

Ombudsman's Determination

Applicant	Mr N
Scheme	Social Housing Pension Scheme (the Scheme)
Respondents	East Thames Group (the Employer) JLT Benefit Solutions Limited (the Administrator) The Pensions Trust (the Trustee)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Employer, the Administrator, or the Trustee.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N's complaint is in three parts. It follows a consultation resulting in the transfer of his benefits under one section of the Scheme to another. First, online access was promised as part of the Scheme benefits but not delivered for some time and did not include important features. Second, there were delays in the collection and investment of contributions, which may have caused losses. Third, he was not informed there would be deductions from contributions to pay for life assurance.
4. Mr N considers that the errors and omissions justify carrying out the consultation again, giving him and other affected members the chance to be reinstated in the original section of the Scheme.

Background information, including submissions from the parties

5. In September 2006, Mr N joined the defined benefit section of the Scheme (**the DB Section**). He accrued benefits on a defined benefits basis.
6. In May 2013, the Employer decided to close the DB Section, to future accrual, following a consultation. Mr N was given the option of joining a new defined contribution section (**the DC Section**), which he chose to do.
7. In July 2013, the Employer closed the DB Section. Mr N's benefits in the DB Section were preserved and future accrual ceased. After that, members who joined the DC

Section accrued pension benefits on a defined contribution basis. The rules of the DC Section stated: -

“Management expenses, including investment expenses, shall be deducted as determined by the Trustee.” [Growth Plan Rule 3.5.3]

“Payment of the lump sum is subject to the payment by the Employer of such contributions as the Trustee may require in order to provide for this benefit.” [Flexible Retirement Plan Rule 10.1]

8. In October 2013, the cost of life assurance deductions rose from 0.2% to 0.45% of the Employer’s contribution.
9. Mr N later complained to the Trustee about the three main issues which are the subject of this complaint.
10. In April 2014, the Trustee responded under stage one of its internal dispute resolution procedure (**IRDP**). The key points were: -
 - It was the Employer’s decision to close the DB Section, and Mr N could have chosen not to join the DC Section.
 - The timing of the payment of contributions was down to the Employer, but they had to be credited by the 19th of the month following the contribution.
 - The introduction of the online system had been delayed as it had to be fully tested, however provision of this service was not guaranteed.
11. Mr N appealed the Trustee’s decision and raised further points.
12. In August 2014, the Trustee responded under stage two IDRP. In summary the Trustee said: -
 - It would provide Mr N with schedule of contributions to date, with daily unit prices, which he could then take up with the Employer.
 - It had commented on contribution delays and had nothing further to add.
 - It had no involvement with the consultation exercise, so Mr N should raise this issue with the Employer.
 - It was not prepared to offer compensation for any financial losses, as it had not been demonstrated that Mr N had suffered any. Nor was it prepared to offer compensation for lack of online access, as this was never guaranteed.
13. Mr N appealed again and made some further points.

14. In October 2014, the Trustee wrote to Mr N and said in summary: -

- There were delays receiving and investing contributions. However a payment of £48.12 was made to the DC Section in July 2014 to address this.
- It had failed to respond to some of his email queries, partly because they were sent to several different people at the Trustee and the Administrator. However, it apologised for any distress this may have caused him.
- It usually took three working days for the Administrator to verify the data and request contributions. Once payment was received, it took about five working days for contributions to be invested.
- It could not comment on whether the Employer should submit contributions the day they were deducted from Mr N's salary. Unit prices changed every day, so it was difficult to establish if a loss had actually been incurred.
- The DC Section was a web-based product, so there was a lot of information available on its website, which Mr N was informed of in April 2013 when his membership in the DC Section was confirmed.
- Information regarding life assurance costs, applicable from October 2013, was communicated to the Employer. It was the Employer's responsibility to make Mr N aware of this. The Trustee's website included this information.
- Mr N's complaint about online access was answered in August 2014. Access for his section was currently planned for October 2015.

15. In November 2014, the Trustee wrote to Mr N, informing him that he could appeal the decision under stage two of the IDRP with the Employer and the Administrator.

16. In January 2015, Mr N complained to the Employer and, in June 2015, he complained to the Administrator.

17. In June 2015, the Administrator responded to Mr N and said: -

- He was correct that a life assurance charge was too high. It should have been 0.45% and deducted from the Employer's premium only.
- This had, however, been put right by buying 5.791 further units. It apologised for any confusion this had caused.

18. In November 2015, Mr N referred his complaint to this Office.

19. In December 2015, Mr N wrote to the Administrator. In summary he stated: -

- He was pleased that the incorrect 0.45% deduction was no longer being applied. But he thought past occurrences should be credited back to him.
- He also felt the online system should be clearer and more comprehensive.

- He could not see that a 'positive adjustment' of additional units, which had been mentioned by the Administrator, had been made.
20. In January 2016, Mr N confirmed to this Office that online access was now available. However, he thought there were various shortcomings with it.
21. In February 2016, the Trustee wrote to this Office with its submissions. It rejected all parts of Mr N's complaint. The key points were: -
- It was the Employer's decision to offer life assurance, and the Trustee gave it all the relevant information to pass onto Mr N.
 - There were several issues in collecting contributions in the months following the change-over. However, these were discussed with The Pensions Regulator (**TPR**) and £48.12 was credited to Mr N's account for any losses. This was confirmed to Mr N in October 2014, with its response regarding delays. This part of the complaint should be directed to the Employer.
 - It was misinformed by the Employer about how much Mr N had contributed into the DB Section. This was not the Trustee's fault, however subsequent information was received, and the details were corrected. Should Mr N die before taking his benefits, he would receive a refund of contributions together with interest.
22. In February 2016, the Employer wrote to this Office. The key points were: -
- It was led to believe the online portal would be available sooner. However, it would still have closed the DB Section even had it known there would be a delay.
 - For death in service benefits, details of the 0.2% charge were made available online. Mr N would have been able to review this information before deciding whether to join the DC Section. The rules of the DC Section allowed the Trustee to increase the charge but the Trustee, not the Employer, was responsible for informing members when this would happen.
 - The DB Section was closed following an appropriate period of consultation. All members of the DB Section were free to not join the DC Section, but Mr N decided to do so.
 - Two contributions dates were missed, in December 2013 and March 2014, but Mr N had received compensation for this. Since then, it had uploaded payment information by the 10th of every month, in line with the Trustee's guidance, and there had been no further delays in contributions being credited.

Adjudicator's Opinion

23. Mr N's complaint was considered by one of our Adjudicators, who concluded that no further action was required by the Employer, the Administrator or the Trustee. The Adjudicator's findings are summarised briefly below: -
- There was insufficient evidence that online access formed part of the original agreement to transfer to the DC Section; there was a lack of detail about when it would be introduced, or what specific features it would have. So neither the Employer, the Administrator, nor the Trustee, had acted in maladministration in this regard.
 - There were a number of instances where contributions were not collected and invested within the required timescales. The reasons for this were somewhat complicated; however, briefly, a combination of the Trustee's systems and the Employer's actions contributed to delays which might have caused investment losses. However, in consultation with TPR, the parties had agreed a way to compensate members for potential losses. Assumptions had been made, which were deemed to be reasonable. Where an approach had been approved by TPR, it was unlikely the Ombudsman would substitute his own formula.
 - The rules of the DC Section provided that the cost of life cover could be covered by means of deductions from the Employer's contributions, and those deductions could be increased. The Employer required the Trustee to provide members with life cover, and there was no possibility of "opting out". So even had Mr N not agreed to deductions being made, and/or increased, the only option was not to join the DC Section. In the Adjudicator's opinion, Mr N would have joined the DC Section, even if he had been fully aware of the level of life cover he would be required to have, and the funding arrangements.
 - There was insufficient evidence that the consultation that led to the transfer to the DC Section had been carried out incorrectly. Without the benefit of hindsight, it was more likely than not that Mr N would have decided to join the DC Section even had he known: (1) that online access would be delayed; (2) that some contributions might be delayed; and (3) that deductions for life assurance would be made from the Employer's contributions, and that they could be increased.
24. The Employer, Administrator, and Trustee, accepted the Adjudicator's Opinion. Mr N did not.
25. The Adjudicator therefore requested further information from all the parties. The further points Mr N raised were summarised, and answered, in the Adjudicator's email dated 2 August 2017. That letter, and the remainder of the correspondence, are summarised briefly below: -

- The Adjudicator did not change his opinion that online access was not promised, or the details of its specific features. Therefore, these were not grounds for a finding of maladministration against the Employer, Administrator or Trustee.
- There was evidence of further missed deadlines for collection and investment of contributions. However, TPR had raised no further concerns. Whilst losses may have been incurred, through late investment of contributions, this was difficult to establish, owing to daily changes in unit prices, and any losses were likely to be marginal.
- There was no maladministration, regarding life assurance deductions, by the Employer, Administrator or Trustee. The rules of the DC Section, which Mr N agreed to when he transferred from the DB Section, provided for deductions to be made, and reasonable efforts were made by the Trustee and Employer to bring to the attention of potential members relevant information regarding life assurance and how its costs would be met. More could have been done, but the rules of the DC Section were made available at the time that Mr N agreed to join the DC section, and they outlined the basis for the deductions.
- Specifically, under section 3.5 of the Growth Plan rules, and 10.1 of the Flexible Retirement Plan rules (as incorporated into the rules of the DC Section by inclusion in the SHPS Scheme document), the Trustee was required, at the request of the Employer, to provide life cover to members. The benefit is funded by the Employer, by deductions from its contributions to the DC Section. This is common with many other occupational pension schemes. There was no possibility of “opting out” of life assurance, so the only way the costs could have been avoided was by not joining the DC Section. Without the benefit of hindsight, it was difficult to say with certainty exactly what Mr N would have done had he been fully aware of the way in which the cost of providing life assurance would be met. However, on the balance of probabilities, and given the various benefits of joining the DC Section, including employer contributions, it is likely that Mr N would have made the same choice.
- Clearly Mr N’s experience, before, during and after joining the DC Section, fell short of his expectations. However, whilst there had been some instances of maladministration, mostly on the part of the Trustee and the Employer collecting and investing contributions, and providing prompt information about the cost of life assurance, no further action was justified.

Ombudsman’s decision

26. Mr N did not accept the Adjudicator’s Opinion, so the complaint was passed to me to consider. I agree with the Adjudicator’s Opinion, as summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

27. I agree that, whilst it took a long time for online access to be made available, and did not include all the functionality Mr N would like, there is insufficient evidence that these things were guaranteed as part of the agreement that Mr N accepted when he agreed to join the DC Section. I do not find that there has been any maladministration in this respect.
28. Also, while some contributions have been collected and invested outside the required or recommended timescales, this does not justify further action by any of the parties. TPR, as the regulator of UK workplace pensions, carefully reviewed the circumstances, and concluded that compensation should be paid, because of potential investment losses. It is important to point out that TPR did not establish that losses were definitely suffered in Mr N's particular case. Rather, it made assumptions and calculated what the losses were likely to have been. As the Adjudicator mentioned, TPR did not raise any concerns regarding later periods in which contributions were collected and invested late. Moreover, the losses, if there were any, are likely to have been minimal.
29. With regard to deductions for life assurance. Mr N has said that he expected that charges such as those incurred in providing life cover would be met from the annual management charge, and without being informed there was no reason to believe otherwise. Also, Mr N understood the Employer's contribution rate would be 12%, and his own rate would be 10%, that was not incorrect; they were just gross figures that did not take into account deductions. However, I am satisfied that the deductions are allowed for under the terms which Mr N accepted when he agreed to join the DC Section.
30. I believe that the Trustee, and the Employer, could have done more to ensure that Mr N and other members aware of these deductions. However, I note the Employer made available on its website information regarding these deductions. Mr N would have been able to review this, and ask further questions, before deciding whether to join the DC Section. Ideally, Mr N would have known exactly how much of the Employer's, and his own, contributions, be invested on his behalf in the DC Section. However, it is more likely than not that Mr N would have joined the DC Section even regardless of whether he had known of the way in which the charge would be taken. I consider that Mr N would have judged the benefit of joining the DC Section, with the contribution rate paid by the Employer, even allowing for the deduction for the life cover charge to be worthwhile when compared with setting up his own arrangement.
31. I find that the consultation was carried out correctly.
32. Therefore, I do not uphold Mr N's complaint.

Anthony Arter
Pensions Ombudsman
18 September 2017