

Ombudsman's Determination

Applicant	Mr S
Scheme	Halcrow Pension Scheme (No. 2) (HPS2)
Respondent	The Scheme Trustee (the Trustee)

Outcome

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

Complaint summary

2. Mr S says the Trustee:-
 - Failed to provide members of the Halcrow Pension Scheme (**HPS**) with appropriate information on all available options when it announced that they had the choice of either transferring to a new scheme, HPS2 (Option A), or remaining a member of HPS (Option B), which would shortly transfer to the Pension Protection Fund (**PPF**).
 - Failed to provide individual transfer out statements of entitlement so that members could consider the available options prior to the deadline date for the acceptance of either Option A or Option B, and allowed insufficient time to make an informed choice.
 - Failed to provide him with information about the impact of taking early retirement, knowing that he was actively seeking to transfer out.

Background information, including submissions from the parties

3. Mr S is a pensioner member of HPS2.
4. Originally Mr S was a member of HSPS, a defined benefit occupational pension scheme. In 1989 HPS, a new defined benefit occupational pension scheme, replaced HSPS. Assets transferred from HSPS to HPS were actuarially valued to be at least 105% of the liabilities. The benefits under HPS were identical to those provided under HSPS and members were treated as having continuous pensionable service from

their original date of entering pensionable service under HSPS. This meant that Mr S' benefits in respect of pensionable service completed under HSPS (up to 5 April 1989), would be calculated by reference to his final pensionable salary under HPS at the date of his retirement, or earlier withdrawal, from HPS. A March 1989 HPS Announcement to members said:

"The transfer of the benefits is being accomplished under the Rules of HSPS, without any requirement that individual members give their consent^[1]. Because the transfer is being made in this way you have a legal right to take the 'cash equivalent' of your benefits as at 5 April 1989 as a transfer value to a personal pension plan or suitable insurance contract ('Section 32 annuity contract') at any time in the future without jeopardising the remainder of your benefits. Of course, if you take the cash equivalent of your benefits up to 5 April 1989, your entitlement under HPS will be correspondingly reduced."

5. In July 2001, Mr S became a deferred member of HPS.
6. In 2011 there was a takeover of the Halcrow Group Ltd (**Halcrow**) by CH2M Hill Companies Ltd (**CH2M**).
7. On 31 May 2016, Halcrow wrote to the members of HPS². The letter referred to a recent communication that had explained the difficulties being faced by the Halcrow businesses and that discussions were ongoing to find a way forward. The letter advised that the discussions had been successful and informed members that they now had the choice of either transferring to a new pension scheme (HPS2) or remaining a member of HPS which would shortly transfer to the PPF. The letter stated that Halcrow required receipt of the completed Option Form by 5 August 2016, and members who did not return it would be transferred to the PPF.
8. The letter sent to Mr S enclosed:-
 - A letter from the Trustee.
 - A letter from JLT Wealth Management (**JLT**)³.
 - A booklet entitled 'An overview of the benefits you would get in the new pension scheme – and how they are better than the PPF'.
 - A 'Factsheet for deferred members under Normal Retirement Age' (the **Factsheet**).
 - An Option Form.
 - A Pre-paid envelop (UK residents) or addressed envelope (Overseas residents).
 - An acknowledgement request card.

¹ Consent is not needed for a bulk transfer if the transferring and receiving schemes are related and the transferring scheme actuary certifies that the transfer credits to be acquired for each member under the receiving scheme "are, broadly, no less favourable than the rights to be transferred".

² As an overseas resident Mr S was sent the communication and its enclosures by email on 1 June 2016.

³ JLT was appointed by Halcrow to assist members in making an informed decision.

9. The Trustee letter said:-

- It had been working hard to find a solution to the problems faced by the HPS, which was not viable in its current form.
- It had worked with Halcrow and CH2M to put in place a solution that would enable members to transfer to HPS2, rather than enter the PPF.
- It had taken extensive advice on the financial position of Halcrow, HPS and its legal position.
- It believed HPS2 represented the best outcome available to members and urged members to consider transferring to the scheme.
- It could not transfer a member unless it had the member's written agreement to do so.
- Members who chose to transfer to HPS2 would be giving consent to the change to their benefits.
- The UK Pension Team (the **Pensions Team**) should be contacted if further information was required to help with deciding.

10. The JLT letter informed members that HPS2:-

- Had an identical benefit structure to HPS, except annual increases and revaluation were reduced to statutory levels.
- Included an uplift on joining of between 1% and 2.5% depending on the individual's membership category.
- Members' benefits would always be as good as those offered by the PPF under current legislation.
- Benefited from a CH2M guarantee of £50 million.
- Was eligible for PPF entry in the future.

11. The Factsheet compared the new pension scheme and the PPF. Under '5. Transfers and the benefit of flexibility' it said:

"If you choose to transfer to the new pension scheme, you will still have the right to transfer the cash equivalent of your benefits to another tax registered pension

scheme in the future if you wish (up to 12 months before your Normal Retirement Age or on a discretionary basis thereafter).

This option is not currently offered by the Pension Protection Fund.”

12. On 1 June 2016, Mr S emailed the Pensions Team at CH2M. He requested a current transfer out statement from HPS and said at least one more option for him (as an overseas resident) was to transfer to a Qualified Recognised Overseas Pension Scheme (QROPS). Mr S added he supposed other options could be to transfer to another UK scheme and to wind-up HPS and transfer the remaining funds to all members to invest in an alternative scheme or schemes.
13. The Pensions Team replied:-
 - No new transfer value calculation requests would be processed for members until the transfer to HPS2 had been completed.
 - While it expected transfer values to be higher under HPS2, for a transitional period of six months, transfer values from HPS2 would be calculated on a “better of both” basis, so if it transpired that the transfer value from HPS would have been higher this would be paid.
 - Winding-up HPS and transferring all remaining funds to an alternative scheme or schemes was the essence of the two options being offered to members. Members had the option to transfer to HPS2 or to transfer with HPS to the PPF.
 - “Please contact us after the transfer into the new scheme has been completed if you would still like to receive a transfer value.”
14. Later that month Mr S submitted calculations, based on an HPS May 2003, transfer out statement of entitlement he had received, and asked if his calculations were correct and what his pension would be if he took early retirement before the transfer to HPS2, either on 24 July 2016, or backdated to 24 October 2015.
15. On 7 July 2016, CH2M’s UK Pension Manager replied that it did not have the resources to validate home produced figures.
16. On 23 July 2016, Mr S emailed a completed Option Form. In a letter enclosing the form he said:-
 - He accepted Option A under duress.
 - The reduction in benefits had been advised without prior consultation, or discussion with pension scheme members or pension scheme member groups, and no time had been allowed for discussion of options other than Option A and Option B. No detailed individual statements of entitlement had been provided.

17. On 25 July 2016, Mr S was informed that the Trustee had rejected his qualified option choice and that he would be transferred to the PPF unless the Trustee received his full consent to the transfer to HPS2 by the deadline date. A further Option Form was provided.
18. On 26 July 2016, Mr S received details of his pension benefits on early retirement. The next day Mr S emailed a letter requesting early retirement:

“The reason for my request is that the project I am working on will soon be complete and I will then stop working.”
19. On 28 July 2016, Mr S emailed the Pensions Team a letter stating that he wished to delete the words “under duress” from his earlier letter and requested confirmation that his selection of Option A was now no longer rejected. The next day the Pensions Team confirmed to Mr S that his Option Form had been accepted.
20. On 6 August 2016, Mr S asked whether the Trustee had sanctioned his application for early retirement. On 9 August 2016, the Pensions Team confirmed the Trustee’s agreement and enclosed an early retirement illustration and associated forms for Mr S’ completion. A covering letter stated:

“If your retirement claim is to proceed, the enclosed forms should be completed and returned together with any other certification requested. If you wish to defer claiming your benefits at this time please complete and return the Retirement Claim form only, including that you wish to defer receipt of your pension⁴.”
21. The next day Mr S emailed his acceptance of the pension and advised that he would arrange for the original forms and certificates (birth and marriage) to be couriered. On the Retirement Claim form Mr S ticked the box next to the first statement:

“I wish to select the maximum pension commencement lump sum available of ...and resulting reduced scheme pension.”
22. In September 2016, Mr S was paid a tax-free lump sum and his pension was put into payment, backdated to 25 July 2016.
23. The same month Mr S invoked stage one of HPS’ internal dispute resolution (**IDR**) procedure. His four complaints did not specifically include the complaint that we have accepted to investigate.
24. In October 2016, members who had consented to the transfer to HPS2 were informed that they had been transferred and HPS entered the PPF assessment period.
25. On 12 October 2016, Mr S emailed the Pensions Team:

⁴ The Form included four statements and against each a tick box. The fourth statement said: “I would like to defer receipt of my pension for the time being. I will contact you when I decide to draw my benefits.”

“As HPS has now been transferred to HPS2 please provide the transfer out statement of entitlement as I requested on 1 June 2016, as advised previously.”

26. Mr S' request was turned down on the grounds that, as he was a pensioner member of HPS2 there was no transfer option.
27. Mr S replied that in certain circumstances a transfer was possible, but irrespective of whether such circumstances applied, he requested “the theoretical transfer out statements of entitlement, which were delayed for the Trustee's convenience.”
28. The Pensions Team informed Mr S that it did not have the resources to provide theoretical transfer out statements of entitlement and that the Trustee had declined his request.
29. Mr S replied that the Trustee had an obligation to provide a transfer out statement of entitlement within two months of his original request, by 1 August 2016. Mr S said this was before he had accepted early retirement. Mr S said he wanted to consider a transfer out while HPS was still in existence and the Trustee had wrongly denied him the opportunity to transfer out of HSPS only or HPS and HSPS.
30. The Pensions Team acknowledged that Mr S had requested a transfer value, but at the time the Trustee had set out the reasons why a transfer value quotation would not be provided. Mr S had then requested to draw his pension early, the Trustee had sanctioned his request and his pension was now in payment.
31. In November 2016, Mr S' four complaints were turned down⁵.
32. In January 2017, Mr S emailed the Pensions Team. The Trustee had not accepted his 26 July 2016, early retirement request unconditionally. The Trustee had responded with a conditional acceptance subject to his completion of certain forms. Mr S said that despite the Trustee being aware of his request for a transfer out statement of entitlement it had not been mentioned in the early retirement documentation. Mr S said he had checked with The Pensions Advisory Service (**TPAS**); a transfer of a pension in payment was permitted to an insurance backed annuity as HPS had wound-up.
33. The Pensions Team reiterated that a transfer was not permitted. It said Mr S had completed, signed (on 10 August 2016), and returned all the payment forms. Mr S had not ticked the box on the Retirement Claim Form saying he wanted to defer receipt of his pension. Mr S was duly paid a tax-free cash lump sum and his pension was put into payment. HPS had not been wound-up, it had entered the PPF assessment period. Mr S had elected to transfer from HPS to HPS2 and that too was not wound-up.

⁵ As Mr S was a transferring member to HSP2 his complaint was considered and determined by the stage one decision-maker acting on behalf of the Trustee.

34. Mr S replied that there were transfer rights in respect of HSPS service available at any time in the future⁶ and requested a transfer out statement of entitlement in respect of his HSPS service pre and post transfer from HPS to HPS2. The Pensions Team Manager turned down Mr S' request, explaining that:-

- Mr S' HSPS benefits had been transferred to HPS.
- While Mr S had requested a transfer value in June 2016, due to the changes taking place no transfer value could be provided. Mr S then requested early retirement. The Trustee approved Mr S' request and his pension benefits were put into payment.
- As a pensioner there was no statutory requirement for the Trustee to offer Mr S a transfer value.

35. In February 2017, Mr S submitted an IDR stage two appeal which included the matters noted in paragraph 3 above. His appeal was turned down. As relevant to the complaint that we have agreed to investigate the decision-maker said:

"It is important to be clear that, as regards the options available to members under the Offer, there were only two – transfer to HPS2 or remain in HPS and receive PPF compensation. The Trustee took comprehensive legal, actuarial and financial advice, and provided full and appropriate information to members in relation to those options. But it was not the Trustee's role to advise you or any other members in relation to your benefits more generally.

You have complained that the Trustee "*failed to inform you that there would never be a right to transfer out once a pension was in payment*". But that is not a restriction that is unique to HPS2 or the wider circumstances of the Offer. You have recited lengthy exchange of correspondence from the Pensions Team last year after the making of the Offer. But nothing in that correspondence from the Pensions Team was incorrect, misleading or deficient and the Trustee does not consider that, by reason of it, you could reasonably have believed that you could draw your pension early under HPS2 and then subsequently transfer your benefits to another pension arrangement."

36. HPS transferred to the PPF on 6 July 2018.

Mr S' position

37. Mr S says:-

- It was inappropriate for the Trustee to recommend Option A in 2016, especially without providing appropriate information on all the available options, namely:-
 - (i) Option A – transfer to HPS2.

⁶ March 1989 announcement.

- (ii) Option B – transfer to the PPF.
 - (iii) Option C – transfer the cash equivalent of HSPS benefits to a personal pension plan or suitable insurance contract at any time in the future without jeopardising the remainder of benefits in HPS, as per the Trustee’s March 1989 letter. Select Option A or B for HPS benefits.
 - (iv) Option D – transfer to HPS2 and then transfer the cash equivalent of HSPS benefits to a personal pension plan or suitable insurance contract at any time in the future without jeopardising the remainder of benefits in HPS, as per the Trustee’s March 1989 letter, leaving HPS benefits in HPS2.
 - (v) Option E – transfer the cash equivalent of HSPS and HPS benefits to a personal pension plan or suitable insurance contract.
 - (vi) Option F – transfer to HPS2 and then transfer the cash equivalent of HSPS and HPS benefits to a personal pension plan or suitable insurance contract.
- The Trustee failed to provide individual transfer out statements of entitlement so that members could consider the available options, including Options C to F, before the deadline date for the acceptance of Options A or B. Insufficient time was given to make an informed choice.
 - There was and is nothing to stop the Trustee providing a transfer out statement of entitlement at 1 June 2016, when he first requested a statement, or at 13 October 2016, when he responded to the email of 14 June 2016, after the transfer to HSP2 had been completed.
 - He was expressly advised to contact the Trustee after the transfer to HSP2 had been completed if he still wanted to receive a transfer value.
 - The six months transitional period, applicable to the calculation of transfer values, was not properly advised.
 - Why did the pension team not properly advise him before he took early retirement that for those with a pension in payment there was no transfer option once the HSP2 transfer was completed?
 - He has been denied the right, referring to the HPS announcement to Members issued in March 1989, to transfer the portion of his HPS benefits attributable to pensionable service when he was a member of HSPS.
 - His expected retirement age in HPS (and HSP2) was 60. He turned 60 on 24 October 2018. Therefore, when the transfer to HSP2 was completed on 5 October 2016, there was more than a year to his expected retirement age. The Trustee failed to honour the Factsheet.

- The Pensions Advisory Service informed him that a transfer out after a pension is in payment is permitted to an insurance backed annuity as HPS was wound-up.
- He wants to transfer to another UK pension scheme.

Adjudicator's Opinion

38. Mr 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 Trustee was not obliged to provide more options than Option A and Option B to HSP members.
- Initially, HSP members had just over two months to decide to accept either Option A or Option B. While the timescale was quite tight, there was no statutory requirement to give more time.
- The Pension Team explained why no transfer values would be calculated prior to the completion of member transfers to HSP2.
- The Factsheet's comment on the right to transfer applied to members who had not opted to vest their benefits. It did not extend to pensioner members.
- Mr S could have taken a transfer to an arrangement of his choice after transferring to HPS2; and there was the safety net of a six months transitional period when the Trustee was offering a "better of both" transfer value, so if Mr S' HPS transfer value (including his HSPS pensionable service) would have been higher than his HPS2 transfer value then the former would have been paid. However, after the Trustee accepted Mr S' decision to transfer to HPS2, almost immediately he chose to proceed with early retirement.
- The Trustee had no obligation when it issued the early retirement quotation to inform Mr S that, if he took early retirement, he would not be able to subsequently take a transfer. While there are disclosure requirements in respect of the information to be provided when a member's pension comes into payment and the options the member is entitled to, there are no statutory requirements relating to the information that must be provided when issuing a quotation for early retirement. Neither is it industry practice to inform a member who opts to take early retirement that he/she will forfeit his/her right to take a transfer value by doing so.
- Mr S had the opportunity to defer claiming his benefits but chose not to do so. On the Option Form he ticked the box next to the statement:

“I wish to select the maximum pension commencement lump sum available of ...and resulting reduced scheme pension.”

Mr S was duly paid a tax-free lump sum and his pension was put into payment.

- Mr S does not have an automatic right to a transfer value because his benefits are in payment⁷.
- Pensions tax legislation allows the transfer of pensions in payment to be a recognised transfer, and so qualify as an authorised payment, provided certain conditions are met⁸. The conditions include that the transfer must secure like benefits, specifically a pension of equal amount and a spouse’s pension. But that is very unlikely to be achieved. Nevertheless, the Trustee had exercised its discretion and refused the transfer. There are no grounds for the Ombudsman to interfere with the Trustee’s decision.
- HPS is not wound-up. It has entered the PPF.

39. Mr S did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr S has provided his further comments which do not change the outcome. I agree with the Adjudicator’s Opinion and I will therefore only respond to the main points made by Mr S for completeness.

Ombudsman’s decision

40. Mr S says:-

- The Trustees should and could have provided HPS members with transfer out statements of entitlement. This may have impacted on their selection of Option A or Option B.
- The excuses for not providing these prior to the completion of the transfer of members from HPS to HSP2, namely insufficient resources and time, were artificial and without substance.
- With a transfer out statement of entitlement advice from an independent advisor could have been obtained in respect of each member’s specific circumstances.
- He enquired about transferring out and early retirement at the same time. If the Trustee’s policy was not to allow a transfer of a pension in payment, why was he not informed at that time.

⁷ Section 93(3) and (7) of The Pension Schemes Act 1993.

⁸ Section 169(1B) of The Finance Act 2004.

- It was not as though his pension had been in payment for 10 years and he was under his normal retirement age. The Trustee could simply have deducted what he had been paid from the transfer amount. He asked JLT about the matter but was just referred back to the Trustee.
- The Trustee had a duty to explain all the options clearly. The Trustee did not and contradicted what it did say. In the Factsheet it said a transfer was possible until Normal Retirement Age. It did not say no transfer would be provided once a pension was in payment.
- The Trustee had an obligation to explain all the options and implications of HPS winding down and HSP2 commencing and allotting time to prepare the resources needed to provide all the information requested by members, particularly as the Trustee set the time limit.

41. The Trustee was not obligated to provide more options than Option A or Option B.
42. The Pension Team explained that no transfer out statement of entitlement would be provided until the transfer of members to HPS2 had been completed. That was not unreasonable.
43. Mr S was informed that, once the transfer had been completed, HPS2 members with more than one year before normal retirement age retained the right to transfer; and that for the first six months transfers would be calculated on a 'best of' basis. This information clearly applied to members who had not vested their benefits
44. While Mr S chose to transfer to HSP2 he then decided to take early retirement. The Trustee was under no obligation to inform Mr S, in either the early retirement quotation, or after receiving Mr S' completed retirement form, that once his pension was in payment, he would no longer have a right to transfer.
45. Before deciding to retire, Mr S could have sought independent financial advice.
46. I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
20 April 2020