

Ombudsman's Determination

Applicant	Ms B
Scheme	Cambridge Building Society Retirement Plan (the Plan)
Respondent	The Trustees of the Cambridge Retirement Benefits Plan (the Trustees)

Outcome

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

Complaint summary

3. Ms B's complaint concerns the Trustees' decision to transfer the defined contribution (**DC**) section of the Plan from a Prudential With Profits fund (**the Prudential fund**) to a Standard Life GARS fund (**the GARS fund**), the latter of which performed negatively in 2016 resulting in a reduction in the value of Ms B's pension. Ms B has argued that the Trustees' decision to do so was flawed, and that it is not providing "good value" for members.

Background information, including submissions from the parties

4. Between August 2001 and November 2006, Ms B was an active member of the DC section of the Plan whilst employed by the Cambridge Building Society.
5. The DC section of the Plan was previously invested in the Prudential Fund. In 2013, the Trustees took the decision to implement a life styling investment strategy for its DC members. Briefly, this is where members' pension funds, depending on how many years members have before retirement, are initially invested in higher risk assets capable, although not guaranteed, of providing higher returns, although this is not guaranteed. As members near retirement age, typically 5 or 10 years before they were expected to draw their pension, their pension funds are switched into lower risk investments, generally expected to provide lower but more stable returns to minimise the risk of loss of any previous investment gains. To implement the life styling strategy, the Trustees transferred the DC section of the Plan into the GARS fund. When members reached the age of 60, their DC benefits would then be switched into

two lower risk funds with Legal and General (**the L&G funds**) up to the age of 65. Members of the Plan could also choose to remain in the GARS fund until retirement beyond age 65.

6. Ms B was aged 55 in 2013, so her benefits were transferred into the GARS fund.
7. Ms B's annual statements in 2014 and 2015 set out the following fund values: -
 - £58,544.80 at 31 March 2014
 - £64,476.42 at 31 March 2015
8. In 2016, the Plan Administrator, First Actuarial (**the Administrator**), prepared members' 2016 annual statements, but did not issue them. In March 2017, upon receipt of her annual statement, only issued after Ms B had made several requests to the Administrator that it be provided, Ms B discovered that at 31 March 2016, the value of her pension had fallen to £61,538.18, a reduction of £2,938.24. Ms B subsequently invoked the Plan's Internal Dispute Resolution Procedure (**IDRP**) concerning the performance of the GARS fund. Ms B also complained that she did not receive her 2016 annual statement in a timely manner and that she ought to have been informed that the GARS fund had yielded a negative return.
9. In April 2017, the Trustees issued its IDRP stage 1 response and did not uphold Ms B's complaint. It apologised that her 2016 annual statement was not issued promptly but said there was no requirement for it to inform members that the GARS fund had performed negatively in 2016. The Trustees said it was aware of the GARS fund's performance. After discussions with its investment advisors, the Trustees continued to believe in the appropriateness of the GARS fund, and whilst previous performance was not an indicator of future returns, the Trustees were encouraged by the previous returns of the GARS fund, set out in the table below:

2016	2015	2014	2013	2012
-1.5%	3.7%	6.4%	7.7%	8.5%

10. In August 2017, Ms B appealed the IDRP stage 1 decision. In summary, she made the following points:-
 - Ms B referred the Trustees to the "DC code, Value for members" (**the DC code**) published by The Pensions Regulator in July 2016, which states:

"Members of money purchase schemes rely on others to make the important decisions about their fund and to deliver and assess value for them. All members should receive good value from their pension scheme, regardless of whether you have a legal duty to assess and report on value for members annually. Trustees should strive to ensure that their scheme

continues to provide good value for the full period that they are responsible for members' fund".

- In light of the DC code, Ms B asked the Trustees to comment on why it believes the life styling strategy it chose in 2013 remained relevant, as this is aimed toward members purchasing an annuity, especially in light of the pensions freedom legislation introduced in 2015, which resulted in the decline of annuities being purchased.
- Ms B also said that her current employer does not allow transfers into its pension scheme and that she "does not have confidence in the IFA population to find me an alternative [to transfer into], due to the increasing number of pension scams, so I feel I am between a rock and a hard place".
- Ms B had been chasing the Administrator since October 2016, for the annual statement she should have received in March 2016, and questioned whether the reason why this was not forthcoming was due to the negative performance of the GARS fund.
- The annual statement Ms B received in 2017, did not state in pounds and pence the amount she has paid in annual management charges (**AMC**).
- Ms B was informed by the Administrator that the AMC of the GARS fund was 0.685% "plus additional fees and expenses around 0.02% over and above the AMC". Ms B interpreted this to mean that all expenses were met by the Cambridge Building Society, but upon querying this again with the Administrator, she discovered the charges were met by the members. Ms B complained that the Administrator had not communicated this clearly.
- As a member who is paying the cost of meeting the AMC, Ms B argued that she is not receiving "good value for money" considering the performance of the GARS fund.
- Ms B has never received a copy of the Chair of the Trustee's annual statement.
- Ms B asked the Trustees to comment on "how the investment risk profile of their selected funds is tailored to meet my needs".
- Overall, Ms B argued that the Trustees should "put my pension pot back to where it should have been, the greater of i) if it continued to be invested in [the Prudential fund] or ii) the mixture of the GARS fund/the L&G funds in their best performing years and back dated to November 2013."

11. In September 2017, the Trustees' issued its IDRPs stage 2 response. A summary is set out below: -

- The Trustees accepted that the Plan only allows members to either purchase an annuity or transfer to another arrangement. The Trustees had carried out a review of the Plan and decided in principle that members' funds will be transferred to another arrangement which it would expect to offer "the full range of pension flexibilities and online access to monitor funds". The Trustees would write to members once it had all the necessary information to set out the options available.
- The Trustees had considered the performance of the GARS fund over the previous five years, which aimed to provide long-term returns. Even though the fund had performed negatively in 2016, past performance had been positive.
- The performance of the fund relies on the judgment and skill of the investment manager to achieve an investment return. A run of negative performance does not necessarily mean that the Trustees must amend its investment strategy if the investment manager can make reasonable and explainable investment decisions that only in hindsight proved to be incorrect.
- The current investment strategy was chosen taking into account the DC section of the Plan as a whole.
- The delay in issuing Ms B's 2016 annual statement was not related to the performance of the GARS fund. The delay was caused by an error by the Administrator who had prepared the annual statements but failed to issue them.
- The payment of an AMC does not guarantee positive investment returns. No investments are risk free and the value of Ms B's pension may fall as well as rise. The fund is actively managed with a view to getting good long-term returns and to protect members' funds when investment markets fall in value.
- The charges being met by members are in line with other AMCs for similar funds in the marketplace, and are lower than what would be paid by an individual accessing the GARS fund privately, for example using a personal pension plan.
- The selected funds are not tailored to Ms B's specific needs. The default policy was determined by considering the profile and likely needs of the membership as a whole. If Ms B wishes to adopt an investment strategy specific to her needs, she could seek independent financial advice.

12. Ms B did not agree with the outcome she received from the IDRP stage 2 response. In January 2018, Ms B brought her complaint to this Office and said:-

- In 2013, at the time the Trustees decided to switch to a life styling investment strategy, she had to deal with the death of her father and was not in the right frame of mind to seek guidance regarding her pension.

- Ms B says that she received no annual statements between 2013 and 2014. She says that the last statement she received was when the DC section of the Plan was invested in the Prudential fund. She said the statement supported her view that “my investments will grow by 7% every year, so I must question why [the Trustees] felt it was a good decision to put me in a fund which projected at that time 6.75% returns (and even poorer projections for 2015 and 2016). This does not make sense”.
- She contacted the Administrator in October 2016 and March 2017, and did not receive a statement until she made a complaint. It was only upon receiving the statement that Ms B realised that the fund had not performed to the 6.75% benchmark shown in her annual statements.
- In Ms B’s view the GARS fund has performed poorly, which she has no control over.
- Ms B does not believe the Trustees were adhering to the DC code. Ms B highlighted that the L&G funds had outperformed the GARS fund over the past three years. Ms B maintained that the Trustees ought to “deliver value for money” by offering members the ability to transfer into a better performing investment fund under the Plan.
- At the time the Fund performed negatively in 2016, this was the same year that she did not receive her annual statement from the Administrator. Ms B says the Trustees ought to have informed its members about the Fund’s negative performance and switched to a better performing fund.
- Ms B says that in December 2017 she received a letter from the Trustees informing her that the DC section of the plan was closing and the benefits were being transferred to another arrangement. Ms B was given three options; transfer to another arrangement, investigate her own retirement options or have her pension transferred to an investment with Legal & General which offers “investment and pension freedom options”. Ms B would like to have more details of all these options but she finds the Trustees are “inflexible”, and the Trustees have recommended she seeks financial advice which costs her money and “they have already cost me a lot of money by poor selection of [the GARS Fund].”
- Ms B noted that the GARS fund is not included in the new options, which in her opinion shows an admission by the Trustees that its decision to transfer the DC section of the plan into it was flawed.
- Ms B’s believes that the Trustees are “gambling” with its members contributions without being accountable for the decisions it took when selecting the Fund in 2013.

- Ms B reiterated that the Trustees ought to put her back into the position that she would have been in had her pension remained invested in the Prudential Fund, or alternatively, a mixture of the GARS fund and the L&G funds measured against their best performing years.
13. After further correspondence with this Office, Ms B confirmed that she opted to transfer her benefits to the new Legal and General fund.

Adjudicator's Opinion

14. Ms B's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised below:-
- The DC code Ms B has referred to is only set out for guidance purposes and is not a strict set of rules the Trustees are obliged to adhere to, as explained in its covering note:

“The guides are not intended to be prescriptive, although in some instances they state what we consider to be best practice. Often, the methods you choose to adopt will depend on the nature of your scheme and its membership.”
 - The Trustees may not have offered Ms B the pension flexibilities she wished, but this does not mean that it is not providing members with good value for money or that it is failing to comply with relevant legislation. The Pensions Act 2015 (**the Act**), gave members greater flexibility in how they access their DC pensions, but this was not a “statutory override” meaning the flexibilities introduced by the Act were not automatically imposed on all DC pension schemes. The choices Ms B has is ultimately governed by the rules of the Plan. Ms B's benefits have now been transferred to a fund with Legal and General, offering greater pension flexibilities.
 - The Trustees made the decision to transfer the DC section of the Plan from the Prudential Fund into the GARS fund to implement its life styling investment strategy. Generally speaking, the aim a life styling strategy is for long term investment returns and is not intended to be judged over a short period of time. It is not unusual to see an investment fund perform negatively over the short term. With any investment, future performance is not guaranteed.
 - The GARS fund achieved positive returns until 2016, as set out in the table provided by the Trustees illustrating its yearly performance (see paragraph 9 above). The GARS fund performed negatively in 2016 resulting in the value of Ms B's pension reducing. But simply because the GARS fund performs negatively in one year does not mean that it is an inappropriate fund for members' pensions to be invested in. The performance of the Prudential Fund is not known for the year 2016, and whether achieved positive investment

returns that year. However, the Trustees had no way of knowing that the GARS fund would perform negatively in 2016 when the DC section of the Plan was transferred into it in 2013.

- The Trustees are required to provide its members' scheme with an annual statement irrespective of the GARS fund's performance. However, there is no requirement for the Trustees to make members aware of the negative performance the GARS fund suffered in 2016. The Trustees had already explained that the reason why members' statements were not sent in 2016 was due to the Administrator not sending them.
- Even though Ms B did not receive her 2016 annual statement, the Adjudicator could not see how this resulted in a financial loss. Ms B has mentioned that she cannot transfer her pension because her current employer does not accept transfers in, and she is unwilling to seek financial advice to transfer to another arrangement. The Adjudicator is of the view that even if Ms had received her 2016 statement, she would not have taken any action regarding the transfer of her pension.
- The 7% and 6.5% benchmark Ms B has referred to from her annual statements, were only assumptions and not a guarantee of future investment performance.
- Ms B had to chase the Administrator to receive her 2016 annual statement, but the Adjudicator did not consider that the non-financial injustice suffered by Ms B was significant. Therefore, a payment of £500 is not warranted.

15. Ms B did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms B provided her 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 Ms B, summarised below for completeness:-

- Ms B maintains that the Trustees are not acting in accordance with the DC code, and not providing good value for its members. She highlighted that the DC code also states:

"Revising this code has been a good opportunity for us to make very clear what we expect of trustee boards and managers, and to continue to raise the overall standards of governance and administration in DC schemes."
- Ms B asked how long-term returns were applicable to her, as she only has a short amount of time until retirement.
- Ms B pointed out that although the GARS fund achieved positive returns, the "amount of positivity was very low since the GARS fund was being used", and questioned how this can be deemed as a good result. Ms B says the L&G funds outperformed the GARS fund, yet the Trustees did not seek to maximise

her investment returns by transferring her benefit into that fund, which again leads Ms B to believe that the Trustees did not follow the DC code.

- Ms B argues that as the L&G funds outperformed the GARS fund, the Trustees ought to have made her aware and transferred her benefits into the L&G funds. Ms B says that had she received her annual statement in 2016, she could have made an informed decision and potentially asked the Trustees to transfer her benefits into the L&G Funds.
- Ms B disagrees that she would not have acted had she received her 2016 annual statement. She says that whilst she does not trust the IFA population, this does not mean she would not have sought advice elsewhere. Ms B says her “choices” were taken away from her as she did not receive an annual statement in 2016.
- Ms B highlighted that from 2014, the GARS fund did not achieve the “benchmark” growth figures of 6.75% set out in her annual statements. Ms B says that the Trustees were encouraged by the previous performance of the GARS fund, yet historical performance is not a guarantee, which supports the argument that the Trustees made the wrong decision to transfer members’ benefits out of the Prudential Fund.
- Ms B disagrees that she has not suffered distress and inconvenience. She says she has spent a huge amount of time complaining following the transfer from the Prudential fund to the GARS fund.

Ombudsman’s decision

16. The basis of Ms B’s complaint is the negative performance of the GARS fund in 2016, which resulted in a reduction of the value of the Plan. The historical performance of the GARS fund is not an indicator that the Trustees’ decision to use the GARS fund was flawed. The Trustees chose to use the GARS fund to implement its life styling investment strategy. As explained by the Adjudicator, future investment performance is not guaranteed. At the time the Trustees decided to transfer members’ benefits in 2013, it had no way of knowing that the GARS fund would perform negatively in 2016. Whilst Ms B does not agree with this decision, the Trustees have the authority to decide how the DC section of the Plan is invested.
17. Ms B has made a number of references to the DC code, and how in her view the Trustees have not acted in accordance with it because of the performance of the GARS fund. With all due respect to Ms B, it does not appear that she has interpreted the DC code correctly. The DC code sets out guidance for Trustees to provide good value for their members. The DC code goes on to explain the broader elements of good value which include: a Scheme’s governance framework; security of assets; employer contributions to the cost of services; value for money of services paid for by the employer; employer contributions to member funds and its value over the longer

term. Whilst her investment may have performed negatively in one year, it does not follow that the Trustees are not providing good value.

18. Ms B has said that she is reluctant to transfer to another arrangement as she does not trust the IFA population and her current employer does not accept transfers into its pension Scheme. Ms B received her 2016 annual statement in March 2017, and has contended that she would have sought alternative advice had she become aware of the value of her benefits sooner. However, Ms B has produced no evidence to show that she would have opted to transfer her benefits elsewhere, so I am not persuaded that she would have opted to transfer her benefits to another arrangement had she received her annual statement in 2016. Therefore, I do not find that Ms B has suffered a financial loss as a result of the delay in receiving her 2016 annual statement. Ms B says that she could have asked the Trustees to transfer her benefits into the L&G funds, however Ms B was under the age of 60 in 2016 so this option was not available.
19. The “benchmark” figures of 6.75% Ms B has cited from her annual statements is not an investment objective, but an assumption to illustrate her estimated benefits upon retirement. The benefit Ms B receives will depend on actual investment returns.
20. Finally, turning to non-financial loss, I realise that Ms B is unhappy with the transfer of her benefits from the Prudential funds to the GARS fund, but the only finding that the Plan has not been administered correctly in respect of this complaint is the failure by the Administrator to provide Ms B with an annual statement in 2016. The failure to issue an annual statement does not in itself automatically mean that an award for non-financial injustice is warranted. I will only make an award of £500 if I deem that the distress and inconvenience suffered was significant. I realise Ms B has had to email the Administrator on a few occasions to obtain her annual statement, but I do not find that the distress and inconvenience suffered was significant, therefore no award is warranted.
21. I do not uphold Ms B’s complaint.

Anthony Arter

Pensions Ombudsman
16 August 2018