

Ombudsman's Determination

Applicant	Mr D
Scheme	Weetabix Group Pension Scheme (the Scheme)
Respondents	The Trustee Corporation Limited (the Trustee) Weetabix Limited (Weetabix)

Outcome

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

Complaint summary

3. Mr D's complaint against the Trustee and Weetabix is that Mr E , the Scheme's Member Nominated Trustee, (**MNT**), for the period 2013-14, acted in breach of his duty as a trustee when the Scheme proposed changes to pension contribution levels in April 2013, to active members. He says that Mr E had a conflict of interest because he was responsible for negotiating a pay settlement for Weetabix employees in 2014 which negated the benefit of electing to make 12% pension contributions.
4. Mr D says that due to the 2014 pay settlement he now pays an additional £1,500 per year into his pension for no additional benefit. He therefore wants his Scheme pension to be returned to its position prior to the 2014 pay settlement and the 2014 pay settlement to be overturned.

Background information, including submissions from the parties

5. Mr D is a Scheme member and his normal retirement age is 65. He is currently aged 53.
6. Mr E was a MNT from 1 April 2011 until 9 June 2014.
7. In November 2012, Weetabix communicated with active members of the Scheme in relation to proposed changes to the Scheme which were to take effect from 6 April 2013. They mentioned the Scheme had a sizeable deficit. Weetabix made a number of proposals for members. Active members were offered the following options:

Option 1 - Continue to build up the same benefits under the Scheme with an increase in the member contribution rate to 12% of Pensionable Earnings;

Option 2 - Continue with the current contribution rate of 7.5% of Pensionable Earnings but with a cap on future increases in Pensionable Earnings limited to the lower of the Consumer Prices Index (**CPI**) or 2% per year; or

Option 3 - Leave the Scheme with preserved benefits and join the Standard Life Weetabix Group Personal Pension Plan to build up future pension benefits.

8. Mr D chose option 1.
9. Weetabix confirmed to Mr D that if a member chose option 1 in April 2013 they could still select option 2 at any time, with the change taking effect from the 6 April following the member's decision to move to option 2. However, once a member has selected option 2 they cannot revert to option 1 at some point in the future.
10. Mr E's role in the 2014 pay settlement was to represent Weetabix in the pay negotiations with the trade unions, in conjunction with the Head of HR for Operations. Mr E was no longer a trustee when the 2014 pay settlement was concluded.
11. Weetabix say :
 - Whilst Mr E was an MNT in November 2012, Weetabix consulted with active members of the Scheme about proposed changes to the Scheme. Mr E did not negotiate an increase in pension contributions. The changes were agreed with the Scheme's trustee board which owe its duties to all of the members of the Scheme and not just the active members.
 - Any decision about the budgeted 2014 pay rise was taken by Weetabix's board of directors. Mr E did not have sole authority to make decisions in respect of pay increases.
 - Mr E was an MNT from 1 April 2011 to 9 June 2014. The 2014 pay negotiations were carried out between Weetabix and its employees. The Trustee did not have (and should not have) any role in the process. The 2014 pay negotiation and subsequent settlement was the responsibility of Weetabix's UK HR department and not the role of Mr E.
 - As the 2014 pay settlement took place after the 2013 pension changes, the Trustee could not have been influenced by those pay negotiations when considering Weetabix's request that they administer the Scheme in accordance with the 2013 pension changes. Additionally, at the time leading up to the 2013 pension changes, Mr E was not aware (and Weetabix was not aware) what was to happen in respect of pay increases for 2014.

- In his position as an MNT (until June 2014), Mr E was not prevented from participating in discussions within Weetabix. However, the 2014 pay settlement was not approved until September 2014 - three months after Mr E ceased to be an MNT.

Adjudicator's Opinion

12. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee and Weetabix. The Adjudicator's findings are summarised briefly below:
 - There is no evidence that shows that Mr E had undue influence in the 2014 pay negotiations. The 2014 pay negotiation and subsequent settlement was the responsibility of Weetabix's UK HR department and not the individual responsibility of Mr E. In addition, there is no evidence that shows the increase in pension contributions was not agreed by the Scheme's trustee board as a whole or that Mr E was solely responsible for that decision.
 - The options regarding the Scheme changes in question were properly communicated to Mr D. The duty imposed on trustees is to give proper consideration to the interests and legitimate expectations of the various Scheme members taking into account relevant factors and recognising that not all classes of member or beneficiary will necessarily have the same interest. Relevant factors in this particular case include the Scheme's funding level.
 - Mr D still has the option to change to option 2, if he wishes to do so.
 - The Ombudsman would not consider any issue in relation to the 2014 pay settlement, as it is an employment matter and hence outside of his remit.
13. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D provided his further comments many of which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr D for completeness.

Ombudsman's decision

14. Mr D contends that during Weetabix's consultation with active Scheme members in November 2012, about the Scheme changes in question, they provided examples of expected future pay increases at 2.5%. He says that he chose option 1 based on this information. Mr D also asserts that he is no longer an active Scheme member and his pension is now capped at the lower of CPI or 2%, a fact that he was unaware of at the time of the communication of the 2013 pension changes.
15. However, it is apparent from the evidence that has been provided that the processes undertaken by the respondents in communicating both the Scheme changes in

question and the 2014 pay settlement were properly conducted. In addition, as explained by the Adjudicator in the Opinion it is not for me to comment on the impact that the 2014 pay settlement has on Mr D's Scheme pension. In any event, Mr D was informed by Weetabix that he can change his decision and has the opportunity to select option 2, if he so wishes.

16. Mr D says that he has asked Weetabix on a number of occasions for a copy of the Scheme's actuarial report for 2015 and has not yet received it. However, Mercer, the Scheme's actuaries wrote to Mr D on 18 February 2016, explaining the reasons for the delay and confirmed that a copy of the report would be provided to Mr D when it is finalised. I note that the statutory deadline for completing the 2015 valuation report is 6 July 2016 which has not yet passed.
17. Therefore, I do not uphold Mr D's complaint.

Anthony Arter
Pensions Ombudsman

4 July 2016