

## Ombudsman's Determination

Applicant	Mr E
Scheme	Scottish Housing Association Pension Scheme ( <b>the Scheme</b> )
Respondent	TPT Retirement Solutions (formerly The Pensions Trust Retirement Solutions) ( <b>TPT</b> )

## Outcome

1. I do not uphold Mr E's complaint and no further action is required by TPT.

## Complaint summary

2. Mr E says that in 2014 his employer told him it would remain liable for a £7,000 payment if he remained in the existing AVC fund at retirement. When he queried this at the point the payment became due, he was told that the £7,000 contribution was to be allocated to TPT.
3. In addition, his employer had offered to match the benefits in the existing fund and pay him a cash sum if he transferred to another one where it would not be liable for the £7,000.
4. He believes he was misled by these statements.

## Background information, including submissions from the parties.

5. The Scheme is a multi-employer pension scheme covering more than 150 employers in the housing sector. It is one of over 40 schemes which participate in a master trust arrangement called The Pensions Trust (**the Trust**). TPT is the provider of trusteeship, administration, actuarial and investment services to the Trust.
6. On 1 October 1995, Mr E joined the Scheme through his employment with Wishaw and District Housing Association (**the Employer**).
7. In September 2003, he started paying Additional Voluntary Contributions (**AVCs**) into the Growth Plan Series 3 (**Series 3**).
8. In 2012 the Employer told Mr E that it was no longer offering Series 3 as an option for AVCs and asked if he would be prepared to transfer his accumulated fund to the new

Growth Plan Series 4 (**Series 4**). It said that it guaranteed he would not lose any benefits by doing so and that by transferring he would help the Employer to clear its liability to the Scheme.

9. From 1 December 2012, Mr E's AVCs were paid into Series 4, but his existing fund remained in Series 3.
10. On 13 December 2012, TPT responded to an enquiry from Mr E. It explained that, unlike Series 3, which guaranteed his fund would never go down, Series 4 offered no underlying guarantees regarding the value of his fund. Series 4 did however offer a wider range of funds where positive investment returns were more likely. It said it was entirely Mr E's choice whether he wished to move his existing Series 3 benefits to Series 4.
11. The differences between the two options were explained further in a telephone conversation on 19 December 2012. The telephone note says "Spoke to the member to ensure he was happy with contents of my email. He thanked me for the time going over his options and the differences between the schemes".
12. On 3 January 2014, Mr E requested a retirement estimate from TPT. This was provided on 3 February 2014. The covering letter said that, in addition to the benefits quoted, Mr E had built up AVC fund values in defined contribution arrangements, Series 3 and Series 4. Details of these were shown on DC retirement illustrations enclosed.
13. On 12 May 2014, Mr E asked TPT about the Employer's liability with regard to his AVCs. He said, "Could you please explain the current employers [sic] liability with regard to the deficit in my current AVC contributions".
14. TPT responded on 13 May 2014. Because this is the crucial document giving rise to Mr E's complaint, I have set it out in full in the Appendix.
15. Following a further enquiry from Mr E, TPT emailed him on 31 July 2014 to again explain that, while Series 3 had a capital guarantee, Series 4 did not. It said that he could choose to leave his benefits in Series 3 or transfer them to Series 4. It attached several fund factsheets giving details of the investment funds available under Series 4.
16. In response, on 4 August 2014, Mr E requested a transfer value quotation of his Series 3 benefits only. TPT provided this on 18 August 2014 but explained that it was not possible to transfer the Series 3 fund away from TPT while he remained an active member of the Scheme. He could, however, transfer his Series 3 fund to Series 4. TPT again explained the differences between Series 3 and Series 4. However, it said that it could not give financial advice regarding his options.
17. On 3 September 2018, Mr E telephoned TPT to say that the additional £7,000 he was expecting had not been added to his fund. In response, on 7 September 2018, TPT

explained that the £7,000 was a debt owed to the Scheme and not an amount to be added to Mr E's fund.

18. Mr E complained to TPT on 20 September 2018. He said that the Employer had approached him in early May 2014 indicating that it had become aware that it would be liable for a sum of about £7,000 on his retirement to support his Series 3 AVCs. It had asked if he would be prepared to transfer his fund from Series 3 to Series 4 for it to avoid this liability. Based on information provided by TPT he had made the decision not to transfer. He said that at no point did TPT make it clear that the debt owed by the Employer would not be added to his fund at retirement.
19. He said that the Employer had offered him a cash incentive of £1,000 to transfer and guaranteed that his fund in Series 4 would match what he would have had if he had remained in Series 3. Again, after much thought, he had refused in the belief that £7,000 was going to be added to his fund on retirement.
20. He had now had to retire through ill health and, on querying why the £7,000 had not been added to his fund, had been told his claim had been refused.
21. TPT issued its final response to Mr E's complaints on 8 November 2018. It said:-
  - Rule 12.2 stated that the Trustee may decide whether or not any person is entitled to any pension or other benefit in accordance with the Rules, all other claims on the Fund and all matters, questions and disputes concerning the Fund.
  - Having read the correspondence, it agreed with the conclusion that Mr E had not been given financial advice by TPT and that he had no personal entitlement to the Series 3 plan debt figure.
  - Its email of 13 May 2014 had clearly stated that TPT was unable to provide advice but could give him some facts. These included explaining that his employer would owe the Series 3 plan £7,000 when he stopped contributing AVCs, and that should he transfer his Series 3 fund to Series 4, his employer would not have to pay this debt.
  - It had not indicated that this sum would be paid into Mr E's fund.
  - It had explained the differences between Series 3, which had a capital guarantee, and Series 4, which had no guarantee but provided a greater prospect of obtaining positive returns on the funds invested.
  - It had made clear that the decision was Mr E's alone.
  - It had explained that when the Employer's last active member stopped contributing to the Series 3 a debt on withdrawal is triggered. The reason why the Employer was encouraging Mr E to transfer from Series 3 to Series 4 was to avoid this debt.

22. Mr E rejected the decision in an email dated 21 November 2018. He said that when he had originally contacted TPT it was at no point mentioned that the £7,000 would not be included in his final figure. It also made clear that this sum would not be due if he transferred to another scheme. He also referred to TPT's letter of 8 November 2018 in which it had said, "Each member has an individual pot into which the member's own contributions are paid together with the contributions paid by their employer." He said that, from this, it was reasonable to assume the Employer's contributions were for him and not TPT. He felt the previous information provided by TPT was misleading.
23. Following a further representation, Mr E's case was referred to the Scheme's Appeals and Discretions Committee. There was acknowledgement that the email of 13 May 2014 could have been clearer, for which TPT offered £750 for the distress and inconvenience caused. Mr E rejected the offer.
24. **TPT's position:-**
- Mr E had confirmed that he was asking about the debt on his own behalf and not on behalf of the Employer.
  - TPT had confirmed, in its email of 13 May 2014, that it was unable to provide advice, but could give some facts. It had explained that the Employer would owe the Scheme about £7,000 when Mr E stopped contributing AVCs and that, should he transfer from Series 3 to Series 4, the Employer would not have to pay this debt.
  - It had not indicated that this sum would be paid to Mr E's own fund.
  - It had also explained that Series 3 had capital guarantees, whereas Series 4 did not, but that Series 4 provided a greater prospect of getting positive returns on the funds invested.
  - It had made clear that the decision on whether to transfer was Mr E's alone.
25. **Mr E's position:-**
- The literature provided to him clearly states that employer contributions are put into the employee's pot.
  - TPT was aware that he had been offered a financial incentive to switch and had received a written guarantee that his benefits in Series 4 would be guaranteed to be no less than Series 3.
  - If TPT had clarified its position he would have accepted the offer.
  - He believes TPT's process is misleading.

## **Adjudicator's Opinion**

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

- It appeared the Employer understood that if Mr E remained in Series 3 it would become liable for a debt of approximately £7,000 once he ceased to be an active member. This is one of the aspects of a multi-employer scheme which is designed to ensure that the liabilities of the scheme are shared fairly between the participating employers. It is covered in regulations known as 'Debt on the Employer'.
- However, by Mr E transferring to Series 4 the Employer believed it would cease to be liable for this debt. While this was relevant as background to Mr E's complaint, it was not material to it. So, the Adjudicator did not consider whether the Employer's understanding was correct.
- Mr E's case rests entirely on TPT's email of 13 May 2014, from which he says he understood that the Employer would pay a sum of £7,000 into his AVC fund.
- The question Mr E had raised on 12 May 2014 was, "Could you please explain the current employers [sic] liability with regard to the deficit in my current AVC contributions".
- In its response (see Appendix) TPT had said that the Employer would "owe The Pensions Trust about £7,000 when you stop contributing your AVCs, this is because the government require the employer to support the scheme".
- There was nothing in this statement to suggest that the £7,000 would be paid to Mr E's own fund.
- The response went on to attempt to explain how the Debt on the Employer regulations operate. In trying to be helpful and informative, the writer had perhaps added to Mr E's misunderstanding. But the wording stopped well short of implying that the debt would be paid to Mr E's fund. It made clear that to transfer should have no other repercussions for Mr E and that the default position was that everything would stay as it was.
- If Mr E was unclear about the meaning, he could have questioned TPT further at the time to be certain he understood the position correctly before making such an important decision.
- It was also apparent that Mr E was in discussion with the Employer regarding his options. It was the Employer that had initiated the process and was trying to persuade him to switch, and yet he did not appear to have asked it to clarify what the implications were of its offer.

- While TPT's email of 13 May 2014 could have been clearer, this did not amount to maladministration. What the email said was not factually incorrect, it was that Mr E had misunderstood it and made an assumption as to its meaning.
- As TPT had made clear, the decision was for Mr E alone to make. It could not advise him, but he could have taken independent advice if he wished. However, he did not and based on the decision he made he was in receipt of the correct benefits.
- The Adjudicator acknowledged that, as a consequence of his misunderstanding, Mr E had missed out on a potential incentive payment of £1,000 from his Employer. However, TPT had offered him £750 in recognition of the fact its communication could have been clearer.

27. TPT accepted the Adjudicator's Opinion but Mr E did not and his complaint was passed to me to consider.

28. Mr E has provided further comments which do not change the outcome. He says that:-

- He had telephoned TPT to specifically advise it of the Employer's offer of compensation and undertaking to match the Series 3 results if he transferred to another scheme. At no point did TPT advise him that this offer would be the most advantageous. In fact, it again advised him that if he did opt for this choice the Employer would be 'off the hook' for the £7,000 outstanding. He says this was clearly misleading him against his own best interests by omission. There appeared to be no duty of care to him.
- The letter from TPT dated 8 November 2018 said:

"Growth plan series 3 works differently. Each member has an individual pot into which the member's own contributions are paid together with the contributions paid by their employer."
- He contends that there is no ambiguity in that statement. Any reasonable person could understand from this that all employer contributions are to contribute to his pot.
- He believes that, even though he clearly sought TPT's advice to ensure that he made the most advantageous choice for his future, the advice supplied was not in his best interest. TPT was disingenuous in that it steered him into maintaining his 20 years of AVCs in the Scheme most beneficial to TPT while financially disadvantageous to him.
- Although TPT was fully aware of the offer from his employer, it failed to explain at any point that the £7,000 was not to be assigned directly to his account despite its duty of care to him.

- He was reluctant to seek advice from the Employer at this point because he believed it was pressuring him to look after its own best interest. He believes he made this position clear in both email and telephone calls to TPT.
- He had supposed that TPT would advise him as to his own best interests and, to some extent, he may therefore be culpable. Notwithstanding this however, he strongly believes that the information/advice supplied by TPT was deliberately obtuse and not fit for purpose. TPT understood his only and sole consideration was what was the best option for his future. Yet despite this it failed to mention even once that the Employer's financial obligation would not be allocated to his account. He maintains this was in direct contradiction of the information supplied in TPT's letter of 8 November 2018.
- TPT's failure to explain the situation clearly and concisely to him is a clear dereliction of its duty of care, which has cost him £1,000. If TPT had explained this to him, he would have accepted the Employer's offer, but it appears TPT put its own interests above his own.

29. I agree with the Adjudicator's Opinion and note the additional points raised by Mr E.

### **Ombudsman's decision**

30. Mr E has quoted from TPT's letter of 8 November 2018 in support of his claim. That letter was in response to his complaint and was written some years after the events in question. Mr E cannot therefore argue that any decision he made was based on its wording.
31. TPT's role is to manage the Scheme in accordance with the rules. It is not a financial adviser and it is not authorised to give advice. TPT could not advise Mr E as to which option would be most advantageous to him.
32. The focus of TPT's letter dated 13 December 2012, and its subsequent telephone conversation with Mr E on 19 December 2012, was entirely in relation to the investment options and underlying guarantees available under Series 3, as opposed to the potential for positive investment returns but with no guarantee under Series 4. At that point there was no reference whatsoever to the Employer's liability.
33. In TPT's email of 13 May 2014 (see Appendix), it set out facts about how the Scheme worked. It again explained how the investment and underlying guarantees of Series 3 and Series 4 differed. It did not provide Mr E with advice as to which option he should take. In fact, it made clear that it could not give advice.
34. I acknowledge that TPT did confirm in its email of 13 May 2014 that the Employer had a liability to the Scheme of £7,000 if Mr E remained in Series 3. But this was a statement of fact. It was not worded in such a way as to suggest to Mr E that he would personally benefit one way or the other from his decision on whether to switch.

35. Mr E appears to be under the impression that TPT has benefited in some way from his decision not to transfer and put its own interests above his. This is not the case. The £7,000 is not payable for TPT's benefit but is due to the Scheme to ensure the Employer contributes its share to the Scheme's overall liability.
36. While I sympathise with Mr E's position, I find that there has been no maladministration by TPT. I note that TPT has accepted Mr E's view that its communication could have been clearer and has confirmed that its offer of £750 remains open to Mr E for any distress and inconvenience this caused him. I will leave Mr E to discuss payment with TPT should he wish to accept TPT's offer..
37. I do not uphold Mr E's complaint.

**Anthony Arter**

Pensions Ombudsman  
23 March 2021



## Appendix

Email from TPT to Mr E dated 13 May 2014.

“Thank you for the extra info this really helps to understand what you are looking for. It is a difficult topic to approach as we are not able to provide you with advice however I can still provide you with some facts. Your employer will owe The Pensions Trust about £7,000 when you stop contributing your AVC's [sic], this is because the government require the employer to support the scheme, without going into too much detail your benefits aren't at risk and technically Growth Plan 3 doesn't have a deficit however the government require the employer to support the benefits in Growth Plan 1 and 2 (because they are part of Growth Plan 3) and so your membership means that the employer is “on the hook” for some debt but in essence it doesn't actually arise from your funds but your funds are used as a way for us to determine their share of the scheme debt.

Your fund is about £27,096.83 in Growth Plan 3 and £3,293.74 in Growth Plan 4 as at May 2014. If you chose to move the £27,096.83 into Growth Plan 4 then the law will mean that your employer will not have a debt to pay us when you stop contributing however you should of course be making your decision based on your own personal circumstances rather than what will help the employer. The money that you have in Growth Plan 3 has what is known as a capital guarantee which means that there is a promise that your fund at the beginning of the year will not be less than the fund value at the end of the year just ended. This basically means that your fund won't go down. The offset of this benefit is that the scheme is invested very cautiously and over the past few years the return on the fund is about 0%. Some people will be happy to leave their money there knowing that even though it won't grow very much it is safe.

The alternative is to move the money over to Growth Plan 4 for it to be invested with your other Growth Plan 4 monies however you lose the capital guarantee but you gain the prospect of getting some return on the money.

The transfer should have no other repercussions for you i.e. the employer shouldn't stop paying the AVC's to us but you may need to check with them for sure. I don't believe there is any reason now why the employer has to pay AVC's for you anyway as there is no rule to offer the AVC vehicle but equally it doesn't cause them any harm to facilitate the payment of the AVC's and paying AVC's is an excellent way to top up your benefits.

The important thing is that you don't have to make a decision at all if you don't want to, the default is that everything just stays as it is, we only need to know if you want to move the money to Growth Plan 4 otherwise the funds remain in place until you come to retire.

I hope that the above helps some way, I would be happy to answer any further questions that you may have.”