

Ombudsman's Determination

Applicant	Mr N
Scheme	The Barclays Bank UK Retirement Fund: Afterwork (the Fund)
Respondent	Barclays Pension Funds Trustees Limited (the Trustee)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Trustee as there is no remaining injustice to be put right.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N says information provided to his late son, Mr A, concerning the benefits payable in the event of his death was misleading. When he raised the issue, the Trustee refused to explain how the significantly lower than expected lump sum death benefit (the **Death Benefit**) had been calculated.

Background information, including submissions from the parties

4. Mr A previously worked for Greig Middleton, part of the Gerrard Group (**Gerrard**). He was a member of its group personal pension plan (the **GPP**), administered by Standard Life. Gerrard was subsequently taken over by Barclays Group Plc (**Barclays**). The benefits Mr A would have earned in the GPP are unconnected to his membership of the Fund.
5. In 2008, Barclays harmonised terms and conditions for its employees. A 'pension and permanent health insurance (**PHI**) harmonisation' question and answer sheet (the **Q&A**) was issued to Mr A at the time. This stated that, to deliver consistency and equity across its workforce, Barclays had promised to review its legacy pension and PHI arrangements, at a significant ongoing cost to Barclays. It emphasised that this was "absolutely not" a cost saving exercise. The Q&A said:

...Changes to pension arrangements

You will automatically become a member of afterwork, Barclay's main pension scheme, with effect from 1 April 2008. This means that:

- You will start accruing benefits under afterwork from 1 April 2008; and
 - You will become a deferred member of the Greig Middleton Group Personal Pension Scheme (your current pension scheme) with effect from 31 March 2008. The benefits which you will have accrued up to that date will remain in your current pension scheme and you will continue to be able to decide how to invest these (within the investment options available to you under that scheme) or you may alternatively choose to transfer your accrued benefits to afterwork.”
6. The Q&A stated that if Mr A did not want to join the Fund, Barclays would not contribute to his personal pension or “SIPP”. Therefore, it would not provide him the option of making further contributions to his personal pension or SIPP in place of participation in the Fund. It said:
- “...you may set up your own personal pension/SIPP and make your own contributions into that personal pension/SIPP whilst simultaneously participating in afterwork.”
7. The Fund is a hybrid scheme consisting of a cash balance scheme: the Credit Account, and a defined contribution (**DC**) plan: the Investment Account. The Investment Account offered two default investment options: a lifestyle strategy for growth, and “anchor”: a lower risk option of mixed investments. It also had a self-select option, so members could make their own fund selection from a range of funds.
8. A cash balance scheme provides a promise to pay a specified lump sum at retirement, based on the member’s pensionable earnings. However, the amount of any pension secured will be based on prevailing annuity rates at retirement.
9. The Q&A said that, based on employee and employer contributions, Mr A would build up funds in both the Credit Account and Investment Account, which would be used to provide an annuity and other benefits such as dependants’ pensions. It explained that the Credit Account would accumulate credits equivalent to 20% of his monthly salary, and that his contributions would amount to 3% of the credits. It stated that he could invest more via the Investment Account on a DC basis, and that Barclays would match any of his regular contributions to the Investment Account up to 3% of his salary.
10. The Q&A explained that Mr A would need to contribute the mandatory 3% of salary to get the full 20% credit to his Credit Account. It explained his option to choose not to contribute 3% of his salary and join as a “Reduced Terms Member”. In which case he would receive a lower guaranteed credit of 10% from Barclays, rather than the standard 20%.
11. The Q&A compared the level of risk, mandatory contributions, matching contributions, and death in service benefits in the Fund, directly with these same features in the GPP. It confirmed that a more detailed comparison of the main features was set out in the factsheet included with the Q&A. It stated that, provided Mr A did not take early

retirement, or transfer out, his Credit Account balance was guaranteed to be risk-free and inflation-proofed up to a maximum of 5% per annum. Mr A was advised to read the scheme booklet enclosed with the Q&A.

12. Mr A elected to pay contributions of 3% of his pensionable salary to the Investment Account, and make additional voluntary contributions (**AVCs**) of £250 per month. In November 2010, he switched his units in the Investment Account from the BGI Aquila Life Pacific Rim equity index fund to the Fund's active emerging markets equity fund (the **Active Emerging Markets Fund**).
13. The value of Mr A's Investment Account as at 5 April 2013, as shown in his 2013 pension statement (the **2013 Statement**), was £40,505. The value of his Credit Account on that date was £72,401. A note immediately below this said:

"The value of your Credit Account shown above is the amount available to you, in most circumstances, at age 60 if no further credits or increases are built up. If you take your pension before age 60, or leave Barclays and transfer your Afterwork benefits to another pension scheme, your Credit Account will be reduced to reflect its early payment."
14. A table in the 2013 Statement outlined the death benefits payable on Mr A's death before age 75, while an active member of the Fund. Directly below this, it stated that individual circumstances at the time of death may change the benefits payable. It stated that the actual benefits payable were detailed in the Fund rules. In a separate section of the pension statement, it was recommended that he regularly review his investment choices for his Investment Account to check that they were right for him.
15. In October 2013, the Trustee announced to members that the Active Emerging Markets Fund's investment performance had fallen short of expectations. The Trustee confirmed its decision to switch to a passive fund. Mr A's unit holdings in the Active Emerging Markets Fund were moved to the Fund's passive emerging markets equity fund (the **Passive Fund**) in November 2013.
16. The value of Mr A's Credit Account as at 5 April 2014, as detailed in his 2014 pension statement, was £90,178. The pension statement indicated that his Investment Account was worth £43,503. It showed that his units in the Active Emerging Markets Fund had been switched to the Passive Fund. The notes contained in the pension statement said that should he die before retirement, the Trustee may pay benefits to his dependants or beneficiaries in line with the rules of the Fund.
17. Mr A was made redundant by Barclays in February 2014. The statement of his deferred benefits as at 28 February 2014, his date of leaving the Fund, said:

"This statement shows the value of your Credit Account and Investment Account if you leave your deferred benefits in the Scheme... It is important that when you read this document, you refer to the 'deferred benefits' guide."

18. Mr N has provided an extract taken from notes relating to benefits on leaving the Fund (the **Leaving Service Notes**). It states:

Your benefits now that you have left Barclays or opted out of Afterwork

“... The **Credit Account** provides you with a guaranteed sum which is payable in full at your ...(NRD), usually age 60...

While your **Total Account** remains in the [Fund], your **Credit Account** will continue to receive any inflationary and discretionary increases applicable. Your **Investment Account** will remain invested and will move in line with the performance of the funds in which you have chosen to invest, up to the date you draw or transfer your benefits.

It is important to review your investments on a regular basis. You can switch your investments to another fund from those made available by the [Trustee]...”

19. During the period that followed, Mr A corresponded with Barclays concerning terms connected with his redundancy. In his letter to the Company, dated 3 June 2014, he stated that ‘Barclays had made him redundant knowing that he was unwell. And that, in his opinion, it had done so to avoid paying his “death in service entitlement.”
20. On 9 August 2014, Mr A wrote to the Fund to request a revised pension statement. He said:
- “As you can see my credit account is valued at £90,178.81 at 5/4/14.
- However, the value for my investment account is shown as “error”.
21. The following month, Mr A chased the Fund for a corrected valuation for his Investment Account. The letter referred to an earlier chaser, dated 14 August 2014, concerning the same issue.
22. Mr A sadly passed away in April 2015 following terminal illness, while a deferred member of the Fund. He had no surviving spouse or dependants. At the time of his death, the combined value of his Credit and Investment Account was £146,495, of which £44,702 represented the value of his own contributions.
23. Rule F9.4 of the Fund rules (the **Rules**) says:

“...**Benefits on Member’s death while entitled to a deferred pension but before this benefit had commenced.**

If an [Afterwork] member entitled to benefits under Rule F8 dies before the date on which such benefit [or] benefits commence, the Trustees in their absolute discretion may:

- a) Use the sum of the Member’s] Cash Equivalent [**CETV**] at the date of his or her death to provide such pensions as they in their discretion

decide for such of the Fund Spouse and Member's Dependants as they shall decide; or

- b) Apply an amount equal to the Employee Investment Interest, Member's [voluntary contributions] interest and the sum of the Member's Credit Contributions and any Transitional Contributions in accordance with Rule A9.2 and apply the remainder of the Member's CETV in accordance with Rule F9.4 (a).

Save that, when the Trustee has determined whether to pay a pension benefit under (a) or (b) the beneficiary of that pension benefit may opt out to receive that benefit as a lump sum instead, payable in accordance with Rule A10.4."

- 24. The Rules defines a dependant as an individual who, in the opinion of the Trustee, was wholly or partly dependant on the member for financial reasons, or because of disability, or was interdependent with the member.
- 25. Following his son's death, Mr N was notified that a discretionary lump sum of £44,702 was due to him. In response to an enquiry, concerning how this had been calculated, the Barclays pension replied to Mr N on 3 August 2015, stating that it was unable to provide a copy of the calculation, as it was owned by the Trustee, and that there were no further benefits payable.
- 26. In January 2016, Mr N formally complained to the Trustee concerning the death benefits. On 18 August 2017, following an exchange of correspondence with the Pensions Advisory Service (**TPAS**), the Trustee replied saying that its administrators confirmed that Mr A had paid Credit Account contributions of £11,816. It said the value of his member contributions to the Investment Account was £32,885, making a total value of £44,702. It attached a scheme booklet (the **Booklet**), which set out the benefits payable on death in deferment. It clarified that, as Mr A had no dependants, no further benefits were payable.
- 27. The Booklet explains that the Credit Account is the cash balance section of the Fund, which provides a guaranteed amount with which to buy pension benefits from normal retirement age (**NRA**). It says that, during active membership of the Fund, Barclays guarantees that a member's Credit Account will receive a credit of 20% of pensionable earnings. However, additional monthly increases may be paid. It explains that the full value of the Credit Account is available at NRA.
- 28. In relation to benefits on death in deferment, the Booklet says:

"Lump sum"

[The contributions that you make in order to receive your Credit Account benefits] plus the balance of your Investment Account built up by your own Investment Contributions (including the investment returns on these) can be paid as a cash sum...

Dependants' Pension

The sum of your Credit Account (reduced for early payment and any part paid as a lump sum) and your Investment Account (reduced by any part paid as a lump sum) will be used to buy pensions for your Partner, Children and/or other adult dependants at the Trustee's discretion, taking into account your [expression of wish] form."

29. Mr N has provided an extract from the Fund's booklet. It provides a comparison of the Credit Account versus the Investment Account in table format (the **Comparison Table**). It says:

"As long as you do not take your pension before your Normal Retirement Date, the value of your Credit Account will be built up from credits of 20% of your monthly Pensionable Salary for each month you have been an Active Member. Your account will receive additional increases in line with inflation up to 5% p.a. and may, at Barclay's discretion, also receive additional increases depending on the performance of a chosen investment index (up to 2% p.a.)."

Barclays guarantees that this amount will be available to you at your Normal Retirement Date, regardless of what this costs – and it will **never go down** (unless you take your benefits early)."

30. Mr N questions whether his son authorised the switch to the Passive Fund. He has highlighted that his son's Credit Account contributions were refunded without interest, rather than increased in line with inflation. Based on his son's membership from April 2008, Mr N has calculated that his son would have paid contributions of £11,815 to the Credit Account, which would have been matched by Barclays, and made total AVCs of £17,750 to the Investment Account.
31. Mr N asserts that Barclays assured his son the Fund would be superior to the GPP. He has calculated that, had his son remained in the GPP the amount paid out on his death would have been approximately £80,000. His son believed the pension promises made by Barclays, and accepted that the fund values shown in his pension statements reflected his correct entitlement.
32. The Trustee has explained that the value of Mr A's own contributions and investment growth amounted to £44,702. Mr N was not dependant on Mr A therefore, Mr N is not entitled to the balance of the funds, as this can only be used to provide benefits for dependants.
33. The Trustee accepts that Mr A's pension statements did not confirm the actual level of benefits payable on his death. However, it says that his pension statements were sufficiently clear that any benefits would be paid out in accordance with the Rules; there was nothing in the statements that would give a member, or beneficiary, an expectation that the combined value of the Credit and Investment Accounts would automatically be payable on death.

34. The Trustee has acknowledged that the level of service Mr N received fell short of its standards. It accepted that its responses to his enquiries could have been clearer and clarified the position. In recognition of this, the Trustee agreed to make an award of £1,000 to Mr N to put the matter right.

Adjudicator's Opinion

35. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee, as the offer of £1,000 would correct the significant non-financial injustice Mr N has suffered. The Adjudicator's findings are summarised briefly below: -
- The Rules are sufficiently clear that, where there are no surviving eligible dependant(s), the only benefit payable is effectively a lump sum benefit equivalent to the member's own contributions to the Fund, including any investment returns on these. The total contributions refunded to Mr N are broadly consistent with the total contributions his son paid into the Fund.
 - No promise was made to Mr A such that it would give rise to an entitlement to the higher benefits Mr N is claiming.
 - Around the time Mr A joined the Fund, he was given the Q&A and a scheme booklet, which would have outlined the benefits payable.
 - Mr A was given notice of the Trustee's decision to replace the Active Emerging Markets Fund with the Passive Fund. His 2014 pension statement showed that the switch had taken place. His pension statements stated that he should review his investment choices for his Investment Account. It would have been open to Mr A to switch his unit holdings if he considered that the Passive Fund was not right for him.
 - Mr N has not provided any compelling evidence to corroborate his assertion that the information provided in the pension statements was inconsistent with his son's reasonable expectations concerning the level of benefits payable in the event of his death in deferment.
 - Nor has Mr N provided any evidence which indicates that administrative errors led to the alleged investment loss on his son's pension savings.
 - The amount of £1,000 offered to Mr N by the Trustee, for significant non-financial loss, has put right any outstanding injustice.
36. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N has provided his 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 Mr N for completeness.

Ombudsman's decision

37. Mr N points out that the Opinion does not address his claim that his son was mis-sold his pension. He would like this to be considered.
38. Mr N says Barclays was paying 10.17% of his son's salary to the GPP. Had this continued, he has calculated that Barclays would have paid an additional £46,193 into the GPP and his son would not have been required to contribute. Barclays informed his son that it would make Credit Account contributions equivalent to 20% of his salary but failed to do so. Instead, it only contributed £11,815: 3% of his son's salary. Consequently, over 70% of the Death Benefit was in respect of his son's own contributions.
39. Mr N asserts that his son's contributions to the Credit Account were deducted from his salary without his consent. They were then refunded to his Estate without interest, even though their real value would have depreciated over time. Moreover, his son was assured that his pension would be "inflation-proofed." This, in his view, goes against "natural justice" because his son was terminally ill and therefore could not challenge the decision.
40. Mr N has pointed out that a member of the Fund is only required to contribute to the Credit Account. Consequently, on death before NPA, his/her estate would only receive a refund of member contributions made to the Credit Account even though he/she could have worked for Barclays for 50 years. Had his son only paid into the Credit Account, his estate would be in that same position. This would effectively have meant that his son would have worked for Barclays, for several years, without pay. He questions whether such a scenario would be legal under current legislation, even though it persists at Barclays and affects its current employees.
41. Mr N maintains that Barclays gave his son written undertakings that the value of his Credit Account was guaranteed. He says that the Leaving Service Notes, and the Comparison Table, further support his claim that his son was misinformed concerning the Credit Account.
42. In relation to the Investment Account, Mr N says the notes in the 2013 Statement made it clear that his son was responsible for making his own investment choices; he chose to invest with BlackRock. There is nothing in the documentation that was provided that indicated that the Trustee could change his son's investment choice. The form his son completed to select his investment choices, did not mention a passive fund. Furthermore, his pension statement, dated 4 March 2014, showed a value of £41,223 in respect of the Passive Fund. However, only £32,885 of this was included in the Death Benefit.
43. Contrary to what the Adjudicator said in the Opinion, Mr N says he does know what his son's expectations were concerning the lump sum death benefit payable in the event of his death. He is certain that the combined value of his son's Credit and Investment Accounts, as at 28 February 2014, was broadly the amount that he

expected would be paid to his Estate. If his son had been aware of the true position, he would not have wasted his time writing to the Fund in August 2014, to request a revised valuation for his Investment Account.

44. Mr N's main complaint is that his late son was given a definite expectation that the Fund would provide significantly higher death benefits in the event of his death in deferment. Mr N maintains that this amounted to a promise, and that misrepresentations were made to his son concerning those benefits. He says his son was given specific guarantees in relation to the Credit Account, which Barclays has failed to honour.
45. Turning first to Mr N's claim that his son was mis-sold his pension. I note that in earlier communication with our Adjudicators, Mr N accepted that this aspect of his complaint was not within the remit of this service. Nonetheless, as he has again raised the issue, it is important that I reiterate that any allegation of mis-selling falls outside our jurisdiction. Consequently, I do not comment on the issue or make any findings in relation to that part of his complaint.
46. Mr A was given notice of Barclays' intention to review its pension provision. The Fund was introduced following the outcome of that review.
47. Apart from the fact that pension legislation at the time prohibited, and still prohibits, employers from making pension scheme membership a condition of employment, nothing in the information that was made available to Mr A indicated that it was compulsory for him to join the Fund. No evidence has been provided which supports that he either did not want to join or that he subsequently asked to opt out. Mr A had the option to choose not to contribute 3% of his salary and join the Fund as a Reduced Terms Member. His actions not only confirm that he decided, by default, to stay in the Fund, but that he chose to boost his pension savings by investing in the Investment Account.
48. I think it is worth pointing out that, had Mr A chosen not to join the Fund, Barclays would have been under no legal obligation to contribute to any alternative pension arrangements. That said, Barclays is not a party to this complaint. Therefore, any issues relating to Barclay's role in this matter falls outside the scope of this complaint and I do not comment on those issues or make any findings in relation to Barclays.
49. It is not uncommon for pension schemes to provide significantly lower death benefits on a member's death in deferment in comparison to those payable following death in service. It is also not usual for the death in deferment lump sum benefit to solely consist of a return of the value of the member contributions, or a refund of his/her contributions with or without interest. I am not aware of any pension legislation which precludes this.
50. I acknowledge that, in his letter of 9 August 2014, dated less than a year before his death, Mr A noted that his Credit Account was valued at £90,178 as at April 2014. I also accept that he was keen to obtain an amended statement for his Investment

Account, and that he followed up his request. Sadly, it is now not possible to know for certain what Mr A's understanding of the level of benefits that would be payable in the event of his death in deferment. But I do not consider that this materially changes the outcome.

51. The documentary evidence Mr N has submitted, relating to the guarantees provided under the Credit Account, needs to be read within the appropriate context. Those guarantees specifically related to benefits payable from NPA. I find that the information provided to Mr A was sufficiently clear on this point.
52. Turning now to the switch of Mr A's unit holdings to the Passive Fund. The evidence does not support that the actions of the Trustee somehow caused the alleged poor performance of the Investment Account that Mr N claims. Furthermore, I can find no evidence that Mr A instructed a switch of his units to BlackRock.
53. It is entirely possible that Mr A's contributions may have generated higher returns had his contributions remained invested in the Active Emerging Markets Fund. But this is not valid evidence that something necessarily went wrong in the administration of his Investment Account. Notwithstanding the fact that Mr A could have switched out of the Passive Fund, what determines how a fund performs depends on various factors, including decisions made by the investment manager. I am unable to comment on those decisions because they fall outside my jurisdiction.
54. I acknowledge that the Trustee has accepted that it mismanaged Mr N's enquiries concerning the Fund. I find that the award of £1,000, already offered by the Trustee, is sufficient in the circumstances.
55. In conclusion, Mr A's beneficiaries are only entitled to the death benefits permitted under the Rules. Those rules require the death in deferment lump sum to consist of the value of Mr A's own contributions to Fund. I am satisfied that sufficient information was made available to him that confirmed this.
56. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Deputy Pensions Ombudsman
10 September 2018