

Ombudsman's Determination

Applicant	Mrs L
Scheme	The Royal Bank of Scotland Group Pension Fund (the Scheme)
Respondents	The Royal Bank of Scotland Group PLC (the Bank), RBS Pension Trustee Limited (the Trustee)

Outcome

1. Mrs L's complaint against the Bank and the Trustee is partly upheld, but there is a part of the complaint I do not agree with. In view of the compensation award that the Trustee has offered I will not make a further award.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs L's complaint against the Bank and the Trustee is that they failed to provide Mr L, her husband, with adequate information to enable him to make sound decisions about his options under the Scheme on ceasing employment, and after his death they provided a poor level of service when Mrs L queried why a lump sum death benefit had not been paid to her. Mrs L has brought the complaint in her own name and also as Mr L's legal personal representative.

Background information, including submissions from the parties

4. Mr L worked for the Bank and related companies in a senior position. In April 2014 Mr L learnt that he had pancreatic cancer. He started hospital treatment in July 2014, receiving chemotherapy and later radiotherapy. He informed his line manager at the Bank of his serious condition. In September 2014 the Bank notified Mr L that his job might be at risk in its next redundancy programme.
5. Mrs L has provided a record of her and Mr L's communication with staff of both Respondents to this complaint, up to stage 2 of the Scheme's internal dispute resolution procedure (**IDRP**).
6. Mrs L's notes confirm that on 24 September 2014, Mr L asked a member of staff in the Bank's Human Resources (HR) department for details of the Bank's policy on retirement on the grounds of ill health. He asked whether he would be entitled to elect

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for early retirement at or after age 60, despite the fact that his normal retirement age was 65 at the time. The HR staff replied to Mr L that day, confirming that he could opt for retirement at any age over 55, there was no separate policy on retirement on grounds of ill health and attached a copy of the Bank's long-term disability scheme (LTDS) rules, support pack and policy.

7. On 3 October 2014, Mr L received formal notification that his role was at risk. He was told that he could elect to leave service on voluntary early retirement on redundancy grounds (VER) or remain in service under the Bank's LTDS. Mr L was notified that he met the criteria for the LTDS. He was also informed that if he left service he could draw his pension from the Scheme at or after age 55.
8. On 9 October 2014, Mr L sent an email to his manager and HR. Mr L confirmed that he had been considering his options after the 'at risk' interview that took place the previous week. He confirmed that he was yet to make a firm decision, but he was veering away from the LTDS option towards VER. Mr L stated he would be seeking further information on his pension options, but he would like to understand his salary options after 6 months on sick pay. Mr L stated that he specifically wanted to know whether his salary would be reduced, and to know how being on sick pay would affect the pension and redundancy payment quoted in the "at risk letter.
9. That same day, Mr L phoned the Bank's pension services team, which administered the Scheme on behalf of the Trustee. Mrs L's note of this conversation with the pensions team states:

"... notified that was on long term sick leave since April having been diagnosed with pancreatic cancer which has a very poor prognosis and in the process of being made redundant. Wanted to know total value of the pension. Was informed that he was not entitled to the information while he was still paying into the pension. The rules only allowed for such information to be available to deferred members. Spouse entitlement to five year full pension on death was mentioned."

Mr L's line manager replied that day confirming that the redundancy and pension payments mentioned in Mr L's 'at risk' letter would not change as a result of Mr L receiving sick pay in excess of 6 months.

10. On 13 October 2014, Mr L asked his line manager to clarify whether all he needed to decide by Friday that week was whether he wished to apply for VER. His line manager replied that day confirming that he thought the decision Mr L had to make for the time being was whether to apply for VER, redeployment or to join the LTDS.
11. On 17 October 2014, Mr L emailed his line manager confirming that he wished to apply for VER, not the LTDS, and said he did not want to be redeployed within the Bank.
12. On 10 November 2014, Mr L informed his line manager that he would like some further information before he reached a decision on his pension options. Mr L asked if he chose to defer his pension, whether he would have to wait until his Normal Pensions Age (NPA) and if so, whether his NPA was 60, 65 or whether he could request an

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earlier date. Mr L said he would ideally like to understand how much annual pension allowance capacity he would have, so he could gauge how much pension augmentation capacity he had.

13. On 13 November 2014, Mr L told the pensions team that he was in the process of being made redundant and had initially selected VER, but he was now considering whether it would be more advantageous to defer taking his pension for a while, possibly until his 60th birthday. He said he understood that in order to do this, he would need to change his election to standard redundancy terms, under which he would be entitled to a redundancy payment of £149,252. He asked whether it would be possible to use £119,252 of his redundancy payment to augment his pension and if yes, he would like to know what his annual pension (after augmentation) would be as from 23 January 2016.
14. That day, the pensions team informed Mr L that his normal retirement age was 65, but he could request early retirement any time after age 55. The team also confirmed that he would have scope for the amount of augmentation he had specified and confirmed that arrangements had been made for the details of the scope and a quotation with augmentation to be sent to Mr L's home address. Mr L confirmed that as soon as he received the quotation, he expected to be able to confirm his pension selections very quickly.
15. On 23 November 2014, Mr L informed the pensions team that he had received the quotation. He stated:

"I must say I was surprised by the figures. A cash contribution of £119,000 in February 2015 delivers an income stream of £3,800 starting in February 2016. Meaning that it would take 31 years simply to recover the original cash contribution quite apart from any time value of money. I suppose that means that the fund doesn't welcome this sort of augmentation. The main benefit of the arrangement appears to [sic] tax avoidance."
16. He also informed his line manager that he had now received the answer to his pension query, so he could proceed with the next formal meeting. He said he was "pretty much decided on what option to take", the details of which he would confirm late that afternoon.
17. On 24 November 2014 Mr L informed the Bank that he did not wish to draw his pension immediately when he left service; he said he would use part of his redundancy payment to pay an additional voluntary contribution (**AVC**) to the Scheme to enhance his pension benefits. Mr L completed and returned the necessary forms, and his choices were then processed.
18. On 29 January 2015 Mr L left service, on VER, and became a deferred member of the Scheme.
19. On 9 June 2015 the Bank sent Mr L a statement, in standard form, of his deferred pension and options available under the Scheme (**the 2015 Statement**). His deferred

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annual pension at the date of leaving was over £53,000. Mr L was given the option of keeping his deferred pension in the Scheme with revaluation until pension age, drawing his pension early (he had already attained his 55th birthday) or transferring his benefits to another pension provider. The 2015 Statement also said: "If you become incapacitated, you may be able to take your pension earlier." It also referred to the potential death benefits, as follows:

"Following your death, your dependants may receive:

- a pension for a spouse/civil partner;
- a pension for dependant children up to age 18 (or 23 if in full time education);
- the balance of your five years' pension payments as a tax free lump sum; if you die in the first five years of retirement – this is paid at the discretion of the Trustee."

20. A note at the end of the 2015 Statement said: "Your entitlement arises under the Plan's Trust Deed and Rules; if there are any differences between the information in the statement and the correct application of the Trust Deed and Rules, the latter will prevail."
21. On 19 August 2015 Mr L requested a cash equivalent transfer value (**CETV**). The Bank instructed this to be calculated on 9 September 2015.
22. A statement of benefits and CETV (over £1.3m) was posted by the Bank's pensions team to Mr L on 21 September 2015 and was received two days later, the day after Mr L was admitted to hospital for the last time as his condition had significantly deteriorated. On 24 September 2015 Mr L was discharged to receive palliative care at home.
23. Sadly, Mr L died on 4 October 2015, aged 59 years and 9 months.
24. On 22 October 2015 the Bank sent Mrs L details of the widow's annual pension of over £26,000 payable to her on Mr L's death (equal to one half of his deferred pension).
25. On 27 October 2015 Mrs L asked the Bank why there was no lump sum death benefit equal to five years' payments of Mr L's pension under the Scheme (**the 5 Year Guarantee**). She was told it was because Mr L was a deferred pensioner when he died, not a pensioner.
26. The Bank clarified in November 2015 that the death benefits were governed by the Scheme's trust deed and rules, and that Schedule 18 applied to Mr L's membership.
27. Mrs L was told in December 2015 that she was entitled to receive the lump sum value of Mr L's AVC funds (over £114,000).
28. In a letter dated 16 December 2015, Mrs L complained to the Bank that she was materially worse off than expected, because she was receiving only a widow's pension and no 5 Year Guarantee. She said that full information about Mr L's post-retirement options had not been provided by the Bank in 2014 and 2015: there was no written comparison of the financial value of the options available, especially the VER and LTDS

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benefits; there were no calculations of any benefits available for serious ill-health; there was no settlement agreement with Mr L when his employment was terminated; there was a delay in issuing the 2015 Statement, and its wording was misleading because it referred to the 5 Year Guarantee without clarifying that it would not apply to a deferred pensioner; there was a delay in issuing the CETV; also there were delays in answering her questions.

29. In its reply dated 6 January 2016, the Bank's pensions services manager conceded that in some respects its service had fallen below its usual standards. He said that the pension services team would not have been aware of the seriousness of Mr L's health issues unless the Bank had informed it; there was no need for a settlement agreement with Mr L as the Bank's standard processes on redundancy were followed; any settlement that had been made would not have included LTDS terms as Mr L had already turned down that option. The manager apologised that the leaving service statement was issued late, explaining this was caused by a delay in updating Mr L's HR records; he also apologised that it had taken three weeks to send out the CETV details; he explained that under the Scheme rules the 5 Year Guarantee was not applicable because Mr L was not in receipt of his pension when he died. He also said that extensive communication and support had been provided to Mr L, by email and telephone, during the weeks prior to him making his decision to opt for VER instead of the LTDS.
30. On 12 January 2016 Mrs L requested a copy of the correspondence referred to in the Bank's last letter. Some of the items were sent to her on 25 February and others were provided on 29 March 2016, but the Scheme booklet was missing, as was a note of Mr L's telephone conversation on 9 October 2014.
31. On 29 April 2016 Mrs L brought a complaint under the Scheme's IDRP. She said that some of the Bank's communications with Mr L were attachments to emails, not sent by post, and the Bank should have taken into account Mr L's circumstances, as he had been coping with gruelling medical treatment for a very serious condition, and at that time he had no access to the Bank's intranet.
32. Stage 1 of the IDRP was determined by the Bank's Head of Pensions, appointed by the Trustee for that purpose. In a letter dated 12 June 2016 he rejected Mrs L's complaint. He said that all reasonable steps were taken to make Mr L aware of his options regarding his pension benefits; a settlement agreement would not normally be made on a redundancy; part of the delay in sending the leaving service statement was caused by uncertainty whether Mr L would draw his pension immediately; the relevant Scheme rule stated that a lump sum death benefit would be paid if the member died within five years after starting to receive a pension, which Mr L had not done; in the 2015 Statement the reference to a lump sum of "the balance of" five years' pension payments indicated that the pension must have already started; the statutory time limit for providing a CETV quotation was three months, and that limit had not been breached; Mrs L had received an apology from the pensions team for exceeding their service level standard of five working days; Mr L's decision to leave service and defer

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his pension instead of drawing it immediately or taking LTDS terms was based on him having received sufficient information.

33. On 26 August 2016 Mrs L told the Bank's pensions team that she should be compensated for her distress and inconvenience caused by its many administrative failings since 2014; she accepted that the terms of the LTDS had been explained to Mr L, but that did not mean that he was made aware of all the other options that were then available to him; she added that if the CETV information had been provided in 2014 "there would have been an opportunity to extract significant value from the pension fund that [Mr L] had built up with the Bank over many years"; she considered that the Bank was under a duty to highlight how death benefits would be affected by Mr L's decision, bearing in mind it was aware of Mr L's terminal illness. She commented that Mr L:

"was an intelligent man and would not have chosen to throw away the benefits available under LTDS and life cover for the sake of less than a year's deferred pension uplift, knowing he was terminally ill. It is therefore much more likely that [Mr L] thought the lump sum would be available if he had "retired" from the Bank, which he thought he had."

34. Mrs L also contended that in the 2015 Statement the words "within the first five years of retirement" were ambiguous because they did not refer specifically to the member having started to receive his pension; Mr L thought that on leaving service he had retired status although he had deferred the commencement of his pension, and he was not in a fit state to draw the same conclusions as a member in good health; the delay in sending the 2015 Statement made it impossible for Mr L to exercise the best option.
35. The Trustee's administration and benefits committee was appointed to consider the matter at stage 2 of the IDRPs, and it held a meeting for that purpose on 24 November 2016. In a letter dated 18 January 2017 it apologised to Mrs L for not having replied more quickly. It said that her complaint had been rejected because:
- Mr L had been provided with sufficient information and support to make his decision in 2014;
 - the Bank and the Trustee could not provide financial advice on the most appropriate option for an individual member, who had to make his own decision;
 - under the Scheme rules there was no lump sum death benefit payable in respect of a deferred pensioner, and the relevant part of the 2015 Statement had been worded accurately;
 - the CETV quotation was provided within the statutory time limit, even if it was outside the Scheme's service level agreement; and
 - the delay between the date that Mr L should have received the 2015 Statement and the date he received it was not critical because he had already opted for VER with a deferred pension.

36. Mrs L then contacted us. She summarised her complaints under three headings:-

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- Failure of the Bank and the Trustee to provide timely, comprehensive and accurate information to an employee who they knew was terminally ill, (and whom they were pressing for a decision on continued employment or leaving) in breach of a duty of care to inform the employee of the value of his pension rights;
 - Breach of a duty of care by the Bank and the Trustee to inform Mr L adequately of the risks of pension deferral when he was suffering from a critical or terminal illness; and
 - Poor administration by the Bank and the Trustee, with unwarranted delays at every stage of the process.
37. We accepted two complaints for investigation: (1) by Mrs L on behalf of Mr L's estate, against the Bank and the Trustee for their acts and omissions before Mr L died, and (2) by Mrs L personally, against the Bank and the Trustee for their acts and omissions after Mr L died.
38. Lawyers acting for the Trustee provided its formal response. They said that under section 93 of the Pension Schemes Act 1993 (**the Act**) the Trustee was required to provide a guaranteed statement of entitlement to a deferred member who requested it, but Mr L was not a deferred member as he was an active member at the relevant date; there was no 5 Year Guarantee payable under Rule 4.2 of the Scheme rules (see Appendix) unless the member's pension was already in payment, so the Bank's phone call with Mr L in October 2014 had provided correct information; the delay in producing Mr L's CETV exceeded the Trustee's service time limit but was inside the relevant statutory limits. The Bank had informed Mr L that he could join the Bank's LTDS, but it was Mr L's decision to turn down the LTDS option (which would have resulted in his continuing employment and continuing active membership of the Scheme) in favour of leaving service and receiving a large redundancy payment; the Trustee could not give advice to a member about the best option for him to take; the delay in providing the 2015 Statement did not cause any financial detriment, and its wording was not misleading or inaccurate. The Trustee acknowledged that some of its responses had been unreasonably delayed, particularly the issue of the 2015 Statement and the IDR stage 2 decision and offered to pay Mrs L compensation of £750 for her distress and inconvenience. In later correspondence with this office the Trustee increased its offer to £1,600.

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39. In a separate formal response, the Bank said that its redundancy exercise was carried out properly; it had no duty of care to give financial advice on the options available; it had corresponded properly with Mr L at the relevant time and answered all his queries; it was not the Bank's fault if Mr L had not fully understood the consequences of deferring receipt of his pension after leaving service; Mrs L had received the correct benefits calculated under the rules of the Scheme; therefore the Bank did not consider that it should compensate Mrs L.

Adjudicator's Opinion

40. Mrs L's complaint was considered by one of our Adjudicators, who concluded that in view of the revised offer made by the Trustee no further action was required by the Bank or the Trustee. The Adjudicator's findings are summarised below:-

- The complaint made by Mrs L as Mr L's legal personal representative related to the information provided by the Bank and the Trustee to Mr L in 2014 and 2015.
- Mr L had numerous discussions with the Bank and its pensions team in 2014, before making his decision to take VER and defer his pension. His main focus was on his income position, namely the level of salary he could receive under the LTDS and the redundancy payment he could receive under VER, part of which he could pay as an AVC. He made little reference to the death benefits that would be payable under each option. This rather suggested that they were not his top priority.
- Although Mr L left service with a deferred pension on 29 January 2015, it was not until 9 June 2015 that he received the 2015 Statement. In recent correspondence the Trustee said that it usually issued such a statement within two months after being notified of the member's leaving, within the time limit set out in statutory disclosure regulations. In the Adjudicator's view, the delay in Mr L's case was unacceptable and amounted to maladministration, for which Mr L's estate should be compensated. However, Mr L had not suffered a financial loss as a consequence of this delay. He had already made his decision to take VER, and the 2015 Statement confirmed the amounts that were payable from the Scheme in those circumstances.
- Mr L's CETV request on 19 August 2015 was not processed and answered by the Bank's pensions team until 21 September 2015. This was unsatisfactory as it was in breach of its service standard. However, in the correspondence Mr L had expressed no particular interest in transferring his benefits from the Scheme to any other pension arrangement and did not appear to have an alternative pension provider lined up. Therefore, it seemed unlikely that he would have consented to a transfer and completed and returned the forms required for both the Scheme and the receiving pension arrangement even if he had received the CETV details within the usual service standard.
- Mr L researched the position carefully between September and December 2014 before deciding to take VER. Having left service in January 2015, Mr L could have subsequently sought the Trustee's consent to draw his deferred pension, thereby

activating the 5 Year Guarantee on his death. As he died nearly nine months after leaving service, he had a reasonable opportunity to do that, before his health seriously deteriorated. Neither the Bank nor the Trustee should be criticised because Mr L did not apply to draw his pension when he had the opportunity to do so.

- If Mr L had opted for the LTDS instead of VER he would have remained covered for the Scheme's life assurance benefits as an employee, but he would not have received a substantial redundancy payment, most of which was paid as an AVC and after his death was paid to Mrs L.
- The complaint made by Mrs L in her own capacity related to (a) the benefits that were paid to her from the Scheme and (b) the level of service provided to her by the Bank and the Trustee after Mr L's death.
- Mrs L had accepted that when Mr L died he was a deferred pensioner of the Scheme. This meant that Rule 4.2 did not apply, and no 5 Year Guarantee became payable, because he was not "in receipt of a Pension".
- Mrs L thought the relevant wording of the 2015 Statement was misleading, but in the Adjudicator's view it was implicit from the words "the balance of" that in order to receive the 5 Year Guarantee the pension payments must already have started. Otherwise the words "the balance of" would serve no purpose. Even if there were any ambiguity, the 2015 Statement also said that the Scheme's trust deed and rules would prevail over the explanatory literature if there were any differences between them. Therefore, the death benefits paid by the Trustee, namely a widow's pension and a lump sum from the AVC fund, but no 5 Year Guarantee, were correct.
- With regard to the level of service provided after Mr L's death, the Trustee's stage 2 IDR letter was issued to Mrs L more than two months after her objections to the stage 1 letter. This was in breach of the Trustee's service standard for IDR. The delay in receiving the formal decision was clearly distressing for Mrs L, and she should be compensated accordingly.
- It was therefore the Adjudicator's opinion that the complaint would be partly upheld against the Trustee, because although it paid Mrs L the correct benefits under the rules of the Scheme it caused several delays: it issued the 2015 Statement to Mr L nearly six months after he had left service, it did not meet its service standard for sending the CETV details and it issued its IDR stage 2 response letter to Mrs L later than it should have done. Those were all Trustee responsibilities.
- In correspondence with this office the Trustee acknowledged its delays and increased its compensation offer from £750 to £1,600. £500 was the minimum amount that I have awarded in those cases where I considered there was at least significant non-financial injustice. As the Trustee's offer was more than three times that amount, the Adjudicator considered that I would not make an additional award, if I had to review this matter.
- Mrs L had also complained about the Bank's delays after Mr L died. It was unhelpful that the Bank took until 25 February and 29 March 2016 to send Mrs L the copy correspondence that she had requested on 12 January 2016 and failed to include a copy of the Scheme booklet. However, bearing in mind my minimum award level, the Adjudicator did not think I would make an award against the Bank for its delay.

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Therefore, the Adjudicator considered that the complaint against the Bank would not be upheld.

41. Mrs L did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mrs L provided her 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 Mrs L for completeness.
42. Mrs L reiterated her earlier comments, with some clarifications. She stressed that while the prospective death benefits were not Mr L's main priority in 2014, they were still an important consideration. She disputes that Mr L had asked for a transfer value which the Act regulates; she states that he had asked to know the value of his pension and had not asked for a transfer value. The pension value information requested would have been helpful for any financial adviser that Mr L instructed; the 2015 Statement was issued much too late to be useful. Mrs L disagreed with the Adjudicator's interpretation of the words "the balance of" in the 2015 Statement. She queried whether the Bank or the Trustee had breached their respective duties of care to Mr L, suggesting that (1) a duty of care to provide relevant pension value information was owed to an active member being asked to consider the termination of his employment and alternative options, and (2) there was an enhanced duty to do that where the member was known to be suffering from a life-threatening condition. Lastly, Mrs L requested an oral hearing.

Ombudsman's decision

43. I note Mrs L's request for an oral hearing. I do not consider that an oral hearing is necessary, given the detailed submissions with supporting documentation received from Mrs L and the Respondents which are sufficient for me to determine this matter.
44. Mrs L had complained that the Respondents failed to provide Mr L, her husband, with sufficient information to enable him to make sound decisions about his options under the Scheme. I do not believe this complaint is made out on the available evidence.
45. From the period when Mr L was notified that his job was at risk until when he left service, he was asking the Bank and the Trustee different questions, the details of which are summarised at paragraphs 6 to 20. He initially asked the Bank about his NRA and for details of the Bank's policy on retirement on grounds of ill health. The Bank (via his line manager and HR mainly) responded to his questions and provided him with a copy of the LTDS rules and supporting information. He informed the Bank that he would be seeking further information about his pension options, and then proceeded to ask the Bank questions about the impact of his sick pay on his pension and redundancy payments, details about his NRA/NPA and his capacity to augment his pension, all of which the Bank responded to sufficiently and promptly. Having received the answers to his questions, Mr L confirmed that he had received the answer to his pension query and was "pretty much decided on what option" to take.

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46. The documentation disclosed shows that after much thought in 2014, Mr L had made up his mind to leave service on VER terms and decided that he would defer receipt of his pension rather than draw it immediately. That was his choice to make. Having been provided with the relevant Scheme rules, my view is that the Bank was entitled to believe that by “pension options”, Mr L meant details of whether his sick pay would impact his pension payment, details about his NRA/NPA, and his capacity to augment his pension which were the questions he asked the Bank prior to making his decisions. I do not consider that the Bank failed to provide Mr L with sufficient information to enable him to reach an informed decision, nor is there any evidence of maladministration arising from the Bank’s communication with Mr L.
47. I now turn to consider Mr L’s request for information which he made to the Trustee on 9 October 2014. The Trustee has said that Mr L asked for a CETV, which under the Act he was not entitled to receive at the time of this request. Mrs L disputes that Mr L asked for a CETV. There is some inconsistency in Mrs L’s evidence regarding what information Mr L asked for. Mrs L has used the term “pension value” in a number of different ways in her correspondence over the years. She has on occasion stated that Mr L called the Scheme on 9 October 2014 and asked for a transfer value, while on other occasions she has stated that Mr L asked for details of the total value of his pension.
48. In her further submissions, Mrs L has stated that Mr L did not ask for a CETV which the Act regulates, though she then states in those same submissions that her husband had asked for a transfer value. Mrs L’s note of the 9 October 2014 call makes no reference to a CETV, but rather confirms that Mr L “wanted to know the total value of the pension”. This, in my view, is not a request for a transfer value specifically, however the term “transfer value” has been used interchangeably with “value of pension” throughout the correspondence such that it is unclear on Mrs L’s evidence as a whole, what information Mr L asked the Trustee for.
49. The Trustee has said that it understood Mr L’s request to be for a CETV and I find that there is insufficient evidence to take a contrary view . Given that the Trustee understood Mr L’s request to be for a CETV , it is my view that the Trustee responded correctly to Mr L’s request.
50. I appreciate Mrs L’s point that the transfer value information that was requested in October 2014, would have been helpful for Mr L’s financial adviser, if and when appointed. However, until Mr L left service he was not entitled to a CETV. Section 93 of the Act makes it clear that the provisions in relation to CETVs only applied to members whose pensionable service had terminated. At the time of his request, Mr L’s pensionable service had not terminated (he was an active member) and it was up to the Trustee to decide whether or not it would provide that information to him. I am not convinced that Mr L would have transferred to another pension arrangement before he died, had the CETV details been provided earlier. Transferring from a defined benefit pension arrangement, like the Scheme, to some form of defined contribution personal pension arrangement, without any guaranteed level of benefits, would have most likely

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been a big decision for Mr L to make. It would have required him firstly to seek and obtain financial advice, and after that it would have taken some time to complete, return and process the necessary forms that both the Scheme and the new pension arrangement would have required if the financial adviser had recommended a transfer.

51. Mr L could have requested a CETV at any time after he left service in January 2015, but he did not do so until August 2015, which sadly was too close to his date of death.
52. I should add that after leaving service Mr L could have put his pension into payment at any time without having obtained CETV information.
53. Mrs L has raised two specific queries in relation to the duty of care the Bank and/or Trustee may have owed Mr L. Firstly, she has asked whether “an employer and/or Trustee owe a duty of care in general to provide relevant pension value information to an active member who is being asked to consider employment termination alongside other options, in this case, going into the employer’s long term disability scheme.” Secondly, whether “an employer and/or Trustee owe an enhanced duty of care to provide relevant information to an active member who, to the employer’s and Trustee’s knowledge, is being asked to consider employment termination alongside other options and is suffering from a condition potentially impacting on their life expectancy (in this case, pancreatic cancer).
54. The law relevant to Mrs L’s specific queries is set out in the Act and in caselaw, most specifically in the House of Lords’ decision in *Scally v Southern Health and Social Services Board* [1992] 1 AC 294 (*Scally*). The question of whether and to what extent an employer has a duty to provide information about pension scheme options for its employees was considered by the House of Lords in *Scally*. The House of Lords held that an employer was obliged to take reasonable steps to bring relevant contractual provisions to the attention of employees (the *Scally* duty) but avoided a general principle that employers should bring unknown pension rights to the attention of their members or protect their overall economic wellbeing. The Court held that the *Scally* duty was limited to situations where:-
 - The terms of the contract have not been negotiated with the individual employee;
 - A particular term of the contract provides a valuable right contingent upon action being taken by the employee; and
 - The employee cannot, in all the circumstances, reasonably be expected to be aware of the term unless it is drawn to his or her attention.
55. In relation to Mrs L’s first question, as discussed above, it is unclear on Mrs L’s evidence what information Mr L asked for but for the avoidance of doubt I consider both scenarios. Assuming Mr L had asked for a CETV, the answer to Mrs L’s first question is no: there was no statutory obligation on the employer and/or Trustee to provide an active member with transfer value information. This is because, as stated in the Adjudicator’s Opinion and as the Respondents’ solicitors have said in their submissions, Mr L was an active member at the time of his request, so under the Act

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he was not entitled to receive a CETV. There was also no duty of care in caselaw for the employer and/or Trustees to provide him with a CETV.

56. Assuming Mr L had not asked specifically for a CETV and just wanted to know the value of his pension more generally, I doubt that the Bank owed Mr L a *Sally* duty or breached this duty. Assuming that the provision of pension value information was an implied term of Mr L's unnegotiated employment contract, I doubt that the third *Sally* requirement is satisfied on the facts. I say this because Mr L was aware about the possibility of obtaining pension value information and it is not the case that this fact was unknown to him and could not reasonably have acted (to take advantage of valuable pension rights) unless it had been brought to his attention. Having been aware of this fact, Mr L did not ask the Bank for pension value information instead he approached the Trustee to make his enquiries and the Trustee provided him the appropriate response.
57. I have also considered what the Trustee could have done differently had Mr L asked for pension value information rather than a CETV. In particular, I have considered whether the Trustee could have provided Mr L with a benefit statement from which he presumably could have obtained pension value or similar information. It was not the Trustee's practice to provide members with benefit statements and the Trustee understood that the Bank provided active members with certain pension information, I therefore doubt that even if Mr L had asked for pension value information, the Trustee would have acted in breach of any duty. The Trustee believed Mr L had requested a CETV which was information he was not entitled to at the time. The Trustee provided Mr L with the correct information and by doing so, discharged any duty it may have owed to Mr L. There is no evidence the Trustee owed Mr L any further statutory or common law duty.
58. In relation to Mrs L's second question, it would appear (on balance) that by "relevant information", Mrs L is referring to the value of Mr L's pension, information about the risks of him taking voluntary redundancy and deferring his benefits and information about the benefits available on his death in deferment. I have already addressed the issues regarding the pension value information. I do not consider that having acquired knowledge that Mr L had been "diagnosed with pancreatic cancer which has a very poor prognosis" the employer and/or Trustees had a duty to provide information on which option was the most financially advantageous for Mr L, or to provide him with details about death in deferment benefits.
59. In accordance with the principles laid down in *Sally* and ignoring for present purposes that *Sally* concerned an employment relationship, I do not believe there was a duty on the Bank and Trustee to provide information on which option was the most financially advantageous or to provide Mr L with details of death in deferment benefits. His query appears to have been limited to details about his income position within the context of having been on sick leave and being made redundant. There is no evidence that he specifically asked about death benefits during his call on 9 October 2014 or provided any further details outside his redundancy considerations that ought to have

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placed the Bank and the Trustee under an enhanced duty. Also, as stated in the Adjudicator's Opinion, the deceased's "main focus was on his income position, namely the level of salary he could receive under the LTDS and the redundancy payment he could receive under VER, part of which he could pay as an AVC." In my view, Mr L did not make any significant reference to the death benefits payable under each option and I cannot see on these facts that the Bank and Trustee were under an enhanced duty of care where the information Mr L sought appeared limited to enquiries about his income position.

60. Following his call on 9 October 2014, Mr L then informed the Bank, on 17 October 2014, that he had decided to opt for voluntary redundancy and defer his benefits; it seems to me that the Bank and Trustee were entitled to accept his decision and turn their attention to progressing this option as they did. Mr L had worked in a senior position at the Bank and his correspondence depicted a confidence in the handling of financial matters. I do not see any reason why the Bank and Trustee should have doubted the decisions he made or done anything further.
61. In my view, the correspondence that ensued from September 2014 shows that the Bank and the Trustee spent a lot of time responding to Mr L's various queries, and I do not consider that the communications from the Bank or the Trustee were worded in such a manner as to mislead Mr L or amount to maladministration. They did not know that, unfortunately, he would die so soon afterwards.
62. With regard to Mrs L's complaint concerning the 2015 statement. I agree with Mrs L that the 2015 Statement should have been issued sooner after Mr L had left service. However, under the statutory disclosure regulations then in force the Trustee had no obligation to issue it before Mr L left service. So, his decision to leave service, with its impact on the prospective death benefits, had to be made first.
63. With regard to the scope of the 5 Year Guarantee, the Adjudicator has adopted the plain and natural meaning of the words "the balance of" in the 2015 Statement. The Adjudicator based his interpretation on The Oxford English Dictionary, which refers to "a sum remaining after the settlement or partial settlement of an account." This implies that the pension must already have started. Mr L's pension had not started, and I do not see any failings in the wording of the 2015 Statement.
64. In conclusion, it is my view that Mrs L's complaint on behalf of Mr L's estate should be upheld against the Trustee, because it caused several delays which amount to maladministration: it issued the 2015 Statement to Mr L nearly six months after he had left service, it did not meet its service standard for sending him the CETV details, and it issued its IDRPs stage 2 response letter to Mrs L later than it should have done.
65. As Mrs L is receiving the correct benefits under the Scheme, namely a widow's pension, I do not uphold the separate complaint that she has brought in her own name.
66. Therefore, I partly uphold Mrs L's complaint against the Trustee. For the reasons I have given I do not uphold Mrs L's complaint against the Bank.

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67. In correspondence the Trustee acknowledged its delays and increased its original compensation offer from £750 to £1,600. I consider the maladministration in this case to be serious and my award for serious non-financial injustice is £1,000. The Trustee's revised offer is higher than the sum that I would have awarded in this case, so I will not make an additional award. Mrs L should contact the Trustee if she should wish to accept its offer.

Anthony Arter

Pensions Ombudsman
17 October 2018

Appendix

Rule 4.2 of Division 2 to Schedule 8 of the Definitive Trust Deed and Rules

Death After Retirement Lump Sum

On the death of a Category A Member in receipt of a Pension within five years after retirement, there shall be paid in accordance with Schedule 20 (Life Assurance Benefits) a cash payment equal to the sum of the instalments of the Pension which would have been paid during the remainder of the life of the Pensioner if he had lived until the expiration of the said period of five years but without taking into account any increase in Pension under Clause 10 which comes into force after the date of death (for the purposes of Schedule 20, the Lump Sum).