

Ombudsman's Determination

Applicant	Mr D
Scheme	The Shell Contributory Pension Fund (the Fund)
Respondent	The Trustee of the Shell Contributory Fund (the Trustee)

Outcome

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

Complaint summary

3. Mr D has complained that the Fund will not provide all the information he has requested. In particular, information relating to how the Fund is taking the potential risks of climate change into consideration.

Background information, including submissions from the parties

4. Mr D was employed by Shell International Limited (**Shell**) and became a member of the Fund in January 1988. He left employment in October 1996, and his pension was deferred.
5. On 1 April 2016, Mr D wrote to the Trustee to find out how the Fund was measuring and managing the potential risks of climate change.
6. On 19 April 2016, the Trustee agreed that climate change was one of the biggest risks the Fund faced. The Trustee also explained that this was considered in investment strategies, risk management and covenant monitoring. The Trustee said that it hoped this had reassured Mr D, but offered to meet him face to face to discuss concerns further if necessary.
7. Mr D decided to meet with the Trustee, but the meeting did not eradicate his concerns. Therefore, he requested a copy of the Fund's recent investment strategy including sections that specifically dealt with climate change, risk management framework, the relevant sections of the employer covenant, sections of documents that describe the techniques and processes used by the Fund to identify, monitor and respond to climate risk, a copy of the most recent actuarial valuations and extracts

from any minutes in the last two years recording decisions the Trustee made in relation to climate change.

8. On 21 October 2016, the Trustee wrote to Mr D and provided a copy of the Actuarial Valuation and a copy of the Fund's Statement of Investment Principles. However, it did not provide the investment strategy, risk management framework or internal management processes as the information was confidential.
9. On 14 November 2016, Mr D expressed his disappointment that the Trustee would not provide all the information he had requested. He said that without this, he was given no certainty of his pension. Therefore, he asked if the Trustee would provide any information that related to decisions made about climate change.
10. On 25 November 2016, the Trustee wrote to Mr D and said it took climate change and the potential impact this could have on the Fund very seriously. The Trustee also enclosed a copy of the Fund's Responsible Ownership Policy.
11. On 1 April 2017, Mr D raised a formal complaint through the Fund's Internal Dispute Resolution Procedure (**IDRP**). He considered that the Fund was exposed to both investments in fossil fuels and as Shell was an oil and gas company, the Fund was at risk of climate change. He wanted to ensure this was being taken into consideration when decisions were made about the Fund. Therefore, he was dissatisfied that the Trustee was not providing enough information about how it was dealing with environmental issues. He said that the information not being disclosed amounted to maladministration.
12. On 8 June 2017, the Trustee wrote to Mr D under stage one of the IDRP. It explained that Mr D had already been provided with a copy of the Trust Deed, Statement of Investment Principles, Annual Report with Accounts for 2014 and 2015, the Actuarial Valuation as at 31 December 2014, and a Responsible Ownership Policy. The Trustee declined sharing the Investment Strategy, Risk Management Framework, Employer Covenant Monitoring Framework, and a description of the process for identifying, monitoring and responding to climate risk. When making this decision, it took into consideration the legal requirement relating to sharing information, confidentiality, commercial sensitive information, direct relevance of the additional documents to the provision of Mr D's personal benefits as a member, resourcing requirement and other priorities, proportionality as to whether the information should be provided to Mr D and potential conflicts of interest. The Trustee went on to explain that it also declined sharing this information because it was only required to provide certain information under the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (**the Regulations**) and this had been provided. The Trustee said the decision not to provide further documentation or information was valid and reasonable, based on balanced consideration. Mr D was given the opportunity to meet with the Chairman of the Trustee and Secretary to the Investment Committee in person which was going over and above their duty.

13. Mr D remained dissatisfied and on 12 September 2017, invoked stage two of the Fund's IDRP.
14. On 7 November 2017, the Trustee provided its response. It said it had provided all the information it was required to. Therefore, it did not uphold the complaint.
15. Mr D remained dissatisfied and brought his complaint to the Pensions Ombudsman to be independently reviewed.

Adjudicator's Opinion

16. Mr D'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 Regulations set out the specific information that must be provided to members on request. This includes the contents of the Trust Deed and Rules, a copy of the annual report, the latest statement of funding principles governing decisions and investments. The Trustee has provided this information. Moreover, it went above and beyond its duties and arranged a face to face meeting between Mr D and the Trustee, in which it discussed how the Fund was considering climate change. The Trustee provided the information it was required under the Regulations, and it was not obligated to provide more.
 - Mr D has concerns about the future of his pension, but the Trustee has a duty to ensure proper consideration is given to protecting the Fund and its members. It provided Mr D with appropriate documentation, and has met with him to address his concerns. The Trustee was not required to do anymore.
17. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D provided his further comments which do not change the outcome. Mr D said the following:
 - He believes that he has a right to see information over and above what is laid out in the Regulations.
 - This is because sharing of information has been developed in case law and in order to determine whether further information should be shared, the Trustee needed to perform a balancing act of weighing up the interests of the beneficiaries, trustees and third parties.
 - There is no basis to suggest that the Regulations override the case law.
 - At the time of his complaint, The Trustee had not provided any information about how it was considering climate change. Some information has been provided but not a sufficient amount.

- No concrete information had been given by the Trustee as to which documents are said to be confidential, and to whom obligations of confidentiality are said to arise for each of those documents. Such information is needed to properly understand if confidentiality is being used as a barrier not to disclose information.
- The Trustee should be required to disclose documents that will allow meaningful monitoring, and give comfort that the Trustee is acting in accordance with its duties.

18. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr D for completeness.

Ombudsman's decision

19. Mr D has complained that the Trustee will not provide him with enough information to assure him that the impact of climate change is being taken seriously. Mr D holds a pension with Shell, so as this is an oil and gas company, he believes the Fund is significantly at risk.
20. The Trustee has tried to reassure Mr D by explaining that only 1% of the Fund's total assets are invested in the equity of companies associated with fossil fuels. Further, the Trustee also confirmed that it considers the wider impact of climate change on investment strategy.
21. Despite the assurances, Mr D still requested further extensive information from the Trustee.
22. The information Mr D is requesting goes far beyond what the Trustee is required to provide within the Regulations.
23. Mr D has argued that the Trustee's duty of disclosure has been extended by caselaw. However, he did not provide any specific cases in support of this argument.
24. When the Trustee made the decision not to provide further information it took into consideration the legal requirements relating to sharing information, confidentiality, commercial sensitive information, direct relevance of the additional documents to the provision of his personal benefits as a member, resourcing requirement and other priorities, proportionality as to whether the information should be provided to Mr D and potential conflicts of interest.
25. I can see no breach of a positive disclosure duty or maladministration. I do not consider that there is evidence to indicate that the Trustee is deliberately trying to stop Mr D from having information about the Fund. On the contrary, the Trustee arranged for Mr D to meet with senior members of staff from the Fund and sponsoring employer. Although the Trustee has provided several reasons why some of the information Mr D requested will not be provided, I do not find that it has erred in declining Mr D's requests.

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26. Therefore, I do not uphold Mr D's complaint.

Karen Johnston

Deputy Pensions Ombudsman
15 August 2019