

Ombudsman's Determination

Applicant	Mrs D
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	West Yorkshire Pension Fund (WYPF) and City of Bradford Metropolitan District Council

Outcome

1. I do not uphold Mrs D's complaint and no further action is required by WYPF or City of Bradford Metropolitan District Council.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs D has complained that when she joined the Scheme, administered by the WYPF, on two separate occasions, the guides provided to her did not provide information on the fund's investments.
4. Mrs D has said that investing in certain company shares is against her religious and ethical beliefs and because of this she would not have joined the Scheme. Mrs D said the complaint is not about her religious beliefs; it is about receiving the information necessary to have made an informed choice.
5. In 2014 Mrs D found out that the fund invested in shares and asked to stop her membership. Mrs D asked for a refund of her contributions, this was declined by WYPF, they have said the Rules of the Scheme do not allow for a refund of contributions where the length of qualifying service is less than two years. Mrs D is currently a deferred member of the Scheme.
6. Mrs D wants the contributions refunded, without interest, as she believes that she has been contributing to businesses that undertake activities against her religious beliefs.
7. Mrs D has also questioned if the "death grant" available under the Scheme is permissible under her religious beliefs.

Background information, including submissions from the parties

8. Mrs D joined the Scheme in 2000 and in 2008. On both occasions an initial information guide was sent to Mrs D. The guides did not contain information with regard to the assets the fund was investing in. The current version of the guide continues to omit any information regarding the assets held in the fund.
9. Much of the information provided by Mrs D, the WYPF and the City of Bradford Metropolitan District Council was in respect of the Scheme being permissible under Sharia Law. This information confirmed that different scholars take different views on this matter.
10. In response to the complaint WYPF have said that “being a member of a defined benefit scheme should not compromise a Muslim’s ethical or religious beliefs”. WYPF obtained the views of a scholar who had previously issued a Fatwa on this issue and confirmed that the scheme was permissible under Sharia Law.
11. The Fatwa described the final salary scheme as an extension of the employment contract. It said that although an employer may not comply with Sharia Law in the way it undertakes its business, as long as the business activity was permissible, an individual can receive a salary from that employer. The scholar said that in the same way a payment for work completed paid as a salary was permissible, payment under a final salary scheme was also permissible.
12. WYPF have said that how the fund works is complex. Because of this it does not provide the information about the fund in the initial guide, it did however state that Mrs D should have understood that a pension scheme would invest in shares and earn interest.
13. During the course of the investigation, Mrs D asked the Adjudicator to consider the “European Fair Trading Law” and “The Consumer Protection from Unfair Trading Regulations” in respect of the complaint.

Adjudicator’s Opinion

14. Mrs D’s complaint was considered by one of our Adjudicators who concluded that no further action was required by WYPF or City of Bradford Metropolitan District Council. The Adjudicator’s findings are summarised below:
15. The Adjudicator had a number of telephone calls with Mrs D prior to issuing the Opinion. The Adjudicator believed that he would not be able to provide an opinion as to the defined benefit scheme being permissible under Sharia Law. The Adjudicator confirmed that Mrs D would need to come to her own conclusion with regard to this matter. Mrs D agreed with this point and confirmed that the complaint was about the ability to make an informed choice based on the information provided.

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16. The Adjudicator confirmed that Mrs D agreed with his view that the Rules of the scheme do not allow for a refund of contributions. It was confirmed that the Opinion would be about the initial information provided to Mrs D and if that information should have detailed the assets that the fund was investing in.
17. The Adjudicator referred to The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 and provided all parties with a copy of these Regulations and the “Public Service Toolkit” summary which was produced with them. These Regulations set out what information should be provided to members of a Scheme. The Adjudicator confirmed that these Regulations do not state that assets within a defined benefit scheme’s fund need to be disclosed. The Adjudicator confirmed that the Regulations make no provision for the disclosure of information that potentially could be relevant in respect of an individual’s religious or ethical beliefs.
18. The Adjudicator’s opinion was that the guides should explain the benefits payable under the defined benefit scheme and what is required by the member in respect of contributions to receive those benefits. The Adjudicator confirmed that the benefits payable were not dependant on the performance of the assets within the fund and in his opinion did not need to be detailed.
19. WYPF have said that it has taken the decision not to include information about the fund in the initial guide as it is complex and it believes the information should be as simple as possible. The Adjudicator was of the opinion that as the Regulations do not require details of the assets in the fund to be disclosed, it was for WYPF to decide whether the information should be included.
20. The Adjudicator’s view was that the European Fair Trading Laws and The Consumer Protection from Unfair Trading Laws were not applicable to this complaint. In summary, these laws concern the purchase of goods and the requirement for the relevant information to be provided regarding what is being purchased. These Regulations do not concern how the business conducts itself or what it actually does to provide the goods or services promised.
21. The Adjudicator disagreed with WYPF regarding what Mrs D should have known about a pension schemes. It was his opinion that Mrs D could not have been expected to know that a fund existed and that the fund invested in shares and held cash that would earn interest. However, where someone holds strong beliefs, it was the Adjudicator’s opinion that the responsibility would be with them to make all of the enquiries necessary to understand what they were entering into and paying for.
22. The Adjudicator confirmed that he could not comment on the “death benefit” in relation to it being permissible under Sharia Law.

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23. The Adjudicator recognised Mrs D's position and understood her distress, however, he could not identify that WYPF or City of Bradford Metropolitan District Council had done anything wrong, because of this he did not recommend that the complaint be upheld.
24. Mrs D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs D provided her 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 Mrs D for completeness. West Yorkshire Pension Fund and the City of Bradford Metropolitan District Council both agreed with the Opinion of the Adjudicator.

Ombudsman's decision

25. Mrs D referred to the Public Service Toolkit which states that all schemes should provide:

“a statement that the pension payable will depend on several factors including contributions paid, investment returns and annuity rates”.
26. This is however only part of the sentence as it begins “Where benefits include DC benefits.... “. The scheme that Mrs D is a member of is a defined benefit scheme and as such this requirement is not applicable. “DC benefits” refer to a defined contribution scheme.
27. Mrs D said that the toolkit also required that the information in the guide should include “how they increase in payment”. This is only part of the sentence which reads, in full:

“a summary of the benefits payable under the scheme, including details of how they accrue, what definition is used (if any) for pensionable earnings, how benefits are calculated, when and on what conditions they are payable, and how they increase in payment”.
28. The reference to “increase in payment” is the requirement to inform a member how their income would increase once the benefits are paid to the scheme member. This is usually calculated by using an inflationary index such as RPI or CPI. This has nothing to do with the fund or the assets held within the fund; therefore this is not relevant to this complaint.
29. Mrs D has referred to the Regulations booklet where it states on two occasions that information on “how and when benefits in payment are increased, if appropriate” should be included. For the same reasons explained above, this refers to how the benefits will increase after they commence, and is not relevant to this complaint.

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30. Mrs D refers to page 20 of the Regulations where it lists under information to be included, “the performance of investments”. This is under section 16. It states:

“Where the member has money purchase benefits, a statement that the value of the pension will depend on several factors including the amount of the contribution paid, the performance of investments and the cost of converting the benefit to an annuity”.
31. This section is for money purchase benefits. The Scheme does not have money purchase benefits. Mrs D has a defined benefit scheme and has not purchased any Additional Voluntary Contributions (AVC's) that are money purchase; therefore, this section does not apply to Mrs D.
32. Mrs D has said that the Regulations do not clearly state that the information on the assets held in the fund should not be provided. Because of this Mrs D has said that the information should be provided. The purpose of the Regulations are to describe what information is required, any information not listed in the Regulations do not need to be provided to scheme members.
33. Therefore, I do not uphold Mrs D's complaint.

Anthony Arter

Pensions Ombudsman
25 November 2016