

Ombudsman's Determination

Applicant	Mr S
Scheme	Atkins Pension Plan (the Plan)
Respondents	Atkins Pension Trustee Limited (the Trustee) XPS Administration (XPS) Zurich Assurance Limited (Zurich)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by XPS, the Trustee, or Zurich.

Complaint summary

2. Mr S complained about the transfer of the Plan to the Mercer Master Trust (**MMT**) in 2018. He said it was undertaken without his consent and caused him a loss of approximately £550.
3. Mr S considered that his risk profile was relatively risk-free, so his investment in the Plan should have been guaranteed to appreciate each year. He said this did not occur during the transfer process and it was the first time the value of his pension had decreased.

Background information, including submissions from the parties and timeline of events

4. On 1 August 2013, Mr S became a member of the Plan, which was a defined contribution occupational pension scheme.
5. On 1 April 2016, the value of Mr S' benefits held in the Plan was £6,707, as detailed in the 2016 benefit statement. The entire amount was invested in the Atkins Balanced Investments Fund.

6. On 5 October 2016, a Deed of Amendment was made, adopting a new consolidated Trust Deed and Rules. Under Rule 11.2 of the Third Schedule, it said:

“Transfers out

The Trustees may at their discretion apply all or some of the Member’s Account by making a transfer of cash or other assets of the Plan to another pension scheme (meaning an occupational or personal pension scheme) in accordance with Rule 15 of the General Rules or to an Insurance Company for a DC Member.”

7. Under Rule 15 of the Second Schedule, it said:

“15. TRANSFERS OUT

15.1 The Trustees may make a transfer payment of cash or other assets for a Member or Group of Members or other beneficiary or group of beneficiaries under the Plan as follows:

- (1) the transfer payment will (subject to (8) below) relate to all of the Member’s entitlements under the Plan unless;
 - (a) the Member is exercising his right under Part 4Z of the Pensions Schemes Act to take a transfer payment relating only to one category of benefits (as defined in section 93 of that Act); or
 - (b) the Trustees at the request of a Member, in their absolute discretion, allow the Member to take a partial transfer payment relating only to one or more of his entitlements under the AVC Fund, the DB Fund (subject to (8) below) or the whole or part of the Member’s Account under the DC 2000 Fund, the DC 2001 Fund or the DC 2007 Fund;[...]
- (6) a transfer payment for a member must not be made without his consent unless this is permissible under the Pensions Scheme Act.”

8. On 1 April 2017, the value of Mr S’ benefits held in the Plan was £10,214, as detailed in the 2017 benefit statement. The entire amount was invested in the Atkins Balanced Investments Fund.
9. On 1 April 2018, the value of Mr S’ benefits held in the Plan was £13,300, as detailed in the 2018 benefit statement. The entire amount remained invested in the Atkins Balanced Investments Fund.
10. On 8 June 2018, Mr S became a deferred member of the Plan.

11. On 13 July 2018, a Deed of Amendment was made to the Trust Deed and Rules. In the 'Background' section it said:

- “(D) Under Clause 3 of the Trust Deed and Rules the Trustee may with the consent of the Company modify alter amend or extend the trusts, powers and provisions of the Trust Deed and Rules subject to certain restrictions which are not contravened by this deed.
- (E) The Trustee and the Company wish to amend the Second Schedule (General Rules) and Third Schedule (DC Rules) of the Trust Deed and Rules in order to enable:
 - (a) the Trustee to carry out a bulk transfer of DC Members' Accounts, including their AVC Fund, to another occupational pension scheme without the Member's request or consent; and
 - (b) DC 2007 Members and DC 2000 Members (who were previously DC 2007 Members but elected to switch to become DC 2000 Members) to retain the right to use their DC Accounts towards their tax-free cash by being able to transfer back into the Plan at retirement.
- (F) The Trustee and Company are satisfied that as this deed makes no effective changes to the benefit entitlements under the Trust Deed and Rules, the provisions of Section 67 Pensions Act 1995 do not apply to the amendments made.”

12. Under the 'Amendments to the second schedule' section, it said:

- “(c) General Rule 15.1(1) is amended by adding after sub-paragraph (b) the following:
 - (d) the Trustees make a transfer of all of a DC Member's entitlements under the AVC Fund and any of the DC 2000 Fund, the DC 2001 Fund of the DC 2007 Fund, to the trustees or managers of another occupational pension scheme without member consent.”

13. On 20 July 2018, the value of Mr S' Plan was £14,328.36. He held 9,250.07 units of the Atkins Balanced Investments Fund and the unit price was £1.549, as detailed in Mr S' leaver statement.

14. On 14 August 2018, XPS, the administrators of the Plan, notified Mr S that the Plan website had been updated and it could provide information about the pension benefits.

15. On 28 August 2018, the Trustee wrote to Mr S to explain that it planned to transfer his pension to the MMT. The transfer was scheduled to take place in mid-October 2018 and there would be a 'black-out' period from 26 September 2018 to 15 October 2018. It provided a 30-day notice for the proposed action, as required by legislation.

16. The letter of 28 August 2018 enclosed a 'Frequently Asked Questions' document. It included the following information:-
- A new pension arrangement was being set up by Mercer Limited, which would hold the pension assets of SNC Lavalin and Atkins, Mr S' former employer.
 - The MMT Trustee had a legal obligation to provide the governance for the pension arrangement and act in the best financial interests of all members when doing so.
 - The MMT Trustee was responsible for determining the fund range and would review the default investment strategy and fund range regularly.
 - The main risk for members was the out of market exposure. This related to the period during the transfer when the pension assets would not be invested in the market, and instead be held in a non-interest-bearing cash account.
 - There would be no compensation if any out of market exposure did occur.
 - The 'Investment Mapping Information' section detailed that investments in the Atkins Balanced Investment Fund would be transferred to the Mercer Growth Fund. The respective total expense ratios were 0.347% and 0.339%.
17. On 15 October 2018, the value of Mr S' transferred Plan was £13,769.16. The surrender proceeds were invested into the SW Mercer Growth Fund. The unit price of this fund at the time was £4.893, which meant Mr S purchased 2,814.053 units.
18. On 17 October 2018, XPS asked Mr S to confirm some personal details, in order that instructions to allow him to access his account could be provided. Mr S provided this information on the same day.
19. On 19 October 2018, XPS informed Mr S that he did not have access to the online pension account and that he needed to contact the administration team.
20. On the same day, Mr S contacted the administration team and was informed of the transfer of the Plan to Zurich. Zurich had owned the MMT before it sold its Corporate Savings business to Lloyds Banking Group (**LBG**) in 2018. Mr S requested an itemised statement from his start to leaving dates.
21. On 26 October 2018, Zurich wrote to Mr S to confirm that an amount of £13,769.16 had been transferred from the Plan and added to the Zurich Retirement Account.
22. On 30 October 2018, Mr S emailed XPS to request a response to his email of 19 October 2018, which asked for fund and investment details.
23. On the same day, XPS informed Mr S that his benefits had been transferred to the MMT, which was administered by Zurich. So, he would need to contact Zurich to obtain further details about his fund and investments.

24. On 31 October 2018, Mr S emailed XPS to request further information regarding his pension benefits. He also complained about the reduction in the value of his benefits, which he believed occurred during the transfer period. He argued that the focus should have been on growing his funds.
25. On 16 November 2018, XPS replied to Mr S and provided him with various fund details. It stated Mr S' assets, which were transferred on 15 October 2018, had a value at that time of £13,769.16, and were invested into the new fund in the MMT. It included benefit statements for 2016, 2017, and 2018; the Atkins Report and Accounts for the year to 31 March 2018; the Balanced Investments Fund Fact Sheet Quarter 3 2018; and the FAQs previously issued with the letter of 28 August 2018.
26. The asset allocation table in the Fund Fact Sheet Quarter 3 2018 set out that the fund composition was over 50% invested in equities and 33.8% in global fixed interest securities. The remainder was invested across a number of different asset classes. The graph which displayed the fund's investment performance over the previous five years, indicated that there had been falls in value. It also said:

“The aim of this Fund is to achieve returns ahead of inflation over the long term through investment in a broad range of diversified investments that include developed and emerging market company shares, commodities and bonds. Investing in this strategy aims for reasonably strong growth over the long term but reduces risk by investing across a number of asset classes.”
27. On 23 November 2018, Mr S emailed XPS to complain about the information he had been given and the reduction in value of his benefits during the transfer period. He requested an explanation for this reduction and details of the transactions that occurred from 1 August 2013 to 15 October 2018.
28. On 31 December 2018, Mr S' retirement account value was £13,241.71, as detailed in his 2018 benefit statement.
29. On 31 December 2019, Mr S' retirement account value was £15,673.14, as detailed in his 2019 benefit statement.

Mr S' position

30. The transfer of his pension benefits took place without his consent, and subsequently dropped in value without justification.
31. A pension company cannot act in a way that would cause his pension to decrease in value suddenly, as this would be tantamount to negligence or misappropriation.

The Trustee's position

32. Mr S was invested in the Plan's default investment strategy, the Atkins Balanced Investments Fund.
33. The change in value of Mr S' Plan was solely due to the movement in unit prices.

34. The unit prices for the Atkins Balanced Investments Fund between 3 April 2018 and 31 December 2018 were £1.495 and £1.442 on these respective dates. A list of the daily unit prices over this period was included with its submissions and has since been sent to Mr S.
35. The pension information ceased to be available online at the time of the transfer to the MMT. Mr S was provided with information regarding investment performance. Information was also available from the standard benefit statements and the quarterly fund updates.
36. Where possible, in-specie transfers were made as part of the bulk transfer. The transaction was pre-funded to mitigate any time out of the market, in order to minimise any impact to members' funds.
37. The objective of the transfer to the MMT was to deliver better outcomes for members in terms of investment returns and flexible retirement options. It took investment advice from Willis Towers Watson to review the investment default fund.

Zurich's position

38. In 2018, Zurich sold its Corporate Savings business to LBG. Under the terms of the agreement, all of the data was transferred to LBG and any complaint would need to be directed to LBG. The Plan was administered by Scottish Widows.

Adjudicator's Opinion

39. Mr S' complaint was considered by one of our Adjudicators, who concluded that no further action was required by XPS, the Trustee or Zurich. The Adjudicator's findings are summarised in paragraphs 40 – 45 below.
40. The Deed of Amendment, dated 13 July 2018, removed the requirement for consent of the member to transfer an entitlement held in the Plan. The Trustee did not need the consent of Mr S when it transferred his benefits in October 2018, and the action was carried out in accordance with the Rules at the time.
41. On 28 August 2018, Mr S was notified by the Trustee of the intended transfer of the Plan to the MMT. He was also informed that there would be a black-out period from 26 September 2018 to 15 October 2018. He was provided with sufficient advance notification of the transfer and its potential consequences.
42. The decline in unit price of the Atkins Balanced Investments Fund to £1.49, when the transfer was effected on 15 October 2018, was because of market movements. There was no evidence to suggest that any of the events related to the transfer of Mr S' pension caused the fall in value. In the view of the Adjudicator, his pension was correctly valued at the point of transfer.

43. The investment history for the Atkins Balanced Investments Fund showed that the unit price had fallen on many occasions prior to the transfer. So, the Adjudicator did not agree with Mr S' assertion that his pension had never decreased in value. Further, he did not agree that it should have provided a guaranteed increase each year, given that a large proportion of the fund was invested in equities, and other assets, subject to market fluctuations.
44. Mr S provided some additional comments in response to the Opinion. These are summarised below:-
- The decision to transfer his pension was made without his consent. The transfer process, including the black-out period, has caused his pension to lose value. There was no transparency around this process.
 - It was not reasonable for the Trustee to have changed the rules without his permission. The legislation unfairly favours the pension provider over the individual.
 - His pension had gone up in value each month, on average by just over £41 for the 60 months between 1 August 2013 and 20 July 2018. From 20 July 2018 to 15 October 2018, his fund dropped in value by £559.20. At no point had his pension dropped in value previously, and certainly not to this extent.
 - He has repeatedly requested evidence as to why his fund went down in value. He believes the assessment was made without verifiable supporting evidence that can be properly scrutinised.
45. I have considered these points, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

46. The Deed of Amendment, dated 13 July 2018, determined that the Trustee was entitled to transfer Mr S' benefits without his consent. The Trustee, in its role overseeing the Plan, has discretion to alter the Trust Deed and Rules, while ensuring that it complies with pension legislation. It did not need Mr S' consent for the change in July 2018.
47. The Trustee's correspondence of 28 August 2018 communicated its intention to transfer Mr S' benefits in the Plan to the MMT. It sought to transfer the benefits into a fund that most closely matched Mr S' investment strategy at the time, which had been the Atkins Balanced Investments Fund. It was explained to Mr S that he could then transfer out of the MMT, if he did not wish to remain invested.

48. The black-out period was enacted by the Trustee to enable the transfer of investments from the Plan to the MMT. Within this period, its aim was to minimise the time out of market and the associated risk, but it did not provide compensation to members for any loss incurred. Activity in the Plan was also restricted, so that the transfer of investments could be completed. I have seen no evidence that the procedure undertaken, in relation to the transfer of assets, was responsible for the reduction in benefit value highlighted by Mr S.
49. The list of unit prices for the Atkins Balanced Investments Fund, along with the performance graphs in the quarterly factsheets, indicate that the price both increased and decreased throughout the time Mr S held his benefits in the Plan. I am satisfied that the valuations provided to Mr S were correct. His investment in the Atkins Balanced Investments Fund contained exposure to equities, or shares, and other asset classes that are subject to market fluctuations. These assets do not provide a guaranteed return.
50. Mr S has highlighted the reduction in value of £559.20 for his pension benefits, between 20 July 2018 and 15 October 2018, the date of transfer. This occurred because the unit price of the Atkins Balanced Investments Fund had fallen over this period. It would have been the case irrespective of whether the transfer to the MMT had been due to take place, as the market valuation of the fund was separate to the transfer process and black-out period. That the unit price had seen a decrease was a normal activity for an investment fund of this type and similar decreases had previously been observed.
51. In conclusion, I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
31 October 2022