

Ombudsman's Determination

Applicant	Mr S
Scheme	Halcrow Pension Scheme No.2 (HPS2)
Respondent	Halcrow Group Limited (HGL)

Outcome

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

Complaint summary

3. Mr S' complaint is that HGL, the sponsoring employer of HPS2, decided after the implementation of the Regulated Apportionment Arrangement (**RAA**) to merge other Defined Benefit (**DB**) schemes it sponsored into HPS2 and this compromised the security and value of his benefits.

Background information, including submissions from the parties

4. On 28 May 2016, an RAA was approved for the Halcrow Pension Scheme (**HPS1**). The RAA was agreed by: HGL; its parent company CH2M; the Scheme Trustee; The Pensions Regulator (**TPR**); and, the Board of the Pension Protection Fund (**PPF**).
5. On 31 May 2016, HGL wrote to all HPS1 members stating that they would be given the option of transferring to either HPS2 or the PPF. HGL said HPS2 "has been designed to be financially secure and sustainable for the long term". On the same date the HPS1 Trustee also wrote to all HPS1 members separately encouraging them to consider the decision to transfer to HPS2 carefully.
6. On 5 October 2016, consenting members of HPS1, including Mr S, were transferred to HPS2. HPS2 offered more generous benefits than the PPF but less generous benefits than HPS1.
7. On 10 March 2017, following the re-structure, the Pension & Life Assurance Plan of Halcrow Fox & Associates (**Fox**) was merged into HPS2. HGL is the sponsoring employer for Fox.

8. On 27 October 2017, after exchanges of correspondence with HPS2's Trustee (**the Trustee**), Mr S made a formal complaint to HGL. Mr S said HGL never informed him that the subsequent merger of Fox into HPS2 was a potential consequence of him transferring to HPS2 over the PPF. Mr S argues that the value of his entitlement has been compromised by the merger. He says the addition of Fox's liabilities to HPS2 has watered down the financial contributions made by CH2M and risked HPS2's financial health.
9. On 15 April 2019, HGL's representative provided its Formal Response to Mr S' complaint. The representative's response is summarised below:
 - As part of consideration of the merger, the Trustee took appropriate legal and actuarial advice. The Trustee concluded the merger was in the best interests of Fox and HPS2 members.
 - No specific communications were sent to HPS2 members about the merger. However, HGL considers all previous communications sent to members about the ongoing financial security of HPS2 remain accurate.
 - Any financial loss to Mr S is currently hypothetical.
 - HGL's insolvency is the only circumstance which would impact upon the value of Mr S' current HPS2 entitlement. Otherwise, the Fox merger has not impacted on the security of Mr S' pension due to the increased affordability of HPS2 and the ongoing support of HGL's parent company.
 - Based upon the 31 December 2017 funding update, HPS2's absolute deficit has fallen against its technical provision. The proportion of liabilities that result from the Fox merger amount to approximately only 4% of HPS2.
10. On 26 April 2019, Mr S provided his comments on HGL's Formal Response. Mr S disagrees with HGL's explanation of HPS2's finances. Mr S says that corporate transactions conducted by the parent company (now Jacobs Engineering Group Inc (**Jacobs**)) undermined HGL's ability to support its obligations to HPS2. Mr S argues that the Fox merger has diluted the Parent Company Guarantee (**PCG**) originally provided solely for HPS2. He also says that there is now a greater long-term risk to his entitlement and a decreased likelihood HPS2 would improve its funding position.

Adjudicator's Opinion

11. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by HGL. The Adjudicator's findings are summarised below:-
 - The Adjudicator appreciated that Mr S was disappointed to ascertain his entitlement would be altered by his transfer to HPS2 following the RAA. The Adjudicator also understood why Mr S disagreed with HGL completing the Fox

merger. However, Mr S' disagreement with the decision reached by HGL and the Trustee was not sufficient reason for the Adjudicator to agree that his complaint should be upheld.

- The Fox merger was a purely commercial decision for HGL and the HPS2 Trustee to make, after taking appropriate professional advice and the Ombudsman would not interfere with such a decision.
 - HGL is the sponsoring employer for HPS2 and Fox. It was required to financially support both schemes before the Fox merger and the Adjudicator did not agree that HGL's obligations had increased because of it. HGL's financial obligation to HPS2 has not been diminished by the Fox merger, rather it has been re-structured.
 - The merger may improve HPS2's financial stability due to the decreased administrative costs to HGL of supporting one scheme, rather than two.
 - Mr S has not sustained a financial loss due to the Fox merger. There is no evidence that it has impacted on his HPS2 entitlement. Any financial loss Mr S alleges is purely hypothetical and may never materialise. The future growth of HPS2's assets and liabilities are impossible to ascertain in advance.
12. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S 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 key points made by Mr S for completeness.

Ombudsman's decision

13. In his comments, Mr S argues that the Fox merger is not just a commercial decision. He says that HGL offered "specific incentives" such as the PCG and the payment of £80,000,000 to "encourage" members to transfer to HPS2 and that these incentives were subsequently diluted by the Fox merger.
14. Mr S believes that HPS2's covenant and the financial support offered by HGL was substantially weakened by the merger.
15. Mr S also says that the Trustee and HGL have a "prime responsibility" to act in his best interests. He says that the "merger should have included a revaluation of the RAA incentives to ensure these were not eroded". He considers that in order to bring the worth of the PCG for HPS2 back to pre-merger levels, it needs to be increased by approximately 4% and he would like me to direct HGL to make a further cash injection to redress the situation.
16. I agree that the Trustee decision was not purely commercial in the sense that the Trustee had a fiduciary duty to the existing members when it considered the implications of the Fox merger. However, it took professional advice and I have seen

no evidence that it breached that duty. I have also seen no evidence that particular statements made about the RAA at the time when it was explained to Mr S have become false as a consequence of subsequent events. No alterations were made to Mr S' HPS2 entitlement after the Fox merger, nor have any subsequently been proposed. I agree with the Adjudicator's view that any financial loss Mr S alleges is purely hypothetical and may never materialise.

17. Turning to the particular point about dilution of the PCG, this is a matter which relates primarily to the terms of the RAA itself and the ongoing funding arrangements which have been agreed for the Scheme. Mr S' arguments about the suitability of the RAA itself were dealt with in his previous complaint to this Office. I do not have the power to review an RAA or direct any remedy in relation to it. As I have stated previously, the legislation (Occupational Pension Schemes (Employer Debt) Regulation 2005) does not provide for any review of an RAA by The Pensions Ombudsman. Any claim that the RAA is flawed can only be made to TPR and by way of a Courts application (subject to the relevant time limits) and not by a submission to my Office. Similarly, ongoing scheme funding requirements are for the Regulator. I have no power to direct that a sponsoring employer put in place specific financial support for a Scheme.
18. In summary I can see no basis upon which to direct the remedy which Mr S seeks.
19. Therefore, I do not uphold Mr S' complaint.

Karen Johnston

Deputy Pensions Ombudsman
23 July 2019