

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Halcrow Pension Scheme ( <b>the Scheme</b> )
Respondents	The Trustees of the Halcrow Pension Scheme ( <b>the Trustees</b> ), Halcrow Group Ltd ( <b>HGL</b> ) and CH2M Hill Europe Limited ( <b>CH2M</b> )

## Outcome

1. I do not uphold Mr Y's complaint and no further action is required by the Trustees, HGL or CH2M.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr Y has complained that following a transfer from a previous employer's pension scheme in 2002 there was a contractual promise to uprate his deferred pension in respect of the transfer-in at 6.5% annually. This contractual promise was confirmed in 2008 and in 2012 when he left employment. On 1 June 2016 HGL wrote to say that his pension would be transferred to a new pension scheme, the Halcrow Pension Scheme (No.2) [**HPS2**], and the deferred pension would be increased in line with the Consumer Price Index (**CPI**). Mr Y has estimated that this will reduce the pension payable by approximately £10,000 a year and he wants compensation for the removal of the contractual terms.

## Background information, including submissions from the parties

4. Mr Y was employed by HGL from 1998 to 2011 when he left under a compromise agreement.
5. In 2002 Mr Y asked the Scheme to investigate a transfer from a previous employer's pension scheme to the Scheme. On 25 September 2002 the Pensions Department sent a memorandum to Mr Y to say that the transfer value offered of £28,155 would buy an additional 9 years of service. The memorandum also said under the heading Increases to Pensions:

"If you leave before your normal retirement date, the added years part of any deferred pension would be increased at the rate of 6.5% per annum."

The memorandum also asked Mr Y to confirm whether he wished to proceed with the transfer or not by completing the enclosed memorandum.

6. Mr Y wrote to the Pensions Department on 9 October 2002 and referred to both the memorandum of 25 September 2002 and a telephone conversation the previous day. Mr Y said:

" I understand the transfer value of £28,155.41 would buy 9 years of added service...I further understand that this will increase in proportion to increases in my salary prior to leaving or at a fixed rate of 6.5% per year should I leave before retirement."

7. Mr Y also completed the memorandum previously enclosed with the 25 September 2002 memorandum to say that he wished to proceed with the transfer.
8. On 25 October 2002 the Pensions Department wrote to Mr Y to confirm that following receipt of the transfer value "this payment will provide you with 9 years of pension service in the scheme."
9. In 2007 HGL closed the Scheme to future accrual with effect from 31 December 2007. Mr Y contacted the Trustees asking about the methodology for uprating the transfer in now that the Scheme was closed to future accrual. The Pensions Manager replied on 11 March 2008 and said:

"The methodology for increasing your benefits in deferment is fixed at the point you leave the Scheme, in line with the Scheme rules and Trustees' practice

...

Had you left the Scheme, and thus lost future salary linking on your Scheme benefits, on 31<sup>st</sup> December 2007 then your benefits would be increased from that date in line with standard deferment increases.

In deferment, under current terms, your benefits in respect of your transfer in would increase at 2% pa above the standard rate of increase. This standard increase (which is known as section 52a orders and is declared by the Government each year) is in line with increases in the retail price index, but with an overall maximum increase of 5% pa over the whole deferment period."

10. Mr Y was not happy with the response he received and after a further exchange of correspondence the matter was referred to the Trustees. The Trustees considered the matter at a meeting in June 2008, and the Chairman of Trustees wrote to Mr Y on 4 July 2008, and said:

"I am pleased to advise you that, having fully considered the matter, the Trustees agreed that in cases such as yourself where the wording on the letter

issued at the time of transferring was not sufficiently accurate and therefore differs from the original intention, then members will be provided with benefits strictly in accordance with the letter.

In your case, therefore your transferred in benefit in excess of the Guaranteed Minimum Pension will increase by 6.5% per annum compound in deferment.”

11. HGL, as principal employer of the Scheme, faced a number of financial difficulties in the following years and it led to the acquisition of HGL by CHM2. HGL’s financial difficulties also contributed to a growing deficit in the Scheme.
12. The Trustees sought additional funding from CHM2 when it acquired HGL to continue on an ongoing basis. But CHM2 was under no legal obligation to provide additional funding or a guarantee to the Scheme. The Trustees were concerned with HGL’s weak covenant and contacted the Pension Regulator regarding the difficulties in agreeing a schedule of contributions following the 2011 actuarial valuation.
13. In 2014 CH2M/HGL made a proposal to the Trustees for a restructuring of members’ benefits. The offer was for members’ benefits to be transferred to a new Scheme without their consent. The offer was considered by the Trustees and they applied to the High Court to confirm that it was a proper exercise of the Trustees’ powers to agree to the restructuring of members’ benefits.
14. The 2014 offer did not proceed as the Judge concluded that it required the members to give their individual consent.
15. Following the High Court ruling, HGL and CH2M put forward an alternative proposal. The proposal was designed to avoid the Scheme falling into the Pensions Protection Fund (**PPF**). The proposal was reviewed by the Trustees with the involvement of the Pensions Regulator (**TPR**) and the PPF. In order to give effect to the proposal, TPR had to agree to a regulated apportionment arrangement (**RAA**) which it did on 28 May 2016. The PPF also formally issued its non-objection to the new proposal.
16. Following this, on 31 May 2016 HGL wrote to all members with details of the proposal which was for members to agree to transfer to HPS2 and included:
  - all members’ starting pension or deferred pension in HPS2 would be the same as under the Scheme, including all increases in payment and revaluations up to date of transfer;
  - all members would be provided with an initial uplift on transfer;
  - revaluation and indexation of members’ benefits in HPS2 would be reduced to statutory minimum levels; and
  - there would a PPF underpin.
17. Members were given three months to consider the offer and complete a form to agree to a transfer to HPS2. If members did not consent to the transfer to HPS2 then they

would be transferred to the PPF. Mr Y agreed to transfer his Scheme benefits to HPS2 and these were transferred on 5 October 2016.

18. Mr Y says that he has a valid and contractual claim for his deferred pension, in respect of the transfer-in, to be uprated by 6.5% a year. The contract was on the basis that he was quoted in writing a fixed rate of 6.5% a year which he accepted in return for the consideration, the transferred in amount of £28,155.41. This contract was not affected by the RAA and he expressly reserved the right to pursue his claim at the time he transferred to HPS2. He decided to transfer to HPS2 to mitigate the losses inflicted on him by the Trustees' refusal to honour its contractual commitments.
19. The Trustees say they did not enter into a contract with Mr Y, in 2002 they accepted a transfer into the Scheme in accordance with rule 6.1 of the Scheme rules. In 2008 the Trustees simply confirmed the terms under which the transfer-in had been accepted. Mr Y's complaint should therefore be dismissed.
20. HGL and CH2M's legal advisers also say that there was no contract in 2002. The basic elements of offer, acceptance, consideration, intention to create legal relations and certainty of terms are not evidenced from the correspondence. The correspondence Mr Y had in 2002 was simply information being given about how a transfer-in from a previous pension scheme was given effect in the Scheme.

## **Adjudicator's Opinion**

21. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees, HGL or CH2M. The Adjudicator's findings are summarised briefly below:-
  - Mr Y and HGL/CH2M have made a number of comments regarding his employment and the reasons for leaving. It is not the role of this office to comment on or investigate complaints concerning employment issues and these are not referred to in the findings. Mr Y left under a compromise agreement and this placed a stop on any further action in respect of those employment issues.
  - The main point of dispute is whether the circumstance of a transfer-in, and the granting of additional pensionable service rights in respect of that transfer-in, formed a contract and an inalienable right for the revaluation of those additional pension service rights on leaving to be continued through to Mr Y's normal retirement date. The Trustees and HGL/CH2M's legal advisers have said that no contract was formed and the Trustees accepted a transfer into the Scheme in accordance with rule 6.1 of the scheme rules. Rule 6.1 says:

“(1) The Trustees may, with the Principal Employer's consent, and subject to the Contracting-out Requirements, accept into the Scheme a transfer of assets in respect of a person from another Retirement Benefits Scheme... In consideration of the transfer, such benefits will be provided from the Scheme to or in respect of that person as the Trustees (after consulting

the Actuary and with the consent of the Principal Employer) decide are appropriate (having regard to the prescribed policy determined by the Principal Employer from time to time).”

- It is apparent from rule 6.1 that the granting of the additional pensionable service rights for Mr Y lay solely with the Trustees after consulting with the Actuary and with the consent of the Principal Employer. After some protracted correspondence the Chairman of Trustees confirmed, in his letter of 4 July 2008, that Mr Y’s “transferred-in benefit in excess of the Guaranteed Minimum Pension will increase by 6.5% per annum compound in deferment.”
- Mr Y has argued that the issue of this letter is a confirmation of the contract that was established between him and the Trustees and they had no right to alter the terms of that contract. But, in the Adjudicator’s view, the letter did not constitute a contract as it simply confirmed the transfer-in right that Mr Y had acquired under the Scheme at the time of writing in July 2008. There was no indication in the correspondence that Mr Y had with the Trustees, or any indication in the rules, that the transferred in assets were to be kept separate from the main Scheme assets. Thus Mr Y’s transferred-in service right was subject to the same terms and risks as any other member’s pension rights accrued through normal service in the Scheme.
- When HGL and the Scheme experienced financial difficulties, there was the possibility that the Scheme would have to enter the PPF. In this event Mr Y’s transferred-in right would have been subject to the same reduction in benefit as his normal Scheme benefit.
- But fortunately the Scheme did not have to enter the PPF and an RAA was agreed with the Pensions Regulator. This RAA confirmed that all members’ starting pension or deferred pension in HPS2 would be the same as under the Scheme, including all increases in payment and revaluations up to date of transfer. Thus Mr Y will benefit from 6.5% increases on the deferred pension in respect of his transferred-in service up to the date of transfer, but future increases will be at statutory rates.
- Mr Y’s complaint is analogous to some complaints that were made to this office when a number of pension schemes changed the index of reference from RPI to CPI for determining the level of increase awarded for pensions in payment and deferred pensions. Members of various pension schemes claimed that any such amendment was a reduction in their accrued rights. The question was referred to the High Court in *Danks and others v Qinetiq Holdings Ltd and another* [2012] EWHC 570 (Ch). But the position taken by Vos J in that case was that for the purposes of revaluation and indexation a member’s subsisting right was not an entitlement or an accrued right until the revaluation or indexation calculation had been done.

- Thus applying the same logic as used in the Danks case above, the Adjudicator concluded that Mr Y did not have a contractual promise as he suggests and that the Trustees were able to change the method of revaluation of his deferred pension for the future subject to giving sufficient notice.

22. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his 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 Mr Y for completeness.

### **Ombudsman's decision**

23. Mr Y says that the Adjudicator's Opinion has dealt only with one of the two promises in respect of which he is claiming breach of contract and/or misrepresentation. It does not address the promise in correspondence from HGL and the Scheme that he would receive a pension of £19,970 a year; nor the misrepresentation claim against HGL and the Scheme.
24. Mr Y has referred to two memoranda that were sent to him from the employer dated 25 September 2002 and 22 October 2002 which he says contain the 6.5% revaluation promise and on which he based his decision to transfer. The offer was made by HGL's Pensions Department and set out detailed terms of the offer and was an offer specific to him. It went further than procuring that the Trustees would accept a transfer in and it was on the basis of that offer, which he quoted back in his acceptance, that he agreed to the transfer. Mr Y also says that those terms were subsequently repeated to him in writing on 4 July 2008, 6 August 2008 and 8 February 2012, as governing the arrangement.
25. I have reviewed the memoranda that were sent to Mr Y in September and October 2002 and on which he bases his view that a contract was established by the employer. But I find that both of these memoranda are written by the then Pensions Manager on behalf of the Scheme and that these were not offers made by the employer. Mr Y accepted the terms offered in the memoranda and as such he accepted the terms offered by the Scheme under rule 6.1.
26. I have also reviewed the letters that were sent to Mr Y on 4 July 2008, 6 August 2008 and 8 February 2012, which he says govern the arrangement. But I find that these letters were all written on behalf of the Scheme and not by the employer. The letters may have been on company headed paper but the sender is either the Pensions Manager or a member of the Pensions team. I do not find that these letters are a promise of benefits from the employer as Mr Y attests or that these would be guaranteed by the employer.

27. All of the letters confirmed that Mr Y was entitled to revaluation of 6.5% on the transfer-in. Although not specifically stated, the letters are referring to revaluation of 6.5% within the rules of the Scheme. I therefore find that there has been no misrepresentation by either the Scheme or HGL.
28. Mr Y's entitlement to 6.5% revaluation on the transfer-in remained in place until the Scheme re-arrangement in 2016. Mr Y was given two choices, to transfer to the new pension scheme and accept a lower level of revaluation on his transfer-in or to remain in the Scheme and eventually move into the PPF with a further reduction in his pension benefit. I can understand Mr Y's distress at the reduction in his future pension benefit, but I do not find that the Trustees or HGL or CH2M have acted incorrectly in reaching the decision they did or that Mr Y had a contractual promise for the 6.5% revaluation on his transfer-in to be continued.
29. Therefore, I do not uphold Mr Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
26 July 2017