

## Ombudsman's Determination

Applicant	Mr N
Scheme	ARLA Foods Pension Plan ( <b>the Scheme</b> )
Respondents	The Trustees of the Scheme ( <b>the Trustees</b> )

## Outcome

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

## Complaint summary

3. Mr N is complaining about the reduction that is being applied to his Cash Equivalent Transfer Value (**CETV**).

## Background information, including submissions from the parties

4. Mr N was an employee of both ARLA Foods UK and Express Dairies, which merged some time ago.
5. Mr N is also a deferred member of the Scheme. However, the Scheme was originally two schemes, which merged on 13 March 2017.
6. Mr N had service in both of the original schemes before they merged, which were both administered by JLT.
7. On 19 July 2016 Mr N was provided with a CETV in relation to the ARLA Foods UK section of his membership of the Scheme.
8. He was quoted a CETV of £692,295, however a reduction of 18.5% was applied to this CETV by the Trustees. The Trustees decided to reduce this, and all other transfer value quotations, to ensure the impact of members transferring out of the Scheme was not detrimental to those remaining. They did this because the Scheme is currently underfunded, with lower assets than the assessed value of the liabilities it is expected to pay out now, and in the future.
9. However, Mr N says that the Scheme, particularly the ARLA Foods UK section of the Scheme, has suffered from mismanagement and the reductions being applied to the

CETVs are immoral and unfair. He therefore wants a more realistic and acceptable offer relative to the full value of his CETV.

10. Mr N says he has subsequently requested further CETVs, but has only been offered 76% of their full value.
11. The Trustees say that the current level of reduction is based on a 78% funding position as of 31 March 2015, but that the funding position has worsened since then, and the liabilities of the Scheme have increased. They further say that they have adopted a Pension Protection Fund (**PPF**) based approach to the reduction of CETVs as this is the fairest way of ensuring that transferring members and non-transferring members are treated equally.
12. This means they have adopted a 'priority order' similar to what would have happened if the Scheme was wound up, firstly securing benefits payable under the PPF, and then the excess of the full benefits of the Scheme above this.
13. Despite this, after the merger of the two Schemes in March 2017, Mr N was offered a higher CETV as a result of transitional period where the actuarial factors used were calculated on a pre-merger basis, in regard to the ARLA Foods UK section of the Scheme.
14. However, Mr N asserts that the Scheme is not in danger of entering the PPF and that there is a strong employer covenant, with a commitment to addressing the underfunded position. Therefore the reductions being applied to his CETVs are unnecessary. He also points to an insufficiency report of January 2017, recommending only a 77% reduction in CETVs, which was not adopted by the Trustees.
15. Finally, he says that it is his understanding that no member already taking their pension can transfer out of the scheme, and if he were to take his pension, then he would also not be asked to take a reduction.
16. However, in trying to manage his own finances as a deferred member, he is expected to take a share of the underfunded position despite there being a full commitment by the employer to fund the shortfall.

## **Adjudicator's Opinion**

17. Mr N's complaint was considered by one of our Adjudicators who concluded that no action was required the Trustees of the Scheme. The Adjudicator's findings are summarised briefly below:-

- The Pensions Ombudsman cannot set aside a discretionary decision taken by scheme trustees, unless the trustees have:

Taken irrelevant considerations into account.

Failed to take any relevant considerations into account.

Committed some other procedural impropriety.

Acted in such a way that no reasonable body of trustees, properly directing themselves, could act.

- However, the decision of the Trustees to adopt a cautious approach to the recovery of the underfunding of the Scheme would not be covered by any of the above.
- Nor would the Trustees adopting the findings of one insufficiency report over another, for example their decision not to accept the insufficiency report of January 2017, recommending only a 77% reduction in CETVs.
- The Adjudicator appreciates Mr N is disappointed with the overall performance of the Scheme's fund, particularly the ARLA Foods UK side, and may have taken different investment decisions in respect to the management of the assets of the Scheme.
- However, the Trustees have confirmed that the investment strategy of the Scheme was only determined after taking professional advice from their investment managers, and after consultation from the principal employer.
- The Trustees say that investments with modest risk were chosen to provide long term stable returns. The Adjudicator also understands that there has been no involvement by the Pensions Regulator, no breach of their code of practice, or concern from them over the approach taken.
- A finding of maladministration cannot be made in regard to investment decisions taken in the long term interests of all the members of the Scheme, albeit on a modest risk basis.
- The Trustees have also confirmed that the employer covenant is solely linked to a UK subsidiary of a larger global business, and therefore only has access to funds from this UK based Company.
- The Trustees further explored whether ARLA Foods UK would be prepared to make good the shortfall that would arise in transfer values but they did not agree. The Trustees do not have to negotiate the terms of CETVs provided to individual members of the Scheme and the Pensions Ombudsman has no power to compel them to do so.
- The Pensions Ombudsman also cannot make a direction that would have an adverse impact on individuals not subject to the complaint, such as in this instance, other members of the Scheme.

- Mr N is correct in that if he remains in the Scheme, and his pension becomes payable, then in line with other pensioner members of the Scheme, it would not currently be subject to a reduction.
- However, active members that are still paying contributions into the Scheme, would still be subject to the same level of reduction if they stopping paying into the Scheme, became deferred members, and requested transfers out of the Scheme.
- Overall the Trustees have not taken any irrelevant considerations into account or failed to take any relevant considerations into account, or committed some other procedural impropriety. They have also, given the underfunded position of the Scheme, not acted in such a way that no reasonable body of trustees, properly directing themselves, could act.
- It was therefore his opinion that the complaint cannot be upheld.

### **Ombudsman's decision**

18. Mr N did not agree with the findings of one of our Adjudicators and feels that as soon as the trustees involved their legal team the complaint appeared to shut down.
19. He highlights that a major point has been missed in that any active pensioner does not take any share of the underfunding position. Yet as a deferred member wishing to transfer out he would take a full share of the underfunding position. He is therefore being discriminated against by the trustees in a most aggressive way.
20. As previously said, he is being prohibited from exercising any form of 'pensions freedom' and is a victim of over-zealous pension trustees taking over cautious positions with respect to deferred members on the basis of a take it or leave it attitude. He would therefore like his complaint to go before the Pensions Ombudsman for a decision.
21. In response to the Opinion of the Adjudicator the Trustees clarified that they did move to the 77% reduction in CETVs following the insufficiency report of January 2017.
22. I agree with the findings of the Adjudicator but would again like to clarify that if Mr N remains in the Scheme as a deferred member until his pension becomes payable, then as with other pensioner members of the Scheme, it would not currently be subject to a reduction.
23. However, active members that are paying contributions into the Scheme would still be subject to the same level of reduction if they stopping paying into the Scheme, became deferred members, and requested transfers out of the Scheme. Therefore Mr N has not been discriminated against. The Trustees are entitled to adjust a CETV to take account of the Scheme's underfunding.

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24. I also note that the Trustees have clarified that they moved to the 77% reduction in CETVs following the insufficiency report of January 2017, so a less severe reduction than the 76% that was previously unacceptable to Mr N.
25. Finally I do not agree that Mr N is being prevented from exercising 'pensions freedom', as he has been offered CETVs in line with the overall reduction applied to all members requesting a transfer of funds from the Scheme.
26. Therefore, I do not uphold Mr N's complaint.

**Anthony Arter**

Pensions Ombudsman  
4 August 2017