

Ombudsman's Determination

Applicant	Mr N
Scheme	The FIL UK Pension Plan (formerly the Fidelity UK Pension Plan) (the Plan)
Respondents	The Trustees of the FIL UK Pension Plan (formerly the Fidelity UK Pension Plan) (the Trustees)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Trustees.

Complaint summary

2. Mr N's complaint is that the Trustees did not inform him that he had to complete two years' pensionable service in the Plan before he would become entitled to a deferred pension. Had he known, he would have made other pension arrangements or stayed in employment until the two-year period was satisfied.

Background information, including submissions from the parties

3. Mr N began employment with Colt Telecommunications (**Colt**) in November 1998. Colt participated in the Plan, a defined contribution occupational pension scheme. FIL Investment Management Limited, formerly Fidelity Investment Management Holdings Limited, (**Fidelity**) administered the Plan on behalf of the Trustees.
4. On 1 December 1998, Mr N was automatically enrolled into the Plan under his contract of employment. The deed and rules for the Plan dated 17 December 1990 (**Plan Rules**), did not require him to complete an application form.
5. The Plan was non-contributory but members could pay additional voluntary contributions (**AVCs**), if they wished. Mr N did not choose to pay AVCs or transfer in any prior benefits and so his written agreement to join the Plan was not required.
6. In July 2000, Mr N stopped working for Colt and left the Plan. On 15 August 2000, Fidelity sent him a letter (**Leaver's Letter**). It said:

“I understand that you left the above arrangement on 24 July 2000. In accordance with the rules, as you were a member for less than two years you are not entitled to any benefits from the arrangement.

Please contact the Pensions Service Centre...if you have any queries”

There is no record of Mr N contacting Fidelity at this time.

7. On 14 June 2016, Mr N called Fidelity for information about his pension. On 20 June 2016, Fidelity confirmed that he was not entitled to a deferred pension when he left the Plan in July 2000. He had not completed two years’ pensionable service (**the two-years’ qualification period**). The Plan Rules and legislation did not require this. He was also not entitled to a return of contributions as he had not contributed to the Plan. The Trustees had returned all employer contributions to Colt. Fidelity added that it had issued an employee booklet dated July 1999 (**the Booklet**) to Mr N when he joined the Plan. This explained the two-years’ qualification period and the relevant legislation.
8. In June 2017, Mr N contacted the Trustees and requested a transfer of his pension to another arrangement. Fidelity informed him that he did not have any pension benefits in the Plan. He had not been entitled to a deferred pension when he left the Plan in July 2000.
9. In February 2018, Mr N complained. He asked the Trustees to pay him the value of the contributions that Colt had paid on his behalf, plus interest, as if he had become entitled to a deferred pension when he left the Plan. Fidelity replied that the Plan Rules did not allow this.
10. Mr N was not happy with this response. On 30 March 2018, he raised a complaint through the Plan’s internal dispute resolution procedure (**IDRP**), saying that:-
 - He had worked for Colt for just under two years and was enrolled into the non-contributory Plan, without receiving advice or guidance from Colt or the Trustees.
 - In 2017, he had asked for his pension fund to be transferred to another arrangement, only to be told that Colt’s contributions had been returned as he had not completed the two-years’ qualification period.
 - The Trustees did not inform him about this two-years’ qualification period, nor had he seen any supporting documentation. If he had known, he would have contributed to the Plan or to another arrangement or stayed in the Plan longer.
 - There was no rationale in Colt paying employer contributions on his behalf only for them to be returned if the two-years’ qualification period was not met.
 - Colt had mis-sold this pension. He would like the Trustees to pay all outstanding amounts, including interest, into another arrangement, or as a lump sum as if he were a qualifying member.

11. On 25 September 2018, the IDRП reviewer rejected Mr N's complaint. He confirmed that, under the Plan Rules, Mr N had not become entitled to a deferred pension when he left the Plan. He had not completed the two-years' qualification period. The Leaver's Letter had explained this. The Plan Rules followed the legislation at the time. The IDRП reviewer confirmed that Mr N was not entitled to a return of contributions or a transfer to another arrangement.
12. Mr N did not accept the IDRП reviewer's decision and responded, as follows:-
 - Once again, Fidelity had failed to answer his complaint.
 - He stood by his original complaint that he had not received any notice, verbal or written, that there was a two years' qualification period. As a result, he has had to cope with a hole in his pension pot. This will have an adverse effect on his final retirement amounts.
 - He did not receive any information about the two-years' qualification period that was necessary to retain his employer's pension contributions.
 - The Trustees could not provide evidence of his signature, confirming that he was informed of the two-years' qualification period when he joined the Plan.
 - In 2017, when he asked for his benefits to be transferred, Fidelity had told him that he had never had a pension account.
13. In correspondence with Mr N, from October to December 2019, the Trustees again rejected his complaint. They said, in summary:-
 - Colt operated contractual automatic enrolment in the Plan with the facility for members to opt-out, if they wished. The Booklet issued to new members said: "You will automatically become a member of the Plan on the first day of the month after you qualify." Mr N's contract of employment would have explained that he would be enrolled in the Plan. Colt had not retained a copy of this, due to data protection laws.
 - An employee need not complete an application form to join the Plan, unless he wanted to pay AVCs. The options for employees to pay contributions was explained in the Booklet.
 - Members would have received an annual benefit statement, although copies were not regularly retained by Fidelity.
 - Rule 12.1 of the Plan Rules required a member to complete two-years' pensionable service before he became entitled to a deferred pension. The definition of "Qualifying Member" in the Rules showed this. Rule 12.6 also stated that members who had not completed the two years' qualification period would only receive a refund of contributions if they had paid AVCs.

- As Mr N had not completed two-years' qualifying service or contributed to the Plan, he was not entitled to a return of contributions. This followed the legislation at the time. The Leaver's Letter confirmed this and, to the best of the Trustees' knowledge, this was sent to Mr N at his last known address.
 - Colt had issued a benefits handbook to all employees (**the Benefits Handbook**). This confirmed Colt's participation in the Plan and also explained automatic enrolment, and the two-years' qualification period.
 - Fidelity had opened an account in Mr N's name and paid employer contributions into it during his membership of the Plan. That account was closed when he left Colt, without completing the two-years' qualification period.
 - Nothing in the Booklet or Plan Rules implied that a transfer was possible before Mr N became entitled to a deferred pension.
14. Extracts from the Plan Rules, the Benefits Handbook and relevant statutory requirements are set out in Appendices 1 to 3.

Adjudicator's Opinion

15. 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 below:-
- The Trustees had operated the Plan in accordance with its Rules and the legislation in force at the time, as set out in Appendices 1 to 3. There was no evidence of any maladministration.
 - The Trustees had complied with their obligations under the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (**the Disclosure Regulations**) to inform members, including Mr N, about automatic enrolment and the two-years' qualification period for leavers.
 - Colt automatically enrolled all full-time employees into the Plan. An application form was not required because Mr N did not wish to pay AVCs. His benefits were automatically subject to the Plan Rules.
 - Leavers' benefits and the option for employees to pay AVCs were clearly explained in the Booklet and Benefits Handbook issued to Mr N.
 - In the Adjudicator's view Mr N has not provided sufficient evidence to show that he did not receive the Booklet or Benefits Handbook, and that he was not informed about the two-years' qualification period.
16. Mr N did not accept the Adjudicator's Opinion. He said that there was only verbal and not factual evidence, that he was not required to complete an application form in order to join the Plan. There was also no factual evidence that the Trustees had

informed him about the two years' qualification period or opened an account for him. He did not receive the Leavers Letter or a Booklet. He made the following comment:

“The decision made in the Opinion is based on verbal confirmation with little or no factual evidence to back it up...the Acts of Parliament since my employment to outlaw these practices have never been considered which also tells me that this type of action was and is still wrong in the eyes of the law...I still stand by my claim. I am at this stage happy for Colt to make me an offer of half of the premiums plus interest due in full and final settlement.”

17. The Trustees did not accept Mr N's offer and the complaint was passed to me to consider. Mr N's further comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr N for completeness.

Ombudsman's decision

18. Mr N's complaint is that the Trustees did not inform him about the two-years' qualification period when he joined the Plan. He did not sign an application form and so he did not accept the terms in the Plan. In addition, he did not receive the Booklet or Leaver's Letter. If he had been properly informed, he would have remained in the Plan for the full two years. He has asked the Trustees to reinstate his pension benefits, with interest added and that the Trustees pay him the value of the contributions that Colt had made on his behalf, plus interest.
19. I do not accept Mr N's submissions. I find that the Trustees operated the Plan in accordance with the Rules and the legislation in force at the time, as set out in Appendices 1 to 3. There has not been any maladministration.
20. I consider that the Plan Rules and the relevant legislation provided for a two-years' qualification period. Rule 12.1 required a member to complete the two-years' qualifying period before becoming entitled to benefits. Rule 12.6 provided that leavers who did not complete the two-years' qualification period would receive a refund of their contributions. Mr N did not pay AVCs so he was not entitled to a refund. Clause 12 also did not allow a member to transfer his benefits to another arrangement, if he was not entitled to a deferred pension.
21. I do not agree that Mr N should have completed an application form to show that he agreed to the terms of the Plan. Rule 5.1 allows the Trustees to decide the form of application for membership. The Booklet explained that eligible employees automatically joined the Plan on the first day of the month after qualification. Mr N did not intend to pay AVCS so there was no need for him complete an application form to agree to the contribution rate or open an account.
22. I consider that the Trustees fully complied with their obligations, under the Disclosure Regulations, to inform Mr N about his benefits. The Booklet clearly explained automatic enrolment and the two-years' qualification period. The Trustees assert they

issued this to Mr N and all new members. There is no evidence to dispute this claim. The Trustees also did not have a legal obligation under the Disclosure Regulations, or elsewhere, to give Mr N specific guidance about when he should leave the Plan.

23. I find, that, on the balance of probability, the Trustees did send the Booklet and the Leaver's Letter to Mr N. Fidelity state that the Leaver's Letter was sent to him at his last known address. Mr N has not claimed that the address was incorrect, just that he did not receive it.
24. The two-years' qualification period and the option for employees to pay AVCs were clearly explained in the Booklet. Mr N has not provided any evidence to show that he did not receive the Booklet or that he was not informed about the two-years' qualification period.
25. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
17 February 2020

Appendix 1

Extracts from the Definitive Deed and Rules of the Plan dated 17 December 1990

Cash Equivalent means...an amount determined by the Trustees and certified by the Actuary as being equal to the Member's Short Service Benefit...

Qualifying Member means a Member who at the date of his withdrawal from Service has completed 2 or more years' Qualifying Service or whose benefits under the Plan include any derived from a transfer to the Fund from a Personal Pension Scheme.

Short Service Benefit in relation to a Member means the benefits payable to and in respect of the Member pursuant to Rule 12 on termination of Active Membership.

Clause 12.2 Transfers from the Fund

12.2 If they receive a Member's written request for a Cash Equivalent, the Trustees shall calculate a Cash Equivalent and transfer the same.

Rule 5 Application to and duration of membership

5.1 The Trustees may from time to time determine the form of application for membership. The application shall be delivered or sent by post to the Trustees or the Employer for transmission to the Trustees.

Rule 6 Contributions by Members – voluntary only

6.1 The Member shall not be required to contribute under the Plan.

6.2 In order to secure additional benefits under the Plan an Active Member may subject as provided in this Rule 6 elect to pay Member's Voluntary Contributions.

Rule 12 Benefit on leaving Service before Normal Retirement Date

12.1 If a Qualifying Member leaves Service before Normal Retirement Date (other than on death)...such Member shall be entitled to Short Service Benefit.

12.6 If a Non-Qualifying Member leaves Service before Normal Retirement Date (other than on death)...such Member shall be entitled to...

12.6.1. a return of such Member's Contribution Credit together with Interest thereon...

Appendix 2

Extracts from the Plan Booklet dated July 1999

"Taking part

You can join the Plan if you are aged between 24 and 63, and...a permanent full-time employee.

The Company will make a contribution to the Plan on your behalf each month. You will automatically become a member of the Plan on the first day of the month after you qualify. And because this happens automatically you don't have to do anything.

You can decide not to join the Plan and if this is the case you must let your Human Resources department know...

Boosting your benefits

As well as paying monthly contributions into your pension account, the Company pays for the running costs of the Plan. The actual amount contributed - a percentage of your pensionable salary - depends on your age and how long you've been with the Company.

Making a contribution Topping up

...You can also contribute to your account by making Additional Voluntary Contributions (AVCs). You can choose how much you contribute and how often - either on a regular

basis or in one-off payments, subject to limits set by the Inland Revenue.

If you would like to make AVCs, simply fill in the AVC section of the Action Form included at the back of this booklet.

Moving on

...Should you leave the Plan with less than two years' membership the value of any AVCs will be refunded to you less tax, currently 20%. However, you will not be entitled to the value of the Company's contributions."

Extracts from the Benefits Handbook

Membership

"Eligibility

You are eligible to join for full membership of the Plan if you are a permanent full-time employee of the Company (or permanent part-time employee working

a minimum of 40% of the normal working week) and are aged 24 or over, and under 63.

You will be able to join the Plan on the 1st of the month following fulfilment of the above conditions, and the Human Resources Department will contact you with details.

If you are a permanent full-time employee (or a permanent part-time employee working a minimum of 40% of the normal working week) you will be covered for the death in service benefits described in the section on "Death Benefits", from the day you join the Company.

Leaving Service

On leaving the Company with at least two years' Pensionable Service you will have the following options in respect of the accumulated value of all contributions:-

- (a) you may transfer the monies to a new employer's scheme, or another approved pension arrangement, which includes an insurance policy or a personal pension scheme; OR
- (b) you may leave the contributions in the Plan and the value of units secured by these contributions will fluctuate with the unit price.

If you have less than two years' Pensionable Service and have not transferred benefits from a previous employer's pension scheme to the Plan, you may take only a refund of the current value of any AVCs paid, less tax which is currently 20%."

Appendix 3

Deferred benefits – legislation

The principal requirement for a deferred pension is that where a member leaves pensionable service under an occupational pension scheme with a minimum period of two years 'qualifying service' he will be entitled to a minimum level of benefit.

Under section 71 of the Pension Schemes Act 1993, a member is entitled to a deferred pension under a trust-based pension scheme after the member has completed:

- two or more years' qualifying service if the member joined the scheme before October 1, 2015; or
- 30 or more days' qualifying service in a defined contribution scheme if the member joined the scheme on or after October 1, 2015.

'Qualifying service' is membership of the scheme plus membership of any scheme from which a transfer payment has been accepted. Schemes can provide for members to be entitled to a deferred pension after a shorter period of qualifying service than that required under statute.

Members with less than two years' or 30 days' qualifying service (as applicable) are entitled to a refund of their contributions. This minimum level of deferred pension is referred to as a 'short service benefit'.

Section 71 Pension Schemes Act 1993

Basic principle as to short service benefit

Section 71

(1) A scheme must make such provision that where a member's pensionable service is terminated before normal pension age and—

- (a) he has at least 2 years' qualifying service, or
- (b) a transfer payment in respect of his rights under a personal pension scheme has been made to the scheme,

he is entitled to benefit consisting of or comprising benefit of any description which would have been payable under the scheme as long service benefit, whether for himself or others, and calculated in accordance with this Chapter.

(2) The benefit to which a member is entitled under subsection (1) is referred to in this Act as "short service benefit"

...

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(6) A scheme must not provide for payment of short service benefit in the form of a lump sum at any time before normal pension age, except in such circumstances as may be prescribed.

The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 [SI 1655/1996]

Regulation 4

4(1) ...the trustees of a scheme shall furnish in writing the information specified

in Schedule 1 to persons and trade unions in the categories specified in paragraphs (2) and (3)...

4(3) The information specified in Schedule 1 shall be given to—

(a) any member or prospective member of, or beneficiary under, the scheme...

Schedule 1 Basic Information About the Scheme

2 Whether persons who are eligible to be members of the scheme are admitted to it—

(a) only on their own application; or

(b) automatically unless the person in question makes an election not to be admitted; or

(c) subject to the consent of their employer.

3 The conditions of eligibility for membership...

6 How employers' contributions are determined.

7 How members' normal contributions, if any, are calculated.

8 What arrangements are made for the payment by members of additional voluntary contributions....

19 What arrangements are made, and in what circumstances, for

(a) estimates of entitlement to a cash equivalent,

(b) statements of entitlement to a guaranteed cash equivalent,

(c) refunds of contributions, and

(d) preservation or transfer of accrued rights

in relation to a member whose relevant employment or pensionable service in relevant employment terminates.