

Ombudsman's Determination

Applicant	Mrs R
Scheme	Cadbury Mondelez Pension Fund (the Fund)
Respondent	Trustees of the Cadbury Mondelez Pension Fund (the Trustees)

Outcome

1. I do not uphold Mrs R's complaint and no further action is required by the Trustees as they have offered a sufficient remedy.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs R's complaint against the Trustees is about their refusal to pay £5,000 to her, which she says they agreed as part of a settlement of a different complaint.

Background information, including submissions from the parties

4. Mrs R retired from the Fund in August 2008 and became a pensioner member, but she deferred taking her additional voluntary contributions (**AVCs**).
5. In December 2014, the Trustees decided to change the conversion rates used to convert AVCs into additional pension in the Fund. As the change would be detrimental to members, such as Mrs R, who were entitled to preferential conversion rates, the Trustees wrote to affected members in February 2015. Unfortunately, the Trustees omitted to include Mrs R in the mailshot, and she remained unaware of the change.
6. The change came into effect in June 2015, amending the preferential terms for Mrs R's AVCs, which meant that any additional pension in the Fund, was worth less than she had been quoted previously.
7. In April 2017, Mrs R received a statement which reflected the reduction in the conversion rates of her AVCs. Mrs R complained to the Trustees, saying that had she been aware of the change, she would have taken her AVCs before the change came into effect. The Trustees admitted that a warning letter should have been sent to her in February 2015.

8. In settlement of that complaint, Mrs R proposed that the Trustees should convert her pre-2015 AVCs into a pension at the old preferential rates, with the balance of her fund being transferred to her self-invested personal pension. Mrs R also asked the Trustees to pay her £5,000 in respect of her tax bill, and also because of the stress and inconvenience caused to her.
9. Following this, an agent of the Trustees (the **Agent**) discussed Mrs R's proposal with her during a telephone conversation. The Trustees say that, during this conversation, they agreed to part of the proposal relating to the treatment of Mrs R's AVCs. However, they deny that they discussed or agreed to pay £5,000 to Mrs R.
10. On 4 August 2017, the Trustees sent an email to Mrs R confirming the amount of the pension to be paid and the "agreed £500 compensation". Mrs R queried the amount as it should have been £5,000. The Trustees responded that they misread the proposed amount as £500 when reaching the settlement with Mrs R. The Trustees apologised for the mistake and confirmed that, in similar cases, the Pensions Ombudsman would usually make awards in the range of £500 to £1,000 for distress and inconvenience. The Trustees increased their offer from £500 to £1,000.
11. Mrs R rejected the revised offer and brought her complaint to this office. She says that the Trustees are in breach of contract, having agreed to pay her £5,000, and she invested in a buy-to-let property in reliance on this. The Trustees say that there was no acceptance on their part to the offer of £5,000, and the award of £1,000 is appropriate in the circumstances.

Adjudicator's Opinion

12. Mrs R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised below:-
 - There is no evidence of an agreement, or that the Trustees accepted that they would pay £5,000 to Mrs R.
 - The Adjudicator accepted the Trustees' explanation that they mistakenly assumed the amount proposed by Mrs R was £500 and not £5,000.
 - In the absence of a formal acceptance of her offer, Mrs R cannot successfully argue that the Trustees made an unequivocal representation, which she reasonably relied on to her detriment.
 - The buy to let property Mrs R invested in, can be regarded as an asset which would presumably increase in value, so the Adjudicator did not consider that Mrs R has suffered any detriment or financial loss.
13. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs R provided her further comments, but these do not change the

outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs R for completeness.

Ombudsman's decision

14. Mrs R says that her dealings with the Fund have been marred by a series of errors/maladministration. The Agent was a senior member of the organisation and had a higher duty of care to manage the complaint. She did not think it unreasonable to assume that the compensation amount of £5,000 had been agreed, even though she did not have it confirmed in writing.
15. I note that Mrs R was unable to recover her phone records from her service provider, but they are not required. There is no dispute that the Agent called Mrs R, and that they discussed her complaint. It is also my view that the Agent wrongly assumed that the amount Mrs R asked for was £500 instead of £5,000. However, no amounts were agreed during the call.
16. There was no specific agreement to pay £5,000 to Mrs R, and the Trustees are therefore not bound to do so. However, their error compounded the earlier mistake of not sending a warning letter to Mrs R in February 2015. Consequently, I consider that the usual award of £500, for significant non-financial injustice, would not be appropriate in this case. I am of the view that the maladministration was serious.
17. The Trustees have admitted the error; Mrs R's AVCs have now retained the old preferential rate and they have made her an offer of £1,000 in order to settle her complaint. It is only right that she receives an appropriate award in recognition of the injustice caused to her. The offer of £1,000 is the sum I would have awarded for serious maladministration, so I will not make a further award.
18. The offer remains open to Mrs R and she should contact the Trustees directly if she is now prepared to accept it.
19. I do not uphold Mrs R's complaint.

Anthony Arter

Pensions Ombudsman
27 September 2018