CAS-41042-H8M7

The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr D
Scheme	The Thames Water Pension Scheme (**the Scheme**)
Respondent	Thames Water Pension Trustees Limited (**the Trustee**)

Outcome

1. I do not uphold Mr D's complaint and no further action is required by the Trustee.

Complaint summary

2. Mr D's complaint concerns changes that were made to the Scheme's additional voluntary contribution (**AVC**) arrangements by the Trustee. He says that the changes were contrary to legislation.

3. Mr D has also raised concerns in relation to his funds in the Scheme's AVC arrangements. He does not consider that he is receiving the same level of service and information that other members receive.

Background information, including submissions from the parties

4. Mr D was a member of the Scheme.

5. The Scheme was managed by the Trustee and administered by Capita. The AVC provider was Zurich Assurance Ltd (**Zurich**).

6. Mr D paid AVCs into the Scheme. He invested in the following funds:

    - American 2 EP;
    - European 2 EP;
    - Global Select 2 EP; and
    - Newton Global Balanced ZP.

7. On 28 July 2016, The Pensions Regulator (**TPR**) issued its 'Code of Practice no 13: Governance and administration of occupational trust-based schemes providing money purchase benefits' (**the 2016 DC code**).

8. In September 2016, the magazine for Scheme members, Pensions on Tap, provided an update on changes that were being made to the Scheme's AVC arrangements. It stated that greater governance requirements on trustees resulted in the Trustee considering whether it remained practical to offer all the investment funds currently available. It also said that an improved range of funds with a more efficient charging structure would be confirmed shortly.

9. Around 21 October 2016, Capita wrote to Scheme members with AVC accounts to notify them that the Trustee planned to make some changes to the Scheme's AVC arrangements. In this letter it stated that:-

    - Following an AVC investment review, the Trustee had decided that it would be in the members' interest to make changes to the investment choices available. The range of investment funds was being simplified and fund management charges were being reduced.
    - The Trustee had taken appropriate investment advice in reaching its decision.
    - The Trustee was switching to a new administration platform with Zurich.
    - The change of platform would enable members to obtain better information, update personal details and make changes to investments more easily.
    - Existing AVC funds were being switched automatically at the start of December 2016.

10. The letter from Capita also included a mapping table confirming the funds the existing funds would be switched to. This table also provided a comparison of the annual fund charges for the old and new funds. An extract from this table is displayed at the Appendix.

11. On 4 November 2016, Zurich wrote to Mr D to provide more information on the changes to the Scheme's AVC arrangements. It said that:-

    - The transfer of Mr D's existing AVC funds would take place between 24 November 2016 and 1 December 2016.
    - Mr D may wish to review his investments, in which case, he would be able to make changes once he had been provided with his new login details.

12. On 16 November 2016, Thames Water's support centre responded to a telephone call from Mr D on 14 November 2016. It said that:-

    - Mr D could not opt-out of the AVC transfer.
    - It referred him to the two letters that had been sent by Capita and Zurich for a list of the funds available under the new AVC arrangements. It also directed him to a website where further information could be found online.

- His existing investments would be transferred into the equivalent funds under the new arrangements.

- New contributions would be invested in the default strategy. However, Mr D could go online once he received the welcoming pack and choose how he wanted his future contributions invested.

13. On 16 November 2016, Mr D telephoned Zurich and asked for a list of the new AVC funds.

14. On 2 December 2016, Zurich responded to the request Mr D made on 16 November 2016.

15. On 9 December 2016, Mr D's AVC funds were transitioned to the new platform.

16. In December 2016, Mr D said he had not received all the communications that had been issued concerning the changes to the Scheme's AVC arrangements.

17. On 21 December 2016, Mr D requested forms to transfer his AVC benefits out of the Scheme.

18. On 10 January 2017, Capita responded to queries raised by Mr D in a telephone call. It said:-

    - The move to the new AVC platform was in response to the 2016 DC code. This required the trustees of defined contribution pension arrangements to review the governance, effectiveness, and value for money of their AVC arrangements.

    - In response to the new guidance, the Trustee had asked its advisers to carry out a review of the Scheme's AVC arrangements.

    - The review found that some of the investment funds offered by the Scheme's AVC provider, Zurich, offered poor value for money. It also recommended that the number of investment funds offered should be reduced to enable the Trustee to carry out its governance obligations more effectively.

    - At the same time, Zurich had informed the Trustee that it wanted to upgrade the administration of the Scheme's AVC arrangements to its newer 'Corporate Savings' platform.

    - This had created an opportunity for the Trustee to change the choice of AVC funds offered by the Scheme to funds that offered better value. At the same time, it looked to simplify the fund range.

    - A global equity fund: the Zurich Aquila 30/70 Currency Hedged Global Equity Index CS1 fund, was available on the new platform. This was 70% invested in overseas equity markets.

19. On 25 January 2017, Mr D made a formal complaint to the Trustee. He said:-

- The changes made to the Scheme's AVC arrangements breached the guidance provided by TPR.

- The changes were not in his best interests or the interests of other Scheme members who intended to retire overseas.

- He had invested some of his AVCs in overseas investments to ensure that, when the value of sterling fluctuated, he was not adversely impacted.

- The change of platform removed his ability to invest in overseas markets in foreign currency.

- He was happy to pay higher fees for the more expensive overseas funds. The funds that he had an interest in were offered by Zurich, but not as part of the new AVC arrangements.

- He wanted compensation for loss of benefits due to the changes made by the Trustee, which were imposed on members.

20. On 17 March 2017, the Trustee provided its response under stage one of the Scheme's two stage Internal Dispute Resolution Procedure (**IDRP**). It did not uphold Mr D's complaint. It said:-

- Willis Towers Watson (**WTW**) was appointed to review the compliance of the Scheme with the 2016 DC code.

- A subcommittee of trustees worked with WTW, Zurich and the Trustee to ensure that the Scheme's AVC arrangements complied with the code. The Trustee was satisfied that the new AVC investment offering was appropriate for all members.

- As a result of the review, changes were made to the self-select fund range, to both simplify members' choices and reduce the associated fees.

- WTW advised that the majority of the Scheme members who paid AVCs were based in the United Kingdom. In addition, less than 20% of the AVC assets were invested in self invest funds.

- The changes were appropriate for the majority of members and a compensation payment to Mr D was not appropriate.

- Approximately 3% of the membership lived overseas and paid AVCs. The Trustee had to act in the best interests of the membership as a whole.

- The Scheme was established in the UK to provide benefits to members in the UK. However, there was an option under the new AVC arrangements to invest outside of the UK.

- Mr D's previous funds were not hedged against fluctuations in the value of sterling. All investments under the previous AVC arrangements were priced in sterling.

- Mr D had the option to transfer his AVC funds to another provider should he so wish.

21. On 28 August 2017, Mr D notified the Trustee that he wished to appeal its decision. He said that:-

    - The Trustee's decision to change the AVC arrangements was in the best interests of Thames Water, not the members of the Scheme.
    - He did not receive all the correspondence concerning the changes that were being made.
    - The driver behind the reduction in the range of investments was that TPR's requirements were becoming more onerous. This burden fell wholly on the Trustee and Thames Water, which was ultimately responsible for funding the costs. The members did not benefit from the reduced investment choice, it only penalised them. This was contrary to the 2016 DC code.
    - Where AVC members planned to spend their funds was of greater significance than where they resided. No attempt had been made to identify the location of deferred members of the Scheme who had paid AVCs.
    - The best interests of members would have been better served by providing them with some education on the need to select the most appropriate investments and the need to use a financial adviser.
    - The Trustee did not understand that overseas funds do not need to be hedged against sterling.
    - Members who chose the more specialist funds would have taken time to choose their own investments. They would have balanced the higher costs against the benefits of being able to invest in funds more appropriate for their needs.

22. On 23 November 2017, the Trustee provided its response to Mr D's appeal under stage two of the IDRP. It repeated some of the points made in its earlier responses. It also said that:-

    - While it did not uphold Mr D's complaint, it did identify an issue with the timing of the information that it provided. It acknowledged that this may have hindered Mr D's ability to transfer his funds out of the previous AVC arrangements before the changes were made.
    - It was prepared to offer Mr D an ex-gratia payment of £6,835.15 (**the Trustee's Offer**) in respect of these timing issues.
    - It acted independently from Thames Water.
    - One driver behind the review of the AVC arrangements was the fact that TPR's governance was becoming increasingly onerous. Another factor was a desire to

reduce costs for the members. The decisions were made in the best interests of the majority of the members. WTW had confirmed that all legal requirements were met.

- The Scheme was UK based, with the majority of members living and retiring in the UK.

23. On 7 December 2017, the transfer of Mr D's AVCs from the Scheme to a Self-Invested Personal Pension (**SIPP**) was completed.

24. On 15 January 2019, the transfer of Mr D's main Scheme benefits to his SIPP was completed.

25. In late 2019, Mr D accepted the Trustee's Offer. However, Mr D's SIPP provider was not willing to accept the sum as a compensation payment, it would only accept the sum as a new contribution. Mr D said that this approach would have had an adverse impact on his tax liability.

26. Scottish Widows acquired Zurich's pensions and savings division and was now the Scheme's AVC provider.

27. On 13 November 2019, the Trustee contacted Mr D and offered him the option of having his AVC account reactivated so that the ex-gratia payment could be invested.

28. On 14 November 2019, Mr D notified the Trustee that he wished to accept the Trustee's offer of having his AVC account reactivated. He said that this was subject to Scottish Widows being willing not to treat the payment as a new contribution.

29. On 21 November 2019, the Trustee notified Mr D that Scottish Widows would treat an ex-gratia payment from existing Scheme assets as compensation for lost investment, rather than a new contribution.

30. On that same day, Mr D confirmed that his preference was to have his Scottish Widows AVC account reactivated and the £6,835.15 paid into it.

31. In December 2019, Mr D's AVC account with Scottish Widows was reactivated. A payment of £6,835.15, less a reactivation fee, was paid into it.

32. On 9 December 2019, Mr D sent an email to the Trustee. He asked:

> "Can you please clarify my pension status. I have transferred out of the defined benefit scheme but with the AVC being supervised by Thames Water Trustees am I not a member of a defined contribution Thames Water Pension Scheme."

33. On 13 December 2019, the Trustee sent an email to Mr D in response to his email of 9 December 2019. It said: "That is correct".

34. Mr D then asked how he could obtain information on his AVCs, having been told by the Trustee that he was not a member of the Scheme. He had also been told by

Trafalgar House, the Scheme's new administrators, that he was technically not a deferred member.

35. On 4 May 2021, the Trustee responded to Mr D's question. Referring to its email of 13 December 2019, it said:-

- When Mr D accepted the ex-gratia payment of £6,835.15, he was no longer a member of the Scheme as all his benefits had been transferred out.

- When Mr D's AVC account was reactivated and the ex-gratia payment made, Mr D regained his Scheme membership. He became an AVC only deferred member of the Scheme.

- Mr D's benefits were limited to an AVC account with Scottish Widows. His rights were identical to the rights that any other Scheme member with an AVC account had in relation to their AVCs.

- Any Trustee and Scottish Widows communications relating to AVCs held with Scottish Widows would be sent to Mr D, including an Annual Benefit Statement.

- Mr D had access to the Scottish Widows AVC portal.

- Mr D did not have access to Trafalgar House's MyWorkPension portal (**the Portal**). The Portal did not have access to real-time AVC data and the information present would be largely irrelevant as Mr D did not have any non-AVC benefits.

- When Mr D decided to take his benefits, he would have the same rights and options as other members have in respect of their AVCs.

- If Mr D wished to transfer his AVCs or take his retirement benefits, he should contact Trafalgar House. It would then liaise with Scottish Widows. If he wished to take an annuity with Scottish Widows, Mr D could liaise with Scottish Widows directly.

- It apologised for any concern caused to Mr D if he had been told that he was not a deferred member of the Scheme. It also apologised that he was not sent information on the vacancy for a Member Nominated Trustee in September 2020. It stated that steps had been taken to ensure that Mr D's status was more clearly recorded on its systems.

Adjudicator's Opinion

36. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-

- The Adjudicator noted that the 2016 DC code required the Trustee to demonstrate how it met the standards of conduct and practice that TPR expected trustee boards to meet in complying with their legislative duties. The code was not prescriptive, it was the responsibility of the Trustee to make judgment calls as to what was a reasonable and proportionate method of ensuring compliance for the Scheme.

- In seeking to ensure that the Scheme's AVC arrangements complied with the code, the Adjudicator noted that WTW had been appointed to provide subject matter expertise. A subcommittee of Trustees worked with WTW, Zurich and the Trustee on this review.

- The Adjudicator was of the opinion that there was nothing in the outcome of the review, and the subsequent changes that were made to the Scheme's AVC arrangements, that was of concern. In particular:-

  - The annual fund charges for the new funds were lower than for the old funds, representing a saving for members.

  - The number of funds available under the new arrangements was less than those under the old arrangements. However, a reasonable spread of funds was available that would, in the view of the Adjudicator, meet the requirements of the majority of the Scheme members. The Adjudicator noted that the Trustee considered, by reducing the number of funds, it enabled the Trustee to carry out its governance obligations more effectively. In the Adjudicator's opinion, this was a reasonable approach given the additional requirements introduced by the 2016 DC code.

  - The Adjudicator noted that one of the funds offered under the new AVC arrangements was invested overseas. In the Adjudicator's opinion, the Trustee was not obliged to provide further overseas investment options to meet the needs of members who intended to retire overseas.

  - In the view of the Adjudicator, Mr D's requirements were not representative of the majority of members. He was a more experienced investor who required access to a wider range of investment funds to achieve his aims, which included hedging against future currency fluctuations. The Adjudicator acknowledged that the changes to the AVC arrangements had restricted the investment options available to Mr D. The Adjudicator also acknowledged that the changes were made in the best interests of the majority of Scheme members.

  - The Adjudicator noted Mr D's comment that the previous fund choices should have been retained by the Trustee. The Adjudicator also noted Mr D considered that members should have been educated on the need to select investments most appropriate for them, and to use a financial adviser. The Adjudicator agreed that education was never a bad thing. However, he was of the view that the Trustee was responsible for providing a range of investments that did not require members to have investment expertise.

- The Adjudicator noted that Mr D had the option to transfer his AVCs out of the Scheme and he had chosen to do this.

- The Adjudicator acknowledged that Mr D said he did not receive all the communications that the Trustee claimed were sent to him concerning the changes to the Scheme's AVC arrangements. Mr D had stated that the first communication that he received was from Zurich on 4 November 2016; he received no communication from Capita in October 2016. The Adjudicator noted that Mr D telephoned Thames Water's support centre on 14 November 2016, requesting more information on the changes. As well as the written response that the support centre provided, Mr D was directed to an online site where further information was available.

- The Adjudicator also acknowledged Mr D said he was unclear how he could obtain information on his AVCs. In the Adjudicator's opinion, the Trustee's response dated 4 May 2021, gave adequate clarification in this respect. The Trustee stated that Mr D would:

  - be treated as an AVC only deferred member of the Scheme;

  - receive the same communications that other members of the Scheme who had AVC funds receive in relation to their AVCs;

  - have access to the Scottish Widows' AVC portal; and

  - be able to contact Trafalgar House should he wish to transfer his AVCs or take his retirement benefits.

- The Adjudicator noted that Mr D said he was told by Trafalgar House that he was not technically a deferred member of the Scheme. The Adjudicator also noted that the Trustee has since contacted Trafalgar House to ensure that it was aware of Mr D's membership status in the Scheme. In addition, steps were taken to ensure that Mr D was recorded on Trafalgar House's system in the most appropriate way. As he was the only AVC-only deferred member in the Scheme, it is understandable that a precedent for recording his status was unlikely to have existed.

37. Mr D did not accept the Adjudicator's Opinion. He said that:-

- The 2016 DC code did not refer to changes that would benefit the 'majority' of members. He questioned in what circumstances the interests of members as a whole could override the best interests of the minority. One of the guidelines issued to accompany the code stated that: "All members should receive good value from their pension scheme".

- A choice of low-cost UK AVC funds and higher cost overseas funds did not harm those who chose the lower cost funds.

- He was seeking unhedged overseas funds to provide a hedge against future currency fluctuations. There was an overseas fund under the new AVC arrangements. However, as it was hedged back to sterling, it was worthless for hedging purposes.

- The Trustee had stated that approximately 3% of the membership lived overseas and paid AVCs. This figure was inaccurate. The real issue was that accurate information was not available on the number of members who would benefit from having a wider choice of AVC investments.

- Trafalgar House said that he was not technically a member if the Scheme. It was the Trustee that stated that he was not a member of the Scheme. He wanted to be accepted by the Trustee as being a deferred member with full rights.

- The Trustee continued to deny him the same level of service and information that all other members of the Scheme who held AVC funds received. An example of this was Pensions on Tap, which was sent to all current and deferred members.

- He was denied access to the Portal. It contained information that was relevant to him. This included the legal documents for the Scheme and an online copy of Pensions on Tap.

- Earlier in the year, he contacted Trafalgar House to enquire about his options in respect of his AVCs. It said that he could only transfer them out of the Scheme. He was expecting to also be offered the option to convert them to a pension in the Scheme.

38. In response to Mr D's further submissions the Trustee made a number of additional points, which included:-

- It did not tell Mr D that he was not a member of the Scheme once his AVC account had been reactivated. In the relevant email exchange from December 2019, Mr D asked: "Can you please clarify my pension status... am I not a member of a defined contribution Thames Water Pension Scheme". The Trustee responded: "That is correct". It was agreeing that Mr D had become a deferred member of the Scheme, but only in respect of his reactivated AVC account, which provided benefits on a defined contribution basis.

- The main purpose of the Portal was to provide tooling to enable members of the Scheme to model their main benefits. It did not hold up to date AVC information and was of little benefit to Mr D. He will be sent a copy of Pensions on Tap. He had already been provided with a copy of the Scheme's legal documentation.

- In relation to the benefits payable to him, Mr D will be provided with the same options as other Scheme members with AVCs, subject to the rules of the Scheme. Where the exercise of any of the options is dependent on the discretion of the Trustee, it cannot say in advance how such discretion would be exercised.

39. Mr D's complaint was passed to me to consider. His comments do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr D.

Ombudsman's decision

40. Mr D's main complaint concerns changes that were made to the Scheme's AVC arrangements which he says were contrary to legislation.

41. In making changes to the Scheme's AVC arrangements, the Trustee had a responsibility to look after the interests of the members. However, with any change of this type, it is not always possible to meet the needs of all members. There is likely to be a degree of compromise which results in some members feeling that they have lost out.

42. The primary purpose of AVC arrangements is to provide an opportunity for members to make additional contributions to increase their income when they retire. Scheme trustees must also bear in mind that not all of its members have investment expertise. So, there is a requirement to offer a range of easily understood investment opportunities with an acceptable level of risk.

43. I acknowledge Mr D's comment concerning the accuracy of information available in relation to the number of members who would benefit from having a wider choice of AVC investments. In particular, it is difficult to predict how many of the current membership who are paying AVCs are planning to retire overseas.

44. However, I do not agree that providing more experienced investors with the opportunity to hedge against currency fluctuations is a requirement that the Trustee had to take into account. More specialised investment funds exist outside of the Scheme which could be used for this purpose.

45. Mr D has said that the Trustee acted in the interests of the employer rather than the members. I do not agree that this was the case. The new AVC arrangements have provided benefits to the members including lower fund charges, the simplification of the choices available and the introduction of an improved online platform. The Trustee needed to consider the needs of the members. However, it was not unreasonable for it to have also considered the value for money offered by the new funds and the reduced governance costs. The introduction of a range of more complex funds would have increased these costs. It was also not unreasonable for the Trustee to consider whether more complex funds would offer value for money for the membership as a whole.

46. I note that the Trustee sought expert advice from WTW who were responsible for ensuring the Scheme complied with the 2016 DC code.

47. I also note that there was some confusion in relation to the email exchange in December 2019 between Mr D and the Trustee. This was caused by a misunderstanding over the use of the word "not". I am satisfied that this has been

resolved and all parties have a common understanding of what the Trustee was conveying in its response. It was agreeing that Mr D had become a deferred member of the Scheme in respect of his reactivated AVC account.

48. The Trustee has confirmed that Mr D will have access to the same level of information as other deferred members of the Scheme have in respect of their AVCs. This includes a copy of Pensions on Tap. The Trustee has also confirmed that access to the Portal will not be provided to Mr D. I agree that it is more appropriate for Mr D to have access to the Scottish Widows' AVC portal in view of his AVC-only status in the Scheme.

49. I am satisfied that the Trustee has adequately explained the primary usage of the Portal as being relevant to members' main Scheme benefits. In addition, other information that may be accessible from the Portal, such as the Scheme's legal documentation, can be requested directly from the Trustee.

50. I note that the Trustee has confirmed that, subject to the rules of the Scheme, Mr D is entitled to the same benefit options in respect of his AVCs as all other Scheme members with equivalent AVCs. I also note that it has discussed this with Trafalgar House. The Trustee has stated that Mr D can contact the Trustee if he has any concerns about his status in the Scheme in the future. In particular, he can do this if he receives a benefit quotation which he believes does not reflect the benefit options he was expecting to be available to him.

51. In summary, I find that the changes the Trustee made to the Scheme's AVC arrangements were appropriate in the circumstances and do no amount to maladministration. I acknowledge that Mr D is likely to be the first AVC-only deferred member of the Scheme. His unique status may have initially caused some confusion. However, I am satisfied that steps have been taken by the Trustee to clarify his status and ensure that the level of information available to him is appropriate.

52. I do not uphold Mr D's complaint.

Anthony Arter

Pensions Ombudsman
21 July 2021

Appendix

Summary of the mapping between the old and new AVC funds for the funds in which Mr D's AVCs were invested

Asset class	Existing fund range	Total fund charge (% pa)	Mapped to new fund range	Total fund charge (% pa)
Global Equity	American 2 EP	0.930	Zurich Aquila 30/70 Currency Hedged Global Equity Index CS1	0.592
Global Equity	European 2 EP	0.910	Zurich Aquila 30/70 Currency Hedged Global Equity Index CS1	0.592
Global Equity	Global Select 2 EP	0.880	Zurich Aquila 30/70 Currency Hedged Global Equity Index CS1	0.592
Diversified Growth	Newton Global Balanced ZP	1.000	Zurich Legal & General Diversified CS2	0.690