

Ombudsman's Determination

Applicant	Mrs S
Scheme	Citizens Advice Sutton Stakeholder Pension Scheme (the Scheme)
Respondent	Citizens Advice Sutton (CAS)

Outcome

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

Complaint summary

3. Mrs S' complaint is that CAS agreed to offer new starters a stakeholder pension scheme, with it matching pension contributions up to 6.5%. Although it has agreed to pay back-dated employee and employer contributions to Mrs S, it will not compensate her for the lack of investment growth on those contributions.

Background information, including submissions from the parties

4. On 31 December 2010, the Trustee of CAS ceased enrolling new employees in the existing pension scheme because it said the on-going cost was becoming prohibitively high. CAS says it investigated opening a Stakeholder Pension Scheme and agreed to match employees' contributions up to 6.5% of their salaries. CAS says there were no applications from eligible employees and it was impossible to set one up.
5. On 1 September 2013, Mrs S started employment at CAS. Section 8 of Mrs S' contract of employment stated "a stakeholder pension is available. Please contact your manager for details." CAS accepts that Mrs S informally enquired about joining the pension scheme at that time. There is no written evidence that proves what was discussed. Mrs S says that she was told that no opportunity to join a pension would exist until she was auto-enrolled in October 2016.
6. In October 2016, Mrs S was auto-enrolled into a workplace pension with The People's Pension.

7. In March 2018, Mrs S raised a formal grievance with CAS about her entitlement to join a pension before 2016. Mrs S says she should have been enrolled in a pension scheme in 2013.
8. In April 2018, Mrs S raised her employee contribution in the Auto-Enrolment (**AE**) pension to 6.5%.
9. On 11 July 2018, following exchanges of correspondence, CAS offered to pay back-dated employer contributions from September 2013 into the Scheme. It also offered to pay an advance of employee contributions to the Scheme on Mrs S' behalf that she could repay over time.
10. In September 2018, Mrs S investigated what her pension entitlement might have been worth if it had started in September 2013. She approached Aviva and requested an actuarial calculation that she says was based on the contributions that she and CAS would have made, invested in "an average risk, average growth fund". Mrs S said her Scheme entitlement would be worth £159,176.45 as at 31 March 2018.
11. On 29 November 2018, Mrs S emailed a representative of CAS stating that she had a contractual right for CAS to make employer pension contributions. Mrs S also said she considered that compensation was due for the investment loss she had missed out on.
12. On 8 February 2019, a representative of CAS provided its final response to Mrs S' complaint. The representative disagreed that Mrs S' contract of employment entitled to her employer contributions from September 2013. He also said CAS offered to pay £11,428.20 (comprising of £5,714.10 of Mrs S' and £5,714.10 of CAS' back-dated contributions, from 1 September 2013) to the Scheme as a lump sum. CAS' representative said Mrs S could repay the contributions over a period of 55 months and that its offer was "a non-prejudicial gesture of goodwill in full and final settlement of (Mrs S') grievance".

Adjudicator's Opinion

13. Mrs S' complaint was considered by one of our Adjudicators who concluded that further action was required by CAS. The Adjudicator's findings are summarised below:-
 - Mrs S should receive some redress for lost investment growth on her back-dated Scheme contributions before April 2018.
 - With hindsight, it is impossible to comment on the composition of a pension scheme that CAS did not set up. The Adjudicator did not agree that the investments and growth figures Mrs S supplied were a reasonable expectation of how a pension scheme would likely perform over the relevant period.

- Based on the facts, an Ombudsman would likely award simple interest, calculated for the period of 1 September 2013-31 March 2018, at the base rate quoted by the Bank of England, on CAS' employer contributions.
14. CAS accepted the Adjudicator's Opinion and calculated the interest on its contributions to be £50.44. Its representative further offered to increase its offer to £100 total. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S 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 Mrs S for completeness.

Ombudsman's decision

15. In her comments, Mrs S says she approached Aviva because it was the provider considered by CAS in 2010 as an alternative to the previous pension scheme. Mrs S says that it would be reasonable to calculate her financial loss based on the performance of the pension market overall and she approached Aviva to provide calculations based on an 'average' fund's growth. However, as the Adjudicator noted, I cannot speculate on the investment returns of a scheme that was never established.
16. The investments chosen would likely not have performed in the way Mrs S has suggested. I have seen no evidence that CAS would have chosen the particular fund on which Mrs S based her claim for financial loss. Consequently, I do not find that CAS should compensate Mrs S in the way she has suggested. Mrs S has not suffered a financial loss. She has had the benefit of the portion of her salary that would otherwise have been contributed to her pension since the start of her employment with CAS.
17. CAS agreed with the Adjudicator's view and has proposed a higher calculation of the redress due than I would award based on the facts. Consequently, I find that CAS will not need to take any further action to resolve Mrs S' complaint.
18. I do not consider that CAS' actions have caused Mrs S significant distress and inconvenience. Consequently, I will not direct it to make an award for non-financial injustice.
19. Mrs S should contact CAS if she wishes to accept its non-prejudicial offer of goodwill: £11,428.20 back-dated contributions to be paid into the Scheme as a lump sum. £5,714.10 Mrs S' employee contributions and £5,714.10 CAS employer contributions, for the period 1 September 2013 to 31 March 2018; and for Mrs S to repay the back-dated contributions over a period of 55 months. Also, an offer to Mrs S of £100 interest in respect of the back payments.

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20. I do not uphold Mrs S' complaint.

Anthony Arter

Pensions Ombudsman

27 June 2019