

Ombudsman's Determination

Applicant	Mr S
Scheme	Railways Pension Scheme (the Scheme)
Respondent	Aviva

Outcome

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

Complaint summary

3. Mr S's complaint against Aviva is about the amount that they say he is entitled to from the Scheme.

Background information, including submissions from the parties

4. Mr S was a member of the Scheme up until 1977.
5. In an effort to trace his benefits under the Scheme, he contacted Railway Pensions Management Limited (**RPML**) in 2002, 2004 and 2005. Initially he was informed that, at the time he worked for British Rail, it was not compulsory to join a pension scheme and employees who did join received a refund of their contributions and no further benefits when they left the Scheme. He was later informed that their records confirmed that a refund of contributions was paid to him, but they did not have details of the amount that was paid.
6. In February 2013, he was informed by RPML that a refund of contributions of £697.62 was paid to him by cheque in July 1977. They said that they were only obliged to keep a record of payments for six years.
7. In 2014, as result of enquiries made by Mr S, Aviva wrote to him informing him that the benefits they held for him in respect of his membership of the Scheme was an Equivalent Pension Benefit (**EPB**). They said that this benefit was provided because he was contracted out of the State Graduated Pension Scheme. The amount of the EPB was a pension of £38.88 a year or he could take a taxable lump sum of £476.21.

8. Mr S took his complaint to the Pensions Advisory Service (**TPAS**). TPAS explained to him:
- the State Graduated Pension Scheme ran from 1961 to 1975 and was only for employees over the age of 18 and membership of the Scheme did not start until an employee was 20½ years old;
 - for the period between his 18th birthday and February 1966 (when he would have been 20½ years old), he would have been contracted-in to the State Graduated Pension Scheme;
 - if contracted-out of the State Graduated Pension Scheme, from 6 January 1964 the minimum level of EPB a pension scheme had to pay was £3:9s:7d (approximately £3.47) a year, but a pension scheme could choose a higher rate; and
 - he would have been contracted-out for 9 years 2 months, which would equate to £4.24 a year and therefore in excess of the minimum that had to be paid.
9. Aviva say that Mr S contacted them on 17 January 2017 about the pension they are holding for him. They say that he was told that he needed to decide how he wished to take his benefits, i.e. in the form of a pension or a lump sum; and they would add interest to any payment they make for late payment of his benefits.

Adjudicator's Opinion

10. Mr S's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised briefly below.
- Aviva say that the pension they hold for Mr S was secured by British Rail and is his EPB under the Scheme. Aviva are unable to provide the necessary paperwork to corroborate this. However, given that the pension was secured in 1977, i.e. about 40 years ago, it is not unreasonable that the paperwork no longer exists.
 - An EPB relates to a pension scheme that was contracted-out of the State Graduated Pension Scheme, which ended in April 1975. At that time, it was not uncommon for pension schemes to secure their EPB liabilities with pension providers in the form of non-profit deferred annuities.
 - There is no reason to believe that the pension secured by British Rail for Mr S was more than his EPB entitlement. In addition, TPAS have demonstrated to him that the pension under Aviva's policy is higher than the minimum EPB he would have been entitled to.

11. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.

Ombudsman's decision

12. Mr S's response to the Adjudicator's Opinion is set out below.
- He asked Aviva several times how they arrived at the proposed pension they hold for him, but failed to receive a response.
 - Aviva have deprived him of his benefit entitlement, whatever that might be, for over seven years.
13. The introduction of the 'Preservation' requirements, which took effect from 6 April 1975, gave members of occupational pension schemes an entitlement to a preserved pension on leaving a pension scheme, provided they were over the age of 26 and had completed five years qualifying service under the Scheme at the time they left the Scheme. However, prior to 1 March 1991, members who made contributions prior to 6 April 1975 could take a refund of these contributions, less tax at 20%, in which case the preserved benefit was reduced to take account of the period of service to which the refund applied. If a member was to take his pre-April 1975 refund and his remaining qualifying service, i.e. service after April 1975, was less than five years, he could elect to take a refund for all his pensionable service.
14. When Mr S left the Scheme in 1977, he was over the age of 26 and had completed five years qualifying service. His pensionable service between April 1975 and 1977, when he left the Scheme, is less than five years. Therefore, he could have taken a refund of his contributions for all his pensionable service.
15. RPML had informed Mr S that, according to their records, they paid him a refund of contributions amounting to £697.62 in July 1977. RPML have not stated whether this was just the pre-April 1975 contributions or all his contributions. Therefore, it is entirely possible that this refund was in respect of all his pensionable service under the Scheme but excluded the EPB.
16. Aviva say that the pension they hold for Mr S is an EPB of £38.88 a year. While I accept that Aviva are not able to provide the necessary paperwork to show that this was the pension secured by British Rail for Mr S, equally he has not provided any evidence to show that he has an entitlement to a higher benefit.
17. Based on the evidence, I would have to say that, on balance, I cannot disagree that the pension held by Aviva for Mr S is £38.88 a year.
18. Given that Mr S only contacted Aviva in 2014, I cannot see any evidence to suggest that they have deprived him of his benefits for seven years as he has claimed. Aviva

have told him that they will pay interest for late payment of his benefits. Therefore, it is now up to him to inform them how he wishes to take them.

19. Therefore, I do not uphold Mr S's complaint.

Anthony Arter

Pensions Ombudsman
31 January 2017