

## Ombudsman's Determination

Applicant	Mr K
Scheme	ADAS Retirement Benefits Plan ( <b>the Plan</b> )
Respondents	HR Trustees Limited ( <b>HRTL</b> )

## Outcome

1. I do not uphold Mr K's complaint, and no further action is required by HRTL.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr K's complaint is that the Voluntary Early Retirement (**VER**) element of his pension benefits will not to be paid by the Pension Protection Fund (**PPF**), despite what he had been told earlier.

## Background information, including submissions from the parties

4. Mr K was a member of the Plan operated by a company then known as ADAS Holdings Limited (**ADAS Holdings**) for eligible employees of its subsidiary companies. In April 1997, due to a business transfer, his employment was transferred to a company then known as ADAS Consulting Limited (**ADAS Consulting**).
5. Soon afterwards, ADAS Consulting offered its older employees a voluntary early retirement package, with extra pension and lump sum.
6. A note of a telephone conversation between one of the trustee directors of the Plan and the Plan actuary on 23 July 1997, said that the company "has been hoping that the [VER] cost can be borne by the Fund i.e. it can be absorbed in the new contribution rate to be set following the imminent actuarial valuation...I said there were different views on the matter." Subsequent trustee minutes show that the matter was discussed at each meeting of the trustee company.
7. Mr K decided to agree to the VER offer, and a letter from the company's HR Manager, dated 23 September 1997, confirmed that his last day of service would be 31 March 1998.

8. The letter also said:

“You will receive an actuarially reduced pension and lump sum from the [employer’s former scheme] and a top up pension and lump sum from the [Plan] plus a compensation lump sum from ADAS.”

9. On 11 March 1998 the Plan’s actuarial valuation results as at 31 December 1997 were issued. In addition to the normal calculations the Plan actuary included a calculation of the VER pension cost “payable by ADAS”.

10. On 13 July 1998 ADAS Consulting wrote to ADAS Pension Trustee Limited, the then trustee of the Plan:

“to seek the agreement of the Trustees to a proposal to transfer payment of enhanced early retirement pensions from the ADAS Company payroll to the [Plan] payroll”.

11. The trustee’s reply dated 16 July 1998 confirmed its acceptance, but also said

“I emphasise that for the enhanced VER pension benefits in excess of the Plan benefits...the Plan will act only as a paying agent for the company; the Trustees accept no liability for the continued payment of these pensions.”

12. On 17 July 1998 ADAS Consulting wrote back:

“I confirm that the Company understands the Trustees’ position that the Plan will act only as paying agent for the Company, and that the Trustees accept no liability for the continued payment of the enhanced pension benefits covered by this plan.”

13. ADAS Consulting informed Mr K of this financial arrangement in a letter dated 22 July 1998. Mr K complained to ADAS Consulting and the trustee of the Plan that their arrangement was unacceptable because he had agreed to ADAS Consulting’s voluntary early retirement package on the understanding that the VER would be provided by the Plan and would be funded in advance by the company. Mr K’s letter of 8 September 1998 to the ADAS chief executive said:

“...you have not been able to demonstrate a guarantee for the future payment of my pension. While I accept that I have not suffered any financial loss to date, you have offered me no guarantee that this could not occur in the future.”

14. When other members of the Plan complained in 1998, the Institution of Professionals, Managers and Specialists looked into the matter and asked ADAS Consulting to pay a lump sum into the Plan to guarantee future VER payments, but ADAS Consulting refused, saying that it had to balance the interests of the pensioners against those of the current employees.

15. A newsletter issued by the trustee of the Plan to all members of the Plan in September 2016 included the following section:

**“9. VER PENSIONERS**

If you are receiving an additional pension under the Company’s VER arrangement you are reminded that the Trustee acts as paying agent only for this element of your pension; your VER pension is not subject to the Rules of the Plan or any laws or regulations applying to occupational pension schemes, and is not covered by the Pension Protection Fund.”

16. A letter from the Plan administrator to Mr K on 15 November 2016 said:

“As noted in the newsletter, you are reminded that the Trustee of the Plan acts as a paying agent only in relation to VER pension and its associated increases which is a separate contractual arrangement between employees and the Company. Your VER pension is not subject to the Rules of the Plan and is not covered by the Pension Protection Fund (PPF) and, therefore, in the event that the Plan entered the PPF, the PPF would not provide you with any compensation in connection with it.”

17. On 15 November 2016 Mr K told the ADAS Consulting’s HR Director:

“When I was offered early retirement terms in 1998, there was significant discussion between myself, ADAS and the Union on the terms of the offer. I was assured that the offer was fully funded under the terms of the ADAS retirement scheme at the time...I maintain that my whole pension is part of the ADAS pension plan and as such should be subject to the rules of the plan and any consequentials from the plan entering PPF. These were the terms under which I accepted the ADAS early redundancy offer. You cannot change the terms of the offer after 18 years to suit the ADAS retirement scheme.”

18. On 5 December 2016 ADAS Consulting went into administration. This led to the Plan entering a PPF assessment period, and HRTL being appointed as sole trustee of the Plan from 20 December 2016. Mr K’s monthly pension payments were reduced from £658.27 to £43.74, to exclude the VER pension.
19. RSK Group then purchased most of the ADAS business assets. RSK Group explained in a letter dated 15 December 2016 that it had no obligation to honour the VER which was effectively an unsecured debt of the ADAS companies in administration. However, RSK said that it wanted to act as a responsible employer and so would endeavour to make a voluntary contribution to meet up to 90% of the VER, without annual increases, in line with the compensation level that the PPF would provide if it accepted the Plan. However, RSK also said that its voluntary payments might vary in amount each year, depending on its profitability.

20. On 5 January 2017 ADAS Holdings went into liquidation.
21. Mr K complained to HRTL under the Plan's internal dispute resolution procedure (**IDRP**) that the VER pension (representing over 90% of his retirement benefits from ADAS) was part of the Plan, and therefore should be covered by the PPF. However, HRTL's letter of 17 May 2017 rejected his appeal, answering the points that Mr K had raised and concluding as follows:
- “The Trustee has reached the conclusion that the VER Pension was a separate contractual entitlement between yourself and the Company and the Plan's role was restricted to paying agent and administrator...the Trustee is only able to provide benefits which form part of the rules of the Plan.”
22. Mr K then contacted us.

### **Adjudicator's Opinion**

23. Mr K's complaint was considered by one of our Adjudicators who concluded that no further action was required by HRTL. The Adjudicator's findings are summarised briefly below:-
- The offer of voluntary early retirement, including the VER, was made to Mr K by ADAS Consulting as Mr K's employer. This was essentially an employment matter. HRTL (and its predecessor trustee of the Plan) was not a party to the offer made to Mr K.
  - The letter of 23 September 1997 from ADAS Consulting's HR Manager to Mr K said the top-up pension would be paid from the Plan. In isolation this could imply that the VER would be a Plan liability.
  - However, it was clear from the correspondence between ADAS Consulting and the then trustee of the Plan in 1998 that that had not been agreed with the trustee of the Plan. ADAS Consulting readily accepted the trustee's proposal that in relation to VER pensions the trustee would be the paying agent for ADAS Consulting as principal. In other words, the trustee would only have an obligation to pay from the Plan such amounts as ADAS Consulting had already paid into the Plan for VER purposes; if ADAS Consulting did not make a payment into the Plan there was no liability on the trustee of the Plan to make a corresponding payment out.
  - Therefore the VER pensions were never included in the rules of the Plan, and were not a Plan liability.
  - Now that ADAS Consulting had ceased to contribute to the Plan, and the Plan had entered the PPF assessment period, no VER pension payments would be made unless RSK Group (or another company) made payments on a voluntary basis.

- Mr K complained that he had been misled in 1997, as he would not have accepted the early retirement package offered if he had known then that the VER would not be secured as a Plan benefit. That might give him a claim against ADAS Consulting for breach of contract or misrepresentation, but it did not give him a claim against HRTL (or its predecessor as trustee of the Plan) because they were not parties to the redundancy offer. HRTL's acts and omissions in this matter did not amount to maladministration.
  - In conclusion, as ADAS Consulting went into administration in 2016 and its parent company has been liquidated, Mr K had unfortunately been left without an effective remedy.
24. Mr K did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr K and HRTL provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr K and HRTL for completeness.
25. Mr K said that when ADAS made the VER offer in 1997, the then trustee of the Plan had seen and discussed the offer and had agreed that the Plan would pay the top up pension. He also said that the then trustee changed its mind between July 1997 and June 1998, while he was considering his options, and its failure to inform members of its changed position constituted a failure in its duty of care to members. Mr K also said that he would not have signed up for VER if he had known that the funding arrangement would change.
26. HRTL responded that it was not clear from its files when the former trustee of the Plan had become aware of the VER offer, but so far as it was aware it had never agreed with ADAS that the VER pension should be provided by the Plan; the terms finally agreed with ADAS were that the trustee would act as paying agent only; there was no change of position by the trustee.

### **Ombudsman's decision**

27. I am satisfied that the trustee of the Plan never agreed to take on the VER pensions as a Plan liability, although the company had hoped that it would do so. The trustee's minutes show that this matter was first discussed in 1997, but it was acknowledged that no decision could be made by the trustee until the next actuarial valuation was issued in 1998. After this highlighted the additional cost of providing VER pensions the matter was discussed further, and the company and the trustee reached a formal agreement on 17 July 1998 that the trustee was only the paying agent for the company. In other words, the trustee only had a liability to pay the VER pensions if the company had already put it in funds to do so. There is no evidence that the trustee changed its position on this.
28. Now that the Plan has been taken over by the PPF, and all employer contributions to the Plan have ceased, the VER pensions will no longer be paid.

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29. Therefore, although I sympathise with the unsatisfactory position that Mr K finds himself in, through no fault of his own, I do not uphold Mr K's complaint.

**Anthony Arter**

Pensions Ombudsman  
22 November 2017