

Ombudsman's Determination

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| Applicant | Mr Y |
| Scheme | Halcrow Pension Scheme (No.2) (HPS2) |
| Respondents | The Trustee of the Halcrow Pension Scheme (No.2) (the Trustee) Halcrow Group Ltd (HGL) CH2M Hill Europe Limited (CH2M) |

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by the Trustee, HGL or CH2M.

Complaint summary

2. Mr Y has complained that HGL, his former employer, fraudulently induced him to transfer his retirements benefits from the former scheme, the Halcrow Pension Scheme (**HPS**), to HPS2.
3. Mr Y then argues that he was provided with incorrect and misleading information to further induce him to transfer out only the 'valuable' portion of his benefits from HSP2, rather than transferring out the full amount.
4. Mr Y states that he was not told the portion of his benefits that remained in HSP2 would not increase once in payment.

Background information, including submissions from the parties

5. Mr Y was employed by HGL, the principal employer and administrator of HPS, from 1998 until 2011.
6. In 2001, HPS was closed to new members.
7. In 2002, Mr Y transferred additional benefits into HPS, from a previous employer's pension scheme, the Mouchel Superannuation Fund (**the Mouchel Fund**), of which Mr Y was a member between 1 October 1990 and 2 December 1997. During his membership of the Mouchel Fund, Mr Y was contracted-out of the 'State-Earnings

Related Pension Scheme', which was later the 'State Second Pension'. With these transferred benefits, Mr Y secured an additional nine years' service in HPS.

8. With effect from 31 December 2007, HPS was closed to future accrual.
9. In 2011, Mr Y left employment with HGL under a compromise agreement, the contents of which are not material to this complaint.
10. In advance of Mr Y's employment ending in 2011, HGL faced a number of financial difficulties which led, in part, to the acquisition of HGL by CH2M. HGL's financial difficulties also contributed to a growing deficit in HPS.
11. The Trustee sought additional funding for HPS from CH2M when it acquired HGL. However, CH2M was under no legal obligation to provide additional funding, or any guarantee to HPS.
12. The Trustee contacted The Pension Regulator (**TPR**) regarding the difficulties in agreeing a schedule of contributions, following a 2011 actuarial valuation.
13. In 2014, CH2M and HGL made a proposal to the Trustee for the members' benefits to be transferred to a new pension scheme without their consent. The intention was that this new scheme would then be able to provide more sustainable pension benefits.
14. This offer was considered by the Trustee who applied to the High Court to confirm that it was a proper exercise of the Trustee's powers to agree to the restructuring of members' benefits in this way.
15. Following Court proceedings in 2015, the presiding Judge concluded that individual member consent was required before the proposed restructure could proceed.
16. An alternative proposal was subsequently submitted by CH2M and HGL. This proposal was designed to avoid HPS entering into the Pension Protection Fund (**PPF**), which would have been the case if CH2M ceased payments into HPS.
17. The Trustee reviewed the proposal, with the involvement of TPR and the PPF. In order to enact 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.
18. On 31 May 2016, HGL wrote to all members of HPS with details of the proposal, which was for members to agree to transfer to the newly formed HPS2, on the following basis:
 - all members' starting pension or deferred pension in HPS2 would be the same as under HPS, including all increases in payment and revaluations up to date of transfer;
 - all members would be provided with an initial uplift to their benefits on transfer;

- revaluation and indexation of members' benefits in HPS2 would be reduced to statutory minimum levels; and
 - there would be a PPF underpin.
19. Members were given three months to consider the offer and, where applicable, complete a form to agree to transfer their retirement benefits to HPS2. If HPS members did not consent to the transfer to HPS2, then their retirement benefits would remain in HPS, which would be transferred to the PPF. Mr Y agreed to the transfer of his benefits from HPS to HPS2, which was completed on 5 October 2016.
20. HGL remained the principal employer for HPS2, with CH2M as HGL's 'parent' company.
21. On 9 February 2017, Mr Y was provided with a Transfer-Out Statement of Entitlement (**TOSE**) of his benefits from HPS2. This quoted a pension of £16,794.79 a year, or a cash equivalent transfer value of £383,597, next to which it stated:
- “For a transitional period of 6 months the transfer value is calculated on a “better of both” basis so that if the Halcrow Pension Scheme transfer value would be higher, this would be provided instead. In this case the HPS basis is greater.”
22. The TOSE provided further information relating to how the transfer value was broken down. Specifically, it stated that, of the £383,597 transfer value, £149,512 was in relation to “Post97 service” and £25,762 related to “GMP”, which is guaranteed minimum pension. The two latter figures total £175,274, which will become relevant in paragraph 24. In the section ‘Increases to Pensions in payment’, the TOSE stated that pension accrued before 6 April 1997 would have, “No increases payable”.
23. Having taken independent financial advice, as requested by the Trustee due to the GMP element of Mr Y's benefits, Mr Y elected to explore the possibility of a partial transfer to the Civil Service Pension Scheme (**CSPS**), of which he was then an active member. The CSPS was not able to accept a full transfer of Mr Y's benefits from HPS2, and set a limit of approximately £182,000. Mr Y has said that he asked CH2M if he could split his benefits from HPS2, with the intention of transferring a partial amount to CSPS, whilst simultaneously seeking another pension arrangement to which he could transfer the remainder.
24. On 30 March 2017, CH2M wrote to Mr Y to confirm:
- “...while you do not have a legal right to require HPS2 to pay a transfer payment to 2 different receiving schemes in the way you have requested, there is discretion under the HPS2 rules for the Trustee to allow partial transfers. This also requires Company consent.
- The Trustee considered your request with the Company at their meeting on 24th March, and I am pleased to let you know that there is agreement to paying your transfer value to 2 different schemes.

The scheme would pay this on the basis that all your contracted out benefits are kept together. These are the benefits you transferred-into HPS, and built up in HPS as a result of being contracted-out of the state earnings related (sic) and state second pension.

Discretionary transfer split

This means your transfer value, total £383,597, would be split as follows:

- £175,274 contracted-out benefits
- £208,323 benefits in excess of contracted-out benefits.

We understand that the maximum the [CSPS] will accept is in the region of £182,518. [HSP2] would therefore be able to pay £175,274 to that scheme, and £208,323 to another qualifying tax registered pension arrangement. I appreciate this is not quite the maximum you understand the [CSPS] will accept, but it enables us to be clear about the benefits you would be transferring out to that scheme, and the protections that apply to them. I hope that explains the reason for the split, and as I have explained, the Trustee and Company are making this transfer offer on a discretionary basis, you do not have a legal entitlement to have the transfer value split in any particular way.”

25. On 23 May 2017, following additional correspondence with Mr Y, CH2M wrote to Mr Y to further confirm the basis on which the Trustee had agreed to his partial transfer of benefits. This letter informed Mr Y:

“The Trustee will pay a transfer value of £175,274.00 provided we have all information we need from you and the Civil Service Pension Scheme by 12 July 2017. This transfer value is in respect of all the benefits you currently have in HPS2 which relate to employment which was contracted-out of the State second pension. This means all Guaranteed Minimum Pension (GMP) benefits accrued up to 5 April 1997, and all benefits accrued after this date.

In your case, in practice this means:

- in respect of the benefits you transferred-into the [HPS], the part of your benefits accrued in your former scheme that relates to your GMP, and the part of your added years transfer-in credit you were granted in the [HPS] that is deemed to relate to service after 5 April 1997 (our records are that your service in your former scheme was from 1 October 1990 to 2 December 1997); and
- all your benefits accrued in the [HPS] from your date of joining that scheme will be transferred-out of HPS2.

You will then have no rights to benefits remaining in HPS2 that relate to:

- your GMP;

- benefits accrued after 5 April 1997 in your former scheme; and
- your pensionable service in the [HPS] (including, you would no longer have part of your benefits payable at 60 and part at 65, and you would no longer have entitlement to a temporary pension).

Benefits remaining in HPS2

The benefit you would then have remaining in HPS2 would be solely the part of the added years transfer-in credit you were granted in the [HPS] that is deemed to relate to service before 6 April 1997 (in excess of your GMP), granting you a pension (payable at age 65) with attaching spouse's and dependants' benefits based on the [HPS] benefit structure."

26. On 30 May 2017, Mr Y wrote to CH2M under stage 1 of HPS2's internal dispute resolution procedure (**IDRP**). In this letter, Mr Y sought to modify the basis on which the partial transfer would be completed, stating:

"Therefore, based on the information you have given me, I will:

- 1) Transfer out of HPS2 the sum of £208,323 that your proposal dated 23 May envisages leaving in HPS2. (This is the added years transfer-in credit I was granted in HPS deemed to relate to service before 6 April 1997).
- 2) Leave in HPS2 the amount of £175,274 that your proposal dated 23 May envisages transferring out of HPS2. (This includes the service I accrued in HPS, my GMP and benefits accrued after 5 April 1997 in my previous scheme)."

27. On 12 June 2017, CH2M sent Mr Y its stage 1 IDRP response. CH2M confirmed that a partial transfer of defined benefit rights could only proceed with the consent of the Trustee and CH2M, and on the terms set by these parties. It highlighted that Rule 8.2 of the HPS Rules (as adopted by HSP2) (**the Rules**) states:

"The Trustees may, with the Principal Employer's consent, transfer all or such part of the Fund as (after consulting the Actuary) the Trustees and the principal Employer think fit to the trustees or managers of a Receiving Scheme, in exchange for the provision of benefits under the Receiving Scheme for a person or persons in place of part or all of the benefits to which they were entitled (or contingently or prospectively entitled) under the Scheme."

28. Further correspondence followed, with CH2M unwilling to alter the basis on which the partial transfer had been offered and Mr Y reluctant to accept the proposal in its original form. Mr Y also sought clarity on the value of the pension that would remain in HPS2, should he proceed with the partial transfer.
29. Mr Y has said that he was mindful of the 12 July 2017 deadline for completing the partial transfer, so emailed CH2M on 28 June 2017. In this email, he said:

“On the basis of the information I have received. I am minded to ask you to make the partial transfer out without further delay and then continue to pursue my claims regarding the residual pension that will become payable from HPS2....”

30. On 30 June 2017, Mr Y sent a further email confirming his request for CH2M to arrange payment of the partial transfer, totalling £175,274, to CSPA.
31. On 4 July 2017, CH2M wrote to Mr Y confirming that the partial transfer representing his “contracted out benefits, together with [Mr Y’s] post 97 benefits” would shortly be made to CSPA.
32. On 3 September 2017, Mr Y requested early payment of his remaining HPS2 benefits on the grounds of ill health.
33. On 11 October 2017, CH2M wrote to Mr Y to confirm that the Trustee had accepted his ill health retirement application. The letter contained an ill health retirement quotation, showing an annual pension amount of £6,072.99. Under the heading, ‘Increases to pensions in payment’ the letter also confirmed, “As your pension was accrued prior to 6 April 1997, as per the rules of HPS2, no annual increases are payable”.
34. On 14 October 2017, unhappy with the lack of pension increases in payment, Mr Y wrote a letter to CH2M, incorporating this element into his complaint. In summary, Mr Y felt that the quoted pension income of £6,072.99 was unfair and did not represent a proportionate value of the funds remaining in HPS2.
35. Mr Y requested that his full complaint be considered through the second stage of HPS2’s IDR. On 8 November 2017, CH2M informed Mr Y that the Trustee did not uphold his complaint. In summary, it argued that Mr Y was given all the necessary information to make an informed decision, firstly on the transfer from HPS to HPS2, then on his partial transfer request. The Trustee argued that this information included what type of funds were to remain within HPS2, and that these represented pre-April 1997 benefits, which would not increase once in payment. Dissatisfied with this response, Mr Y asked us to investigate his complaint.

Adjudicator’s Opinion

36. Mr Y’s complaint was considered by one of our Adjudicators, who concluded that no further action was required by the Trustee, HGL or CH2M. The Adjudicator’s findings are summarised below:-
 - The Rules allow the Trustee to exercise discretion on whether to permit a partial transfer, and on what terms.
 - The Trustee had the right allow a transfer of benefits in the proportion it saw fit, just as Mr Y had the right to reject the proposal made by the Trustee.

- Mr Y was told which benefits would be transferred out of HPS2 and how the remaining benefits within HSP2 would be treated.
- In agreeing to the transfer from HPS to HSP2, Mr Y agreed to the rules governing HSP2, including the revaluation rates.
- A portion of the benefits Mr Y accrued in the Mouchel Fund stood to replace the benefits he gave up by contracting-out of the state earnings related pension scheme. So, it was correct that the Trustee considered these to be pre-1997 accrued pension benefits, upon which it had no requirement to award increases in payment.
- There is no evidence that the Trustee, HGL or CH2M sought to obstruct Mr Y from transferring all of his benefits from HSP2, it was in fact Mr Y who requested a partial transfer.

37. 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 and I will therefore only respond to the main points made by Mr Y for completeness.

Summary of Mr Y's position

38. HGL illegally terminated his employment.
39. He still has concerns over the funding of HPS and considers that HGL and CH2M lost his pension due to "incompetence, lies, dishonest tricks and fraud".
40. In agreeing to transfer from HPS to HPS2, he did not agree to a reduction in his retirement benefits.
41. HGL fraudulently induced him to transfer only part of his pension out of HSP2.
42. He was provided with incorrect and misleading information to further induce him into leaving a portion of his benefits in HSP2.
43. He was not told that the portion of his benefits that remained in HSP2 would not increase once in payment. Had he been told this, he would not have left the remaining transfer value amount of £208,323 in HSP2 in 2017.
44. He thinks that the annual amount of £6,072.99 he was quoted for an ill health pension claim was not a proportionate representation of the benefits he left in HPS2.
45. He now cannot access the benefits he transferred out of HSP2 until age 67, which is another 12 years for him.
46. In March 2019, he transferred out the remaining benefits he held within HPS2, for which he received a transfer value of £141,089. Combined with the £175,274 transferred to CSPA, this totals £316,363, which is lower than the amount of £383,597 he was quoted in February 2017.

Ombudsman's decision

47. The concerns Mr Y has expressed about his termination from HGL are employment matters and do not fall within the remit of the Pensions Ombudsman.
48. Where TPR has made a finding, I will not look to investigate the issues it has considered. TPR, and the PPF, were both satisfied with the measures put in place by the Trustee to remedy the financial deficit faced by the original scheme, HPS, so, I will not consider Mr Y's comments and claims concerning the funding of HPS.
49. On 31 May 2016, HGL wrote to all members of HPS to explain the two options available to them. These were a) Remain in the original HPS after its closure, in which case the benefits payable by HPS would be transferred to the PPF; or b) Transfer into HPS2 on the terms stated in the letter. The letter of 31 May 2016 stated that these terms were: a starting pension or deferred pension in HPS2 equal to that the member would have received from HPS; an initial uplift to benefits upon transfer to HPS2; and the PPF would underpin the benefits within the new HPS2. Mr Y chose to transfer his benefits to HPS2. I am satisfied that the information he was sent on 31 May 2016, sufficiently explained all of Mr Y's options and the terms on which a transfer to HPS2 would take place.
50. A member could not agree to transfer to HPS2 and receive the accompanying uplifts, while also placing caveats on their acceptance of the transfer. Put simply, this was not a negotiation. The Trustee had the discretion to set its terms, and Mr Y could choose to accept these and transfer, or not accept and remain in HPS.
51. Mr Y has argued that he did not accept a reduction to his pension benefits on transferring to HPS2. However, Mr Y's retirement benefits were not reduced upon transferring to HPS2. HPS2 had a different set of revaluation rates, which would provide lower future increases but there was no reduction to the starting pension benefits because of this transfer.
52. Mr Y has said that HGL induced to him to transfer out part of his benefits from HPS2. However, the evidence shows that Mr Y requested a transfer of benefits out of HPS2. The occupational scheme he was a member of at that time, CSPS, placed a limit on the value of benefits it would receive. It would seem this was the catalyst for Mr Y requesting a partial transfer of benefits from HPS2, which the Trustee was not obligated to agree to. The Trustee had the discretion to refuse such a request, but instead consulted with its actuaries to arrive at an offer for Mr Y. I note that, given the amount of the proposed transfer including the GMP element, the Trustee told Mr Y that he must engage an independent financial adviser before proceeding with the transfer, which he did.
53. The TOSE, dated 9 February 2017, stated that benefits accrued 'pre 1997' would not receive increases once in payment. On 30 March 2017, CH2M informed Mr Y of the Trustee's proposal for how it intended to split his transfer value amount. The letter to Mr Y, on 23 May 2017, provided specific details about the types of benefits that each portion of the transfer amount represented. The letter explicitly stated that, should

Mr Y proceed with the partial transfer to CSPA, he would be left with only pre 1997 retirement benefits in HPS2. I find that Mr Y did in fact have the information that the benefits that remained in HPS2 would not be subject to increases once in payment, and that he had this information before he confirmed his instruction to proceed with the partial transfer to CSPA on 30 June 2017.

54. As part of the Trustee's agreement to split the transfer value, it confirmed that Mr Y could transfer the remaining funds, then valued at £208,323, to another tax registered pension scheme. There is no evidence to show that Mr Y made such a request at that time. So, these benefits stayed in HPS2, but this was not because of any limitation placed on Mr Y by the Trustee, HGL or CH2M.
55. Mr Y has complained about the level of ill health retirement income quoted by the Trustee, as he feels it does not represent a fair amount compared with the transfer value of £208,323 that he initially left in HPS2. Mr Y did not proceed with this ill health retirement application, and instead transferred out the remaining benefits in March 2019, so I will not comment further in respect of this part of his complaint.
56. Mr Y has complained that he cannot access the retirement benefits he transferred out of HPS2. However, the terms of taking benefits from his new schemes are set by the rules of those schemes. The Trustee's liability for Mr Y's retirement benefits were released when he transferred out his benefits.
57. Mr Y has complained that the transfer value he received, in March 2019, was lower than the amount he was quoted in February 2017. This is a new complaint point, raised by Mr Y after we accepted his complaint for investigation, and after the Adjudicator's Opinion was issued, so does not fall within the remit of this investigation.
58. I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman
21 May 2020