record.
  - Mr H would have received the Plan booklet, as the correct administration procedure would have been followed.
  - An extract from the booklet which, on page 4, stated that, "If you are over age 55 there may be an opportunity for you to join POPS if you are permitted to transfer pension entitlements from another pension scheme or if you have previous POPs membership or if the Trustee so decides."
  - It was made clear to Mr H that he could transfer in any existing pensions he had, and therefore there was no failure on its behalf.
16. Mr H responded and said that:-
  - He had not received the Plan booklet when he was employed at Royal Mail, and if he had, he would have ensured that he pursued his right to join the Plan.
  - His pension was important to him, as he was aware he had a small private pension.

- His employment contract said he was not eligible to join the Plan, and he had assumed this was because of his age. Therefore, he enquired with his manager at the time who said that if Head Office had told him he was not eligible there was nothing further he could do.
- He had been in contact with a former colleague who had informed him he had been automatically enrolled in the Plan.
- It was clear Royal Mail had failed to inform him of his options, and as a result he had endured unnecessary hardship and financial suffering.

17. In July 2014, Mr H complained again. He said that:-

- When he joined Royal Mail on 7 April 1997, he was not made aware of his pension options and this had resulted in ongoing hardship during his retirement. He was told that he was not eligible to join as he was 57 years and 8 months old and retirement age was 60.
- He did not pursue this further, and he carried on working until he was 65.
- He was only advised in November 2012, when he contacted the Administrator, that he could have transferred in benefits from another pension arrangement, and this was enlightening information and something he was not made aware of when he commenced employment.
- His complaint had been forwarded to Royal Mail on 2 August 2013, but he did not receive a response until 10 December 2013.
- He wanted further information about the administration process. He said no system was infallible; therefore, it was possible that he was not sent the Plan booklet.

18. On 24 July 2014, replied to Mr H's letter, Royal Mail reiterated that he had become a permanent employee on 29 September 1997 and that he would have been sent a Plan booklet. The booklet explained that as he was over the age of 55 he may have been eligible to join the Plan if he transferred in benefits from any existing plans he had at the time. However, Mr H had decided not to pursue this option. Royal Mail confirmed it believed there was no administration failure. It also said Mr H had not acknowledged the additional state pension he had built up during his employment, and the benefit of the pension contributions he was not required to pay during that time.

19. In March 2015, unhappy with Royal Mail's response, Mr H brought the complaint to us.

20. On 22 July 2016, Royal Mail formally responded to Mr H's complaint. It disagreed with the allegations made by Mr H and provided its reasoning together with copies of the employment contracts and the Plan rules.

21. In July 2016, an Adjudicator considered Mr H's complaint and concluded that his complaint would not be upheld by the Ombudsman.
22. Unfortunately, around July 2016, due to unforeseen circumstances, Mr H was unable to pursue his complaint with us.
23. On 14 January 2019, Mr H contacted us again and, with Royal Mail's agreement, we continued our investigation.

### **Adjudicator's Opinion**

24. Mr H's complaint was considered by one of our Adjudicators who concluded that no further action was required by Royal Mail. The Adjudicator's findings are summarised below:-
  - Mr H was not eligible to join the Plan when he joined Royal Mail on a temporary six-month contract. This is stated in the contract which he had signed.
  - When Mr H became a permanent member of staff he was not automatically eligible to join the Plan, as he was not aged between 18 and 55.
  - When Mr H became a permanent member of staff his contract explained that further details of the Plan were available in the enclosed booklet. It was reasonable to assume that Mr H had read this, as he had signed the contract. Therefore, he should have been aware that there was a Plan booklet available.
  - It was more likely than not that Mr H would have received a copy of the Plan booklet, as it was an integral part of Royal Mail's practice and procedures at the time.
  - It was not unreasonable to expect Mr H to have asked for a Plan booklet if one had not been provided alongside his permanent contract.
  - There was no evidence to suggest Mr H made additional enquires about joining the Plan when he became a permanent member of staff.
  - The Plan booklet and Rule 2 of The Post Office Pension Scheme, available at the time, made it clear that employees over the age of 55 could join the Plan through a transfer of pension entitlements, from another pension scheme, at the Trustee's discretion.
  - Mr H was unhappy with the amount of time Royal Mail took to respond to his complaint. However, it was within the four months The Pensions Regulator recommends.
25. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H provided his further comments which do not change the outcome. I

agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr H for completeness.

26. Mr H maintains that:-

- He did not receive the Plan booklet with his permanent contract in September 1997.
- To assume that he received the Plan booklet because it was part of Royal Mail's procedure at the time was incorrect, as no system is infallible.
- When he received the permanent contract, prior to signing it he looked for information relating to pensions. The contract says that to be eligible to join the Plan you had to be aged between 18 and 55 and confirms that the normal retirement age is 60. As he was aged 58 at the time, he questions whether he would be sent the Plan booklet as he was ineligible to join the Plan.
- Royal Mail's negligence and maladministration prevented him from making further enquires in September 1997.

### **Ombudsman's decision**

27. The contract signed by Mr H made it clear that a Plan booklet and further information about Plan membership was available. While he considered he was not eligible based on his interpretation of the wording in the contract, the onus was on Mr H to enquire further about Plan membership at the time and seek further clarification. Royal Mail cannot be held responsible if Mr H decided not to do this.

28. Therefore, I do not uphold Mr H's complaint.

**Anthony Arter**

Pensions Ombudsman  
26 March 2019