

## Ombudsman's Determination

Applicant	Mr H
Scheme	Cassidian UK Pension Plan ( <b>the Plan</b> )
Respondent	Trustees of the Cassidian UK Pension Plan ( <b>the Trustee</b> )

## Outcome

1. I do not uphold Mr H's complaint and no further action is required by the Trustee.

## Complaint summary

2. Mr H has complained that the Trustee wound up the Plan and withdrew the pension drawdown facility. Mr H contends that he would not have chosen the pension drawdown option if he had been aware that it could be withdrawn.

## Background information, including submissions from the parties

3. The Plan is governed by the Definitive Trust Deed 18 October 2002, as amended (**the Plan Rules**).
4. Rule 24 of the Plan Rules states:-

“Winding-up

For the purposes of this Rule the triggering Events are...

the expiry of written notice by the Employers to the Trustees terminating their liability to pay contributions...”
5. Clause 16.1 of the Plan Rules states:-

“The Plan shall be wound-up, the Fund shall be realised and the trusts of the Plan shall be terminated as specified in Rule 24.”
6. An amendment to the Plan Rules, dated 1 June 2008, in relation to the provision of the Plan's pension drawdown facility states:

**“17.3 Form of benefits**

17.3.1 The Trustee may, at the request of a member, allow the member at any time before age 75 to choose to use some or all of the member's Personal Account to buy an annuity contract from an Insurer or to take a pension payable from the Plan in accordance with the requirements for a short term annuity or income withdrawal (as applicable) under the Finance Act 2004.

17.3.2 The Trustee shall tell the member the terms on which a short-term annuity or income withdrawal are available under the Plan...”

7. Mr H joined the Plan in 2008 at which time the Plan was called the EADS DS UK Pension Plan. The name of the Plan changed to Cassidian UK Pension Plan in November 2010. On joining the Plan Mr H was provided with a plan guide called ‘Your Pension with EADS’, (**the 2008 Plan Guide**). Mr H was also provided with details about the Plan’s “Adapt” facility (**Adapt**), which enabled members to take monthly withdrawals from their pension fund without committing to a “long-term retirement agreement”. The terms of the Adapt facility as set out by the Trustee included:-

“What are the risks?

The level of your future income depends on the balance of your pension account each year. While your pension account is invested, there can be no guarantee that the amount you will be able to withdraw will not have reduced from one year to the next.”

8. In 2014, Mr H decided to start using the Adapt facility in order to receive a monthly income.
9. On 26 March 2015, and again on 31 March 2016, the Trustee sent Mr H an Adapt Renewal Guide. This set out his annual options including suspending his withdrawals from Adapt, transferring his remaining pension fund to another pension arrangement, continuing withdrawals from Adapt or purchasing an annuity. The Trustee prompted Mr H to seek financial advice if he was unsure how to proceed. The Trustee also reminded Mr H that while using Adapt:-

“The level of your future income depends on a number of economic factors, including the level of investment return achieved and the level of long-term rates of interest...there can be no guarantee that the amount that you will be able to withdraw will not have to be reduced from one year to the next.

How are we managing it?

We have adopted an investment strategy designed (but not guaranteed) to provide investment returns above the rate of inflation...

We invest your pension account in three separate funds. The funds currently selected are as follows:

**Growth funds:**

Schroders Diversified Growth Fund  
Standard Life Global Absolute Return Strategies Fund

**Cash fund:**

Legal & General Sterling Liquidity Fund”

10. On 17 April 2018, Mr H received an Adapt Renewal Guide which quoted a fund value of £371,631.59 as at 12 April 2018. It also stated that “this amount is not guaranteed as it varies daily in line with unit prices.”
11. On 24 July 2018, the Trustee wrote to Mr H stating that Airbus, (**the Employer**) intended to wind-up the Plan and said that the Adapt facility would be withdrawn. The Trustee said the closure process would start on 24 July 2018 and that Mr H would need to transfer his remaining pension fund before the Plan was fully wound-up.
12. On 21 September 2018, the Trustee wrote to Mr H again confirming the Employer’s decision to wind-up the Plan. The Trustee also confirmed that the current value of his fund was £355,462.85 and again outlined the options available to Mr H which were:
  - Transfer his fund value to another pension arrangement.
  - Taking the fund value as a cash lump sum.
  - Using the fund value to purchase an annuity.
13. The Trustee also told Mr H that he had until 21 December 2018 to confirm his chosen option.
14. Mr H was given the choice of attending a meeting on 8 October 2018 or having information about the Employer’s plans sent to him. Additionally, he was offered free financial advice through Leabold Financial Management Limited (**Leabold**).
15. Mr H says that in response he contacted Quantum, the Plan administrator, to request that his pension fund be frozen or disinvested because it had been falling in value, but no response was provided.
16. On 9 October 2018, Mr H attended a meeting with Leabold to discuss his options for future investment.
17. On 18 October 2018, Quantum provided Leabold with a non-guaranteed transfer value quotation for Mr H of £347,227.47.
18. On 20 October 2018, Mr H emailed Quantum to raise his concerns about the rate at which his fund value had been reducing. He also queried when he would receive a guaranteed transfer value quotation.
19. On 29 October 2018, Quantum replied that:-

- Mr H's fund value would be affected by movements in the investment markets and the performance of the underlying investment funds that he had invested in, meaning that investments could go up as well as down.
  - Other drawdown arrangements could offer similar investment funds that Mr H could transfer into, which may mitigate any potential losses due to fund volatility in the Plan.
  - It was recommended that Mr H take financial advice on his options.
  - Mr H's benefits would remain invested up until they were transferred to an alternative provider. So, his fund value would continue to fluctuate while invested in the Plan.
20. Having received independent financial advice from Leabold, Mr H decided to purchase an annuity with an external provider.
  21. On 29 November 2018, Quantum emailed Mr H stating that as he was purchasing an annuity externally, he needed to forward completed transfer forms and copies of his identification documents. Mr H emailed the requested documentation to Quantum on the same day and queried the value of his tax-free cash lump sum and the transfer value for the purchase of an annuity.
  22. On 13 December 2018, Quantum emailed Mr H stating that the forms he had forwarded were not from the transfer pack sent to him on 18 October 2018. Quantum also said that Mr H's tax-free lump sum payment would be £59,836.59.
  23. On 14 December 2018, Quantum emailed Mr H a link to the outstanding transfer forms to be completed and quoted a transfer value of £286,474.77.
  24. In response, Mr H said that his first name had been spelt incorrectly on the transfer forms and that the quoted transfer value when added to tax free cash of £59,836.59 amounted to £346,311.36, which was around £1,000 lower than previously quoted on 18 October 2018.
  25. On 15 December 2018, Mr H emailed Quantum to again express dissatisfaction with the transfer value quoted the previous day. He said that he had asked for his fund value to be frozen in September 2018.
  26. On 17 December 2018, Quantum emailed Mr H stating that the fund value quotation of 18 October 2018 had been calculated on 12 October 2018 and was not guaranteed, because it fluctuated in accordance with the Plan's underlying unit prices. Quantum also apologised for misspelling Mr H's first name on his transfer forms and agreed to investigate the reduction in his transfer value quotations.
  27. On 18 December 2018, Mr H emailed Quantum to request a copy of the terms and conditions relating to Adapt.

28. On 19 December 2018, Quantum replied that the Plan Rules stated that income drawdown was available and that the Trustee informed members of the terms in the annual Adapt Renewal Guides and Plan Guides. Quantum did not provide a copy of the terms and conditions.
29. On 28 December 2018, Mr H complained under the Plan's Internal Dispute Resolution Procedure (**IDRP**). In summary Mr H said:-
- Members were offered a meeting with Leabold to obtain free independent financial advice on their options. The Trustee should have recognised that each member would make their own investment decisions and may have chosen to purchase an annuity.
  - Standard Life Global Absolute Return Strategies fund (**GARS fund**), one of the underlying funds that formed the basis of Adapt had reducing unit prices since early 2018. So, the Trustee should have provided an option for members to freeze their benefits.
  - Not providing such an option meant that members who chose to buy an annuity would incur significant financial losses, due to crystalizing the reduced fund values.
  - On 17 April 2018, Quantum quoted his fund value as £371,631.59. The Trustee's letter of 21 September 2018 quoted a fund value of £355,462.85, a reduction of £16,168.74. In that period, he had taken five payments totalling £7,189.95, leaving a deficit in his fund value of £8,978.79, caused by investment losses.
  - Quantum's letter of 18 October 2018 quoted a fund value of £347,227.47, a further reduction of £8,235.38. He had taken a withdrawal of £1,437.99 in that month, leaving £6,797.39 in investment losses.
  - The transfer value of his benefits in December 2018 was £346,313.36, which was over £25,000 lower than the April 2018 value. So, his potential annuity value was reduced accordingly.
  - His monthly payment for December 2018 was not received and Quantum held his £286,476.77 transfer value for the whole of that month. The transfer was completed on 2 January 2019, so he expected to receive a monthly payment in December 2018.
30. On 4 February 2019, the Trustee replied to Mr H and said:
- It had not been advised in 2018 that additional measures should be put in place to protect members' benefits. However, investments were regularly reviewed on the basis of professional advice.
  - Investments have been chosen that were expected, but not guaranteed, to provide reasonable long-term returns for members. The value of these

investments fluctuated but this was the risk required in order to achieve long-term rewards.

- The winding up of the Plan coincided with a period of increased investment market volatility, which caused the fund value to reduce. This was simply the nature of the investments offered under the Plan.
- Adapt was designed to maintain a member's fund value by not selling growth investments when their value had reduced, but that strategy was not guaranteed to work because the overall value of all investments could fluctuate. These points were set out in the annual Renewal Guides sent to Mr H.
- The Trustee recognised that members would make their own decisions on the future investment of their benefits after the Plan was wound up. Any member wanting to continue with pension drawdown outside the Plan could have transferred to another provider offering that facility.
- Adapt's existing investment strategy involved three funds:
  - 40% of the fund value was invested in the GARS fund, which was classed as a growth fund.
  - 40% of the fund value was invested in the Schroder DGF fund, which was classed as a growth fund
  - The remaining 20% of the fund value was held in a Cash fund.
- When unit prices in the growth funds were low, a member's withdrawals were deducted from the Cash fund. So, the GARS fund was not used to provide income, allowing it to recover over time. This demonstrated that the Trustee had considered the needs of members.
- The Trustee considered replacing the GARS fund with a similar fund in 2017 but chose not to because the transaction cost would not have been recovered over the short term in light of the expected closure of the Plan.
- There was a set investment strategy in place for Adapt so it was not possible for Mr H to change or freeze his underlying investments in the Plan.
- The Trustee could not make assumptions about what members might do with their benefits during the Plan's winding-up process, but three options were given; transfer to another pension arrangement, take the benefits as a lump sum or buy an annuity.
- An alternative pension drawdown arrangement was sought for members who wished to choose this as an investment option.
- By choosing to use Adapt from 2014, Mr H had accepted that his fund value would fluctuate. The existing fund value was transferred for Mr H to purchase an annuity.

- Mr H's monthly payments were made in advance, so the payment made on 30 November 2018 was in respect of December 2018. But Mr H did receive his lump sum payment of £59,836.59 in that month.
- Quantum disinvested Mr H's remaining fund value in the middle of December 2018, in the expectation of transferring it shortly after that. The outstanding transfer forms that had been sent to Mr H on 18 October 2018 were received on or around 14 December 2018 and processed within 10 working days, meaning that the transfer value reached the receiving scheme on 2 January 2019. The Trustee did not consider that to be an unreasonable timescale.
- The payment of an award to Mr H for poor service was not appropriate under the circumstances.

31. On 3 March 2019, Mr H complained under stage 2 of the IDRP. In summary Mr H said:-

- The 2008 Plan Guide provided retirement options including the Adapt facility. It also contained a section on continued investment which stated that at age 75, he would need to consider purchasing an annuity, meaning that Adapt would continue beyond that age.
- On 18 December 2018, he had emailed Quantum to request up to date terms and conditions for Adapt. On 19 December 2018, Quantum replied that the terms are set out in each annual Adapt Renewal Guide. These brochures do not state that the Trustee had the right to withdraw Adapt. The main reason he opted for Adapt was to receive a lifetime income flexibly.
- The circumstances he found himself in caused him financial detriment as well as distress and inconvenience.

32. On 11 April 2019, the Trustee wrote to Mr H in response stating that:-

- The Adapt facility allowed members to take their benefits as a pension drawdown. It was not a scheme in its own right.
- Adapt was offered subject to the Plan Rules. Plan Rule 24 and Clause 16.1 provide that the Plan will be wound up on the expiry of written notice by the sponsoring employer of the Plan. In July 2018, the Trustee received such written notice from the Employer, meaning that the Plan would be wound up.
- Once the Employer had triggered the closure of the Plan, the Trustee had a duty to establish the Plan's remaining assets and use each member's fund value to secure their benefits in a timely manner before the Plan closed. No members could be left in the Plan, including those using Adapt.
- Members using Adapt were given the opportunity to take independent financial advice from Leabold, paid for by the Employer. Such members could continue pension drawdown externally arranged through Leabold

- The Employer's decision to wind-up the Plan was not a decision that the Trustee could reject.
- The decision not to make an award to Mr H at stage 1 of the IDRPs was upheld.

### **The Trustee's position**

33. There is no record of Mr H making contact in September 2018 to request that his pension be frozen.

### **Mr H's position**

34. Mr H says:-

- Had he been told that the Plan could be wound up at any time he would never have joined.
- He was aware of the volatility of the investment funds used in Adapt but it was not stated anywhere in the Adapt literature that the Employer could wind up the Plan.
- The Trustee selected the investment funds under the Plan. Since late 2017 the overall investment fund prices have declined in value, but the related share values were forecasted to recover in early 2019.
- He had to leave the Plan by the end of 2018. This gave no time for his Plan investments to recover. So, he has incurred a financial loss of approximately £25,000.
- Members were only given the option to opt-out of Adapt once a year in April. So, once the wind-up notification letter was received from the Trustee in July 2018, members had no choice but to stay in Adapt.

### **Adjudicator's Opinion**

35. Mr H's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-

- The Adapt facility was a provision contained within the Plan Rules that allowed members to use their fund within the Plan to drawdown pension. So, it followed that this facility would cease on the wind up of the Plan.
- Rule 24 and Clause 16.1 of the Plan Rules gave the Employer authority to send the Trustee notice that the Plan was to be wound up. The Trustee had to abide by that decision.
- The 2008 Plan Guide and Adapt Renewal Guides would only have been intended to summarise the main terms of the Plan. Generally, plan guides are unlikely to

include details of what might happen to benefits if the arrangement were to be wound up.

- The 2008 Plan Guide states that financial advice should be sought before making the decision to join. Mr H could have clarified what his position might be, should the Plan wind-up, before he made his decision to join. However, even had Mr H taken such advice, it would have been unusual for him not to take the opportunity to build up valuable pension benefits, simply on the basis that the Plan might at some point in the future be wound up.
- Mr H clearly had the alternative options of transferring out of the Plan to another drawdown arrangement or purchasing an annuity which is the option he decided to take. The Adjudicator did not agree that Mr H had no choice but to stay in Adapt after receiving notification that the Plan was due to be wound-up.
- Mr H said that the Adapt investment funds had declined in value since late 2017 but were forecast to recover in early 2019. He argued that as he had to leave the Plan by the end of 2018 this gave no time for his investments to recover, causing a financial loss of approximately £25,000. The Adjudicator took the view that it was simply unfortunate timing that the Plan went into wind-up before the funds potentially had time to recover, but that recovery was not in any event guaranteed. Consequently, the Trustee could not reasonably be held responsible for any investment loss that Mr H believes he has incurred as a result of the Plan being wound-up.

36. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr H.

#### **Mr H's additional comments**

37. The Plan was wound-up for convenience, but there was an alternative option of providing a drawdown facility instead.
38. Had he known the Employer could wind-up the Plan, he may not have joined, because he had been looking for a pension plan to rely on into his retirement.
39. Since applying for benefits under the Adapt facility in 2014, he had received the annual Renewal Guides but no copies of the Plan Rules or updates on the Plan.
40. The extracts of Rule 24 and Clause 16.1 refer to 'the Plan', without stating its full title. So, he does not accept the validity of those rules in relation to the Plan, without seeing a copy of the full Plan Rules.
41. The Trustee's letter of 21 September 2018 gave a three-month deadline for him to make a decision on where to transfer his benefits. The GARs fund was already in decline at that time and was forecast to do so until early 2019. That deadline prevented any chance of his investment recovering before a transfer.

42. In 2017 the Trustee decided not to replace the GARs fund due to the expected closure of the Plan. There would have been sufficient time for him to transfer to an alternative pension drawdown arrangement without incurring further financial losses if notice of the expected wind-up of the Plan had been given in 2017.

### **The Trustee's additional comments**

43. The annual Renewal Guides describe the terms of Adapt such as limitations to the level of withdrawals, how the funds would be invested and the options available. There was no separate terms and conditions document.
44. Details of Adapt are not specifically mentioned in the Plan Rules but provision for it was made in an amendment to the Plan Rules of 1 June 2008.
45. There is no record of a further request received from Mr H for a copy of the full Plan Rules, following Quantum's email of 19 December 2018.
46. If Quantum had misunderstood Mr H's request in sending that response, the Trustee would have expected Mr H to specifically ask for a copy of the Plan Rules, or for additional information, which would have been provided.
47. As the Plan is closed there is no requirement for the Trustee to provide a copy of the Plan Rules to former members including Mr H.
48. The Trustee had planned to rewrite the Plan Rules into plain English and to incorporate them into Deeds of Amendment. However, this plan was not finalised before the Plan was wound-up. Consequently, the Plan continues to be governed by the original 2002 Plan Rules and existing Deeds of Amendment.

### **Ombudsman's decision**

49. Mr H's complaint relates to the decision to wind up the Plan and, specifically, that the pension drawdown facility has been withdrawn. Mr H contends that the Plan was wound-up for convenience and says that there was an alternative option for the Trustee to have continued to provide a drawdown facility.
50. Rule 24 and Clause 16.1 of the Plan Rules provide authority for the Employer to give the Trustee notice that the Plan is to be wound-up, which the Employer did in 2018. There are many reasons why an employer might choose to wind-up its workplace pension arrangements, for example, the cost of providing such benefits is no longer a viable option. However, on the balance of probabilities, I find it unlikely that the Employer took the decision to wind-up the Plan simply for convenience. The Adapt facility was offered as a provision under the Plan Rules. It was not a separate scheme or arrangement. Consequently, there was no option for the Trustee, or the Employer, to continue with Adapt after the Plan was wound-up.
51. Mr H submits that had he known the Employer could terminate the Plan, he may not have joined, because he had been looking for a pension plan to rely on into his

retirement. I do not accept that Mr H would have chosen not to join the Plan in 2008 on the basis that it may later be wound-up. But, in any event, Mr H has not lost the benefits he accrued in the Plan. He has transferred those benefits to a new arrangement which will provide the income he relies upon in retirement.

52. Mr H contends that since applying for benefits using Adapt in 2014, he has received annual Renewal Guides but no copies of the Plan Rules or updates on the Plan. He argues that the extracts of Plan Rule 24 and Clause 16.1 refer to 'the Plan', without stating its full title. So, he does not accept the validity of those rules in relation to the Plan, without seeing a copy of the full Plan Rules.
53. The Adapt Renewal Guides were not intended to be an alternative to the Plan Rules and were sent to provide Mr H with a statement of his benefits and a simple summary of the main provisions of the Plan. Mr H has provided no evidence that he made further requests for a full copy of the Plan Rules following Quantum's email of 19 December 2018, which referred him to the Adapt Renewal Guides for the terms and conditions of Adapt. I consider that it would have been appropriate for Mr H to raise any concerns about the information provided by Quantum at that time.
54. The full title of the Plan will have been defined at the beginning of the Plan Rules and referred to as the Plan throughout the rest of the document. It is therefore not unusual that the full name is not referred to in the extracts of Rule 24 and Clause 16.1. Nor is it evidence that the extracts of Rule 24 and Clause 16.1 are invalid in the absence of the full title of the Plan, as suggested by Mr H.
55. Mr H says that the Trustee's letter of 21 September 2018 only gave a three-month deadline for him to make a decision on where to transfer his benefits. He contends that the GARs fund was already in decline at that time and was forecast to continue that way until early 2019. So, that deadline prevented any chance of his investment recovering before a transfer could be made.
56. The forecasts provided no guarantee to Mr H that his investment in the GARs fund would recover in the way that he expected. Fluctuating unit prices are an inherent risk in investments. Further there was no requirement for the Trustee to ensure that the Plan would be wound-up at a time that was the most advantageous to Mr H or any other member. The Trustee was required to provide the options available to members with a reasonable timescale for those options to be considered. I consider that the Trustee reasonably set Mr H a deadline of 21 December 2018 to confirm which option he wished to take on leaving the Plan.
57. Mr H contends that there would have been sufficient time for him to transfer to an alternative pension drawdown arrangement without incurring further financial losses if notice of the expected wind-up of the Plan had been given in 2017. While there was an expectation in 2017 that the Plan may be wound-up, this would not have been certain until the Employer gave the Trustee notice in accordance with Rule 24 and Clause 16.1 in 2018. But even had notice been given earlier there was no guarantee that Mr H's fund would have recovered to the level he would have liked.

58. I find that there has been no maladministration by the Trustee in relation to winding-up the Plan and withdrawing the Adapt facility as a consequence of that.

59. I do not uphold Mr H's complaint.

**Anthony Arter**

Pensions Ombudsman  
10 December 2020