

Ombudsman's Determination

Applicant	Mr N
Scheme	Kepston Retirement Benefit Scheme (the Scheme) - defined contribution scheme replacement policy (the Policy)
Respondents	Aviva, JLT Benefits Solutions Ltd (JLT)

Outcome

1. Mr N's complaint is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, Aviva should compensate him for the non-financial loss he has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N's complaint against Aviva and JLT is that his benefits in the Scheme were transferred to the Policy without his consent (or prior knowledge). He says that he has suffered a financial loss as a result of the transfer.

Background information, including submissions from the parties

4. The Scheme was a group money purchase plan (a **GPP**) taken out by his former employer, Kepston Limited (**the Company**), with Aviva (then Norwich Union).
5. In April 1995, Mr N became a deferred member of the Scheme. He says that after leaving the Scheme, he received annual pension statements via the Company's Finance Director.
6. Aviva says that it was not kept updated of any changes in Mr N's address.
7. Mr N's annual pension statement as at April 2005, shows that his funds were held in Aviva's with-profit guaranteed fund (the **With-Profits Fund**).
8. In April 2006, member benefits in the GPP were transferred to individual pension policies and the GPP was terminated Aviva says JLT gave advice on the bulk transfer (the **Transfer**).

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9. Aviva has explained that both the GPP and the Policy were set up on a 'nil commission' basis. Consequently, no commission was paid to JLT or any other party.
10. The value of Mr N's total benefits that were transferred to the Policy in April 2006, amounted to £13,451. As part of the Transfer, the value of his unit holdings in the With-Profits Fund were moved to Aviva's balanced managed fund (the **Switch**).
11. Aviva thought it was likely that Mr N's benefits were transferred to the Policy because the Scheme was being wound up. Aviva is unable to locate any documentation in relation to the Switch but, in 1998, Aviva stopped accepting new investments in the With-Profits Fund. Aviva says it is unclear from the documentation it has so far reviewed, whether the transfer payment was classed as a 'new investment' and, if so, whether this would have been a correct decision.
12. Aviva is unable to trace the file for the Scheme. But as Aviva only acts when authorised, the Scheme would have been replaced on the instructions of either the Company or the then trustees of the Scheme (the **Trustees**).
13. Aviva says that the standard process for winding up a scheme is that the trustees will contact members and explain that the scheme is closing, and that their benefits will transfer to a replacement policy. Unless the member wants to transfer their benefits elsewhere, their benefits would automatically transfer to the replacement policy, and transfer paperwork would not be completed. Consequently, Aviva is unlikely to have any paperwork relating to the internal transfer of Mr N's benefits.
14. Given the passage of time, Aviva is unable to clarify its process for tracing policyholders with missing addresses. However, it would have been carried out overseas, and 'TraceSmart' or 'Experian' may have been used. Since 2010, the process of tracing policyholders is carried out in the UK.
15. On 3 October 2006, Aviva 'issued' a replacement policy schedule (the **Schedule**) and a booklet to Mr N. As it did not hold address details for him, Aviva used its own address for the communication. The covering letter said:

"You were previously a member of the [Scheme]. Your benefits under this plan have now been replaced with a policy in your own name. This means there is no longer a trustee to act on your behalf and any future correspondence will be direct with yourself".
16. The Schedule stated that the Policy replaced his benefits under the Scheme and that a transfer payment of £13,418 had been used to buy units in the Aviva balanced managed fund.
17. The Company's current managing director (the **Managing Director**) says he believes the Scheme was always a defined contribution scheme. He was an employee at the time of the Transfer; decisions would have been taken by his father, who was the managing director, and the then company secretary, both of whom are now deceased. He recalls a meeting with an external adviser who gave employees

'advice' on their options. Scheme members had to sign to say that they agreed to the Transfer, which they all did. He is unable to say what would have happened had a member not consented to the transfer. Neither is he able to provide any paperwork relating to the Scheme.

18. The Managing Director says there were around 150 members affected by the Transfer. It would seem that Mr N is the only member that was not aware of the Transfer at the time.
19. Mr N says that in 2006, he would not have been aware that his benefits had been transferred to the Policy. He found out about the Policy by chance when he contacted Aviva, in early 2016, about a different policy he holds with Aviva. When he complained to Aviva, he was told to contact JLT, the financial advisers and administrators associated with either the Scheme or the Policy.
20. Mr N's further comments are set out below.
 - The Scheme was a final salary pension which was only open to senior members of staff.
 - A former colleague informed him that, at a meeting with JLT, those in attendance were told that there was 'a black hole' in the Scheme and that it needed to be transferred to a personal pension, they were given paperwork to sign indicating their preference.
 - Aviva should not have transferred his benefits without his permission as his consent would have been required.
 - JLT were clearly the administrators and the financial advisers at the time, but he never received any advice from JLT.
 - The Managing Director would have been involved during the transfer process, records at Companies House show that the former managing director resigned in 1999. Therefore the current managing director would have held the position in 2006.
 - He would not have moved his funds out of the With-Profits Fund. He believes that he has been disadvantaged as a result of the Switch because his pension benefits will be lower than they would otherwise have been.
21. Aviva's further comments are set out below.
 - Mr N reached normal pension age in March 2017. Under Aviva's current processes, any policies that have twelve months left to maturity would be flagged and the process would begin to trace the member. This would involve an Equifax trace to find an address. If one is found, a letter would be sent to the policyholder asking for confirmation of their address. If there is no response, or no address found, a trace with the Department for Work and Pensions would be completed.

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- Aviva has reviewed the micro fiche which holds the Scheme and member records but has been unable to locate any details on the Transfer or the Switch.
- Aviva accept that JLT was instructed by the Trustees to provide advice 'at the Scheme level'. As Mr N was a member of the Scheme, JLT was noted as financial adviser on his records.

22. JLT's further comments are set out below.

- JLT does not have any documentation which confirms the scope of services provided to the Trustees in relation to the winding up of the Scheme.
- Generally, where a scheme is being wound up, any member communication would be issued by the trustees not JLT.
- JLT has only limited information relating to Mr N. It has, however, located details about his fund value in the Scheme. A number of members who transferred from the Scheme to individual arrangements were not known to JLT. A search of JLT's archive has not revealed anything further.
- JLT is unable to provide further documentation relating to the Transfer. It is likely that this would be held by the Trustees.
- Any advice given by JLT would have been to assist the Trustees in relation to the wind up of the Scheme. It would have been the Trustee's responsibility to confirm details to members.
- JLT cannot find any evidence which supports the assertion that it gave advice to individual members in connection with the Transfer.

23. Aviva says it has carried out further searches but it has been unable to locate a paper file for the Scheme. Aviva accepts that its files on the Transfer are incomplete and that paperwork for the Scheme ought to have been retained indefinitely. Aviva accepts that it should have done more to trace Mr N's address.

24. Aviva has offered Mr N £200 in recognition of the trouble and upset this matter may have caused him. It does not accept that it is responsible for the financial loss he is claiming.

25. Mr N has since retired. He considers reinstatement of his original benefits would be reasonable compensation.

Adjudicator's Opinion

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

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- It has not been possible to obtain full details of the events which triggered the winding up of the Scheme. In cases such as this, where evidence is limited, it is necessary to form a view as to what is more likely to have happened.
 - Neither JLT nor Aviva were Trustees of the Scheme. JLT advised the Trustees in relation to the Scheme wind up.
 - Aviva would not have been responsible for the decision to wind up the Scheme.
 - Ultimately, it would have been the responsibility of the Trustees, under the relevant disclosure regulations, to provide information to members prior to the wind up.
 - While the evidence supports that a notice was issued to active members about the closure of the Scheme and their agreement obtained, it does not prove that Mr N would have been able to remain in the Scheme, even if he had received the relevant paperwork.
 - It is more likely that members would have been given the option to transfer to an alternative pension scheme of their choice. And, if they did not respond by a specific date, their benefits transferred to the replacement plan.
 - Aviva could have done more to ascertain Mr N's address in 2006. The Company clearly had his address.
 - Due to lack of evidence, it is not possible to form a view on whether (or not) the Switch was the result of a mistake by Aviva.
27. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments but these do not materially change the outcome. I agree with the Adjudicator's Opinion, except that an award for non-financial loss should be made. I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

28. Mr N says he asked JLT and Aviva several times to produce any document, he signed, agreeing to the Policy or JLT's appointment as his adviser. Neither party has been able to provide this.
29. Mr N accepts that the Trustees could wind up the Scheme, however, he believes he should have been informed as he was a member. In any event, he would have had the option to take out a pension with an alternative provider of his choosing. Organisations such as Aviva and JLT, have a duty of care to members, all that he has received from both parties is 'gross denial of the facts'.
30. There are essentially two parts to Mr N's complaint. Firstly, that JLT acted as administrators for the Scheme, and was appointed as his adviser without his prior

knowledge (or consent). Secondly, that Aviva moved his pension to the Policy without his knowledge or consent. I will consider each in turn.

31. It is certainly not uncommon for a trust based money purchase scheme to be replaced with individual contract based personal pension policies, which is what appears to have occurred in this case. I am satisfied that the Trustees, rather than JLT or Aviva, would have authorised the winding up of the Scheme at the request of the Company. If the Trustees required Mr N's consent to the Transfer, I would have expected them to have obtained it. In any case, the Trustees are not party to the complaint that this office accepted to investigate.
32. I find that Mr N was misinformed by Aviva about JLT's involvement. Contrary to Aviva's initial assertions, there is no evidence to support that JLT acted as the scheme administrators. Furthermore, Aviva has since acknowledged that JLT was instructed by the Trustees to provide advice to the Scheme trustees rather than individual members, and that no commission was paid to JLT. Aviva's actions amount to maladministration which misled Mr N and caused him distress when he could not find confirmation of what he was told.
33. With regard to Aviva's role, for the reasons stated above, on balance, I find that Aviva were simply carrying out the Trustee's instructions in completing the Transfer and the Switch. I agree with the Adjudicator that, it was for the Trustees, rather than Aviva, to communicate to members about the winding up of the Scheme. However, Aviva ought to have retained records on those transactions. This was an obvious failing on its part.
34. After Mr N left the Scheme, he says that he received annual pension statements via the Company. Consequently, he should have been aware - before 2016, that his pension had been transferred to the Policy. His post Transfer statements refer to a 'defined contribution replacement policy'. Given that the statements would have detailed his investment holdings, he ought to have known, or had sufficient reason to at least suspect, a change to his investments. There is no evidence that he queried either of those changes prior to his enquiry to Aviva in early 2016, almost ten years later. I am therefore not persuaded that he would have acted differently.
35. I agree with the Adjudicator that Aviva ought to have been proactive in tracing Mr N's address before 2016. However, I am mindful that Mr N did not contact Aviva to confirm his address when he received statements that either showed no address or the wrong address. As a deferred member, he should have kept Aviva updated with his correct address details.
36. It is clear from the information provided by the Managing Director that there were other members affected by the Transfer. I suspect that out of the 150 or so members, some of them would also have been deferred members. Given that Mr N appears to be the only member claiming not to have been consulted about the changes, I find, that, on the balance of probabilities, he was also notified either, under circumstances he can no longer recall, or in correspondence sent to him by the Company which, for

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whatever reason, he did not receive. The Company had his address and subsequently sent him annual statements so there does not appear to be any reason why they would not have included Mr N in the winding up communication to Scheme members.

37. In conclusion, I find that the transfer of Mr N's pension to the Policy, and the change to his investments, would more likely have been actioned by Aviva at the request of the then Trustees.
38. However, Mr N should be compensated to the extent that Aviva's failure to keep adequate records, and misinformation about JLT's role in the matter, caused him significant non-financial injustice. I note that Aviva has already offered Mr N £200. I find that compensation of £500, that is, an additional £300, would be appropriate in the circumstances.

Directions

39. To put matters right, Aviva shall, within 21 working days of the date of this Determination, pay a total of £500 to Mr N for the significant distress and inconvenience he has suffered.

Anthony Arter

Pensions Ombudsman
3 November 2017