

## Ombudsman's Determination

Applicant	Mr E
Scheme	United Biscuits Pension Plan ( <b>the Plan</b> )
Respondents	United Biscuits (Pension Trustees) Ltd ( <b>the Trustee</b> ) Aon Hewitt ( <b>Aon</b> )

## Outcome

1. I do not uphold Mr E's complaint.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr E complains that in June 2017 the Trustee and Aon provided him with a quotation incorrectly showing that the total cash equivalent transfer value (**CETV**) available to him from the Plan of £542,621.87 excluded his Additional Voluntary Contributions (**AVCs**). He says that:
  - he had relied upon this incorrect information to his financial detriment by purchasing a car costing around £25,000 in late November 2007; and
  - he would not have made the purchase if he had not been wrongly led to believe that his AVC fund would be payable in addition to the total CETV of £542,654.49 transferred into the Nucleus Trustee Co Ltd SIPP (**the SIPP**) on 30 October 2017; and
  - to put matters right, the Respondents should therefore compensate him by paying the AVC fund of £14,007.26 which had already been included in the total CETV of £542,654.49 into the SIPP.

## Background information, including submissions from the parties

4. Aon sent Mr E a CETV quotation on 16 June 2017 which showed that
  - the current CETV available to him from the Plan exclusive of his AVCs was £542,621.87 and it was guaranteed until 26 August 2017; and
  - his current AVC fund was £13,974.64 but this amount was not guaranteed.

5. The quotation also showed that the current CETV not including his AVCs was made up as follows:

Guaranteed Minimum Pension ( <b>GMP</b> )	£ 40,087.55
Excess over the GMP pre 6 April 1997	£183,642.27
6 April 1997 to 31 March 2006 salary related benefits	£184,448.90
1 April 2006 to 30 November 2007 salary related benefits	£ 25,252.22
Post 1 December 2007 CARE benefits	£ 95,216.29

6. The total of these five components of the guaranteed CETV excluding Mr E's AVCs was £528,647.23 and not £542,621.87. To arrive at the incorrect higher figure, one also had to include the non-guaranteed AVC fund value of £13,974.64.

7. The CETV quotation included a proviso entitled "Important information" which said that:

"We (Aon) administer your benefits for the trustees in line with the trust deed and rules. We're not authorised by either the trustees or your employer to pay any benefits over and above your entitlement.

...We've done all we can to make sure that the figures shown are accurate but if there are any errors your benefits will be limited to your entitlement."

8. Mr E says that he made his "marginal" decision to transfer his pension rights from the Plan to the SIPP after accepting the advice received from his Independent Financial Adviser (**IFA**) who he contends had "based all retirement modelling" on the incorrect CETV figure excluding AVCs of £542,621.87.
9. Aon paid a total transfer value of £542,654.49 including AVCs of £14,007.26 into the SIPP on 30 October 2017 and provided Mr E with full details of the payment on a "Statement of entitlement of CETV" (**the Statement**).
10. The statement showed the same breakdown for the five components of the CETV excluding Mr E's AVCs totalling £528,643.23 which had been guaranteed until 26 August 2017. To obtain the transfer value paid of £542,654.49, one therefore had to add Mr E's current AVC fund of £14,007.26 to this guaranteed amount.
11. Mr E says that it was in late November 2017 when it first seemed to him that his AVC fund in the Plan had not been transferred to the SIPP and informed Aon accordingly.
12. He was dissatisfied with Aon's explanation that the AVC fund had been included in the CETV paid to the SIPP on 30 October 2007 and made a formal complaint under the Plan's Internal Dispute Resolution Procedure (**IDRP**) in December 2017.
13. At Stage One of the IDRP in December 2018, the Trustee apologised to Mr E for the delay in providing its response and informed him that it did not uphold his complaint.

In recognition of the clear distress and inconvenience which the matter had caused him, it offered Mr E £500 compensation as a gesture of goodwill which he declined.

14. The Trustee notified Mr E in February 2019 at Stage Two IDRPs that its decision was unchanged. It was, however, willing to increase its goodwill compensation payment to £1,000 because of the extensive delays incurred dealing with his complaint in order to try settling his complaint amicably.
15. Mr E rejected the improved compensation offer and referred his complaint to me.

### **Summary of Mr E's position**

16. The Respondents did not realise that they had made a mistake on the June 2017 quotation by showing the CETV excluding AVCs to be £542,621.87 until he brought it to their attention in late November 2017.
17. He detrimentally relied on this incorrect higher CETV excluding AVCs figure by purchasing a car costing approximately £25,000 at the end of November 2017.
18. He considered his AVC fund as "an additional part of his pension" and decided to use it to partly cover the cost of the car which he would not normally have been able to afford. He made the purchase only because he thought that he would be receiving a total CETV in the region of the amount available by adding the incorrect higher CETV figure excluding AVCs shown on the June 2017 quotation to his current AVC fund value.
19. He will have to sell the car to bring his "investment plan on track" and to offset the financial loss he has incurred due to the error made by the Respondents if his complaint is not upheld.

### **Summary of the position of the Trustees and Aon**

20. They are only able to pay benefits in accordance with the Trust Deed and Rules of the Plan (**the Plan Rules**). Mr E's correct CETV entitlement under the Plan Rules for all his benefits including his AVCs was £542,654.49 and this amount was transferred into the SIPP on 30 October 2017.
21. It should have been clear to Mr E and the IFA from the breakdown of CETV figure excluding AVCs into its five components shown on the June 2017 quotation that the figure of £542,621.87 could only be achieved by adding the AVC figure of £13,974.64 which was shown separately on the quotation. If it was not, Mr E or his IFA should have queried this discrepancy with them before proceeding with the transfer of pension rights.
22. They do not accept that Mr E has reasonably relied on the incorrect CETV figure. Even if it can be shown that he had done so, it is unclear what financial loss he has suffered as a result.
23. The Statement dated 30 October 2017 confirmed that the CETV paid into the SIPP included Mr E's AVCs. Mr E therefore ought reasonably to have known this when he

purchased a car at the end of November 2017. As such, there can be no question that Mr E reasonably relied on the statement from June 2017 to his financial detriment by deciding to purchase the car.

## **Adjudicator's Opinion**

24. Mr E's complaint was considered by one of our Adjudicators whose findings are summarised briefly below.

- The provision of a quotation to Mr E in June 2017 showing an incorrect higher guaranteed CETV excluding AVCs figure of £542,621.87 clearly constitutes maladministration on the part of the Respondents.
- Although Mr E received incorrect details of the guaranteed CETV excluding AVCs in June 2017, it did not confer on him a right to the higher figure erroneously quoted.
- Mr E is only entitled to the correct benefits which are available to him from the Plan and the Respondents paid the correct CETV of £542,654.49 including his current AVC fund value of £14,007.26 to him on 30 October 2017.
- If Mr E had acted to his financial detriment based on the reasonable belief that the higher CETV figure provided in June 2017 was correct, then he may be compensated for the harm.
- There was no concrete evidence to substantiate his contention that he has suffered a financial loss of the value of his AVC fund as a result of expenditure or of decisions that he would not have made if the correct information had been quoted at the outset.
- A party cannot be permitted to deny that which, knowingly or unknowingly, he/she has allowed or encouraged another to assume to his detriment. It is therefore incumbent upon any member of a pension scheme to ensure that, if fundamentally flawed data is displayed in a benefit statement, the relevant person or department be notified so that corrections can be made.
- It was reasonable to expect Mr E or his IFA to have carried out a simple check that the guaranteed CETV excluding AVCs figure shown on the June 2017 quotation was correct by adding the values supplied for its five components. By doing so, they would have discovered that the total was only £528,647.23 and the incorrect higher figure of £542,621.87 could only be obtained by adding the non-guaranteed AVC figure of £13,974.64.
- When Mr E subsequently received the Statement dated 30 October 2017, if he had repeated this basic calculation, he would have found out much earlier that the CETV paid to the SIPP already included his current AVC fund value of £14,007.26.
- It cannot therefore be said that Mr E had reasonably relied to his financial detriment on the incorrect CETV figure excluding AVCs provided in June 2017 when subsequently purchasing the car in late November 2017.

- The £1,000 award which the Respondents have offered him in recognition of the distress and inconvenience which Mr E has experienced dealing with this matter was equitable.

25. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his 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 Mr E for completeness.

### **Ombudsman's decision**

26. Mr E considers that he should be compensated for the value of his AVC fund available in the Plan because the Respondents were responsible for the error made on the CETV quotation which he received in June 2017.
27. Whilst there is no dispute that there has been maladministration on the part of Aon and the Trustee, the starting point is that Mr E is only entitled to the benefits provided by the rules of the Plan. Exceptionally, in cases where incorrect information has been given redress will be provided, if it can be shown that financial loss or non-financial injustice has flowed from reliance on that incorrect information. For example, the member may have taken a decision in reliance on the accuracy of the information, which they would not otherwise have taken. However, they must be able to prove both that they relied on the accuracy of the information provided and that it was reasonable to do so.
28. I have considered carefully whether it was reasonable for Mr E to have accepted the June 2017 figures as correct and have concluded it was not for essentially the same reasons given by one of my Adjudicators as summarised above.
29. Whilst I do not consider that Mr E had suffered any actual financial loss, it is clear to me that he has suffered serious distress and inconvenience because of the maladministration identified. I note that the Respondents have offered Mr E an award of £1,000 in recognition of this. I consider this amount to be equitable and in line with what I would have directed the Respondents to pay him. If Mr E is now prepared to accept this payment, he should contact the Trustee accordingly.
30. Therefore, I do not uphold Mr E's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
10 September 2019