

Ombudsman's Determination

Applicant	Mr S
Scheme	Zurich Money 4 Life Mercer Master Trust - Hewlett Packard Enterprise Retirement Account (the Scheme)
Respondents	Hewlett Packard Enterprise (HPE) Mercer Master Trust (MMT) Zurich Assurance Ltd (Zurich)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by the Respondents.

Complaint summary

2. Mr S said it is unfair that the Respondents are not allowing him to make additional pension provision in the Scheme once he had left HPE on 30 November 2017 by:
 - paying an Additional Voluntary Contribution (**AVC**) of £20,000; and
 - claiming six years of "missing" employer contributions, which would have been paid by HPE between 1 January 2004 and 31 December 2009, had he not opted out of the pension scheme at the time.

Background information, including submissions from the parties

3. Mr S joined HPE in September 1999. He contributed to several money purchase schemes offered at various times by HPE during his employment.
4. Prior to 31 December 2013, Mr S was a member of the "Compaq Scheme". Between 1 January 2014 and 30 November 2016, he contributed into the "HPE Investment Scheme", administered by Capita. From 1 December 2016, he was a member of the Scheme administered by Zurich, the administration of which was recently transferred to Scottish Widows.
5. On 8 April 2010, Mr S sent HPE an e-mail which, among other things, said:

“I realise I am not going to get much of a pension when I retire, especially when there was a gap in contributions due to the lack of salary sacrifice....”

6. According to an internal HPE e-mail dated 13 April 2010:

- Mr S opted out of the Compaq Scheme on 1 January 2004, and re-joined it on 1 January 2010;
- he had been paying 2% of his salary into the Compaq Scheme and the corresponding employer contribution was 6% of his salary; and
- if he had not opted out of the Compaq Scheme between 1 January 2004 and 31 December 2009, assuming his average salary during this period was £24,000 per annum, Mr S and HPE would have paid an additional £2,880 and £8,928, in employee and employer contributions respectively.

7. HPE said that its records show there was no further correspondence on this matter until 28 September 2017, when Mr S asked it to provide:

- details of the total amount of his “missing” employee and employer pension scheme contributions whilst working for HPE; and
- illustrations of the benefits available to him from the various schemes, based on his actual contribution history and assuming a full contribution record.

8. Mr S told HPE that his Independent Financial Adviser (**IFA**) was looking into whether he could afford to retire and needed this information as soon as possible.

9. HPE replied to Mr S on 10 October 2017, as follows:

- his funds in the HPE Investment Scheme would be transferred to the Scheme as part of a bulk transfer at the end of October;
- if he wished, he could also transfer his funds from the Compaq Scheme to the Scheme whilst he remained an active member; and
- he should seek independent financial advice before deciding whether to do so.

10. In his e-mail to HPE on 23 October 2017, Mr S said that:

“Having discussed with my IFA...we believe that it is simpler to roll up all the different HPE related different funds into the latest provider (whilst MMT are in the process of fund transfers anyway).

I confirm that...there was a delay in take up of the offer of initial (Compaq) pension commencement contributions due to...affordability at that time.

...the timelines you kindly provided also have a contributions gap...during which we would expect to be a regular ongoing contributions period?

To correct the above error, may we have this gap detailed and costed up for the contribution from both myself and the company needed to cover this gap...?

...once the above are included, may we have the anticipated illustration of the final pay-out options available from the latest provider MMT for the completed fund for pension predictions, lump sum withdrawal, transfer value at NRD of 14 December 2017...?

Without this information it is not possible on my side to evaluate the options and confirm a final plan of action related to best advice.”

11. In November 2017, HPE informed Mr S that he could not pay the “missing” employee contributions belatedly as a lump sum into the Scheme and receive the corresponding employer contributions.
12. Mr S replied saying he was unhappy that HPE would not allow him to make up the missed contributions and asked whether he could continue to contribute into the Scheme once he had left on 30 November 2017.
13. On 20 November 2017, HPE informed Mr S that it was not possible for him to do so.
14. Mr S asked HPE why it would not allow him to make up the “unintentionally” missed employee and employer contributions which would have a “substantial impact” on his retirement benefits. He also said that he would commence the transfer process of his fund in the Compaq Scheme to the Scheme as soon as possible.
15. On 24 November 2017, HPE responded by e-mail:

“Whilst I appreciate that you unintentionally missed these contributions it was your responsibility to ensure that the benefits you had were what you wanted. You would have had plenty of opportunities to check and review your pension status, monthly payslips, annual my Choice reviews, annual pension statements coming to you noting no contribution being paid. Even when you did resume contributions you set yourself with the lowest contribution rate possible, 3%, thus missing the opportunity to receive the maximum 6% matching employer contribution and make up missed contributions...”
16. Mr S was made redundant on 30 November 2017. His final contribution into the Scheme was paid on 21st December 2017, representing part of his redundancy payment.
17. On 19 January 2018, HPE notified Scottish Widows that on 30 November 2017, Mr S had become a deferred member of the Scheme.
18. HPE said that:
 - the delay in periodically reporting leavers to Scottish Widows allows any late contributions or augmentations from redundancy payments to be processed;

- the report cycles will therefore lead to a gap between an employee leaving and Scottish Widows' records being updated to show a deferred status;
- furthermore, there is an in-built one month's delay on the Scottish Widows' platform between being notified of a leaver and showing a record as deferred; and
- once an individual is shown as deferred on the Scottish Widows' platform, it will not accept any further contributions.

19. In his e-mail to HPE, dated 14 February 2018, Mr S asked whether he could pay an AVC payment of £20,000 into the Scheme, either via HPE's payroll or "manually" before the Scheme "closed" to him on 26 February 2018. On 23 February 2018 He asked HPE to keep his status in the Scheme as "active" and not change it to "deferred" in order to allow him more time to make the AVC payment and resolve the issue over the "missing" contributions.
20. On 2 March 2018, Mr S told HPE that he was looking forward to receiving its instructions on how to make the AVC payment of £20,000. HPE replied on the same day that it would do so as soon as possible but did not subsequently provide Mr S with a further response.

Mr S' Position

21. It is unfair that the Respondents have refused to allow him to make additional payments into the Scheme once he had left HPE.
22. The Scheme is "inflexible" and does not allow him to pay additional contributions into it at a time when he had the funds to do so, and after seeking independent financial advice. It is also not possible to purchase a Scheme annuity.
23. He has therefore applied for a self-invested personal pension (**SIPP**) with Hargreaves Lansdown (**HL**), in order to consolidate his funds in the HPE pension schemes and make additional contributions before purchasing a "top-up" annuity with Legal and General.

The position of MMT and Zurich

24. In accordance with the Scheme Rules, the Scheme cannot accept pension contributions from a deferred member such as Mr S. But if it transpires that there are outstanding contributions payable from when Mr S was an active member, MMT can decide to reactivate his record to "active" status for the purpose of receiving the missing contributions, before returning it to "deferred" status.

HPE's position

25. Mr S was aware of the gap in his pension contribution history in April 2010. It would have responded to his e-mail dated 8 April 2010 verbally by telephone, to "ensure he was clear on the options available to him". It did not hold any subsequent emails on

its records showing that Mr S had continued to engage with HPE on this issue had it not been resolved to his satisfaction. HPE assumed Mr S had decided, at that time, against making up any shortfall by increasing his pension contributions.

26. Mr S conceded, in his e-mail dated 23 October 2017, that there was a delay taking up pension scheme membership because of “affordability” issues.
27. It was not until Mr S was due to leave HPE that he appreciated the advantage of having a full contribution history and decided to make a claim for any employer contribution arrears by offering to make up his missing employee contributions.
28. The Scheme can only accept contributions from members actively working for HPE and paid via its payroll. It does not accept single contributions made directly from individuals who have left HPE. It is not possible for Mr S to make any further contributions into the Scheme. It had made Mr S aware of this in its e-mail of 20 November 2017.
29. It is not possible for HPE to assist Mr S to purchase an annuity using his Scheme fund.

Adjudicator’s Opinion

30. Mr S’ complaint was considered by one of our Adjudicators who concluded that no further action was required by the Respondents. The Adjudicator’s findings are summarised below.
31. The Respondents must comply with the Scheme Rules which state that the Scheme can no longer accept pension contributions from a member who has left HPE and become a deferred member.
32. The available evidence suggests that it was mainly “affordability” issues and not any maladministration on the part of the Respondents which was the reason for Mr S failing to make adequate employee contributions into the Scheme in a timely fashion. As a consequence of missed employee contributions, Mr S has not benefitted from the corresponding employer contributions.
33. It was regrettable that Mr S was unable to pay an AVC of £20,000 into Scheme following receipt of independent financial advice, but there was no evidence that this was caused by inaction on the part of the Respondents.
34. The course of action which Mr S has now chosen to take with HL, in order to resolve his dispute, was a prudent one. After transferring the funds from his various HPE pension schemes into the HL SIPP, he can elect to make additional payments into the SIPP, if necessary, before purchasing a “top up” annuity with Legal and General.
35. Mr S did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I

agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Mr S for completeness.

Ombudsman's decision

36. It was Mr S' decision to not pay employee contributions into the Compaq Scheme between 1 January 2004 and 31 December 2009. Had he made these contributions Mr S would have benefited from the corresponding employer contributions available at the time.
37. HPE was under no obligation to make good the Scheme contributions belatedly, or to accept Mr S' proposal to make up his missing employee contributions shortly before leaving HPE.
38. In accordance with the Scheme Rules, the Scheme can only accept pension contributions from Mr S whilst he was an active member and still on HPE's payroll.
39. Over the years it had always been open to Mr S to increase his regular employee contributions and benefit from higher employer contributions whilst working for HPE, in order to try and make up the shortfall. Unfortunately, it would appear he was either unable to do this or chose not to do so.
40. It is also regrettable that Mr S only received and accepted financial advice to make an AVC payment of £20,000 after he had left HPE, when it was no longer possible to do this. I can see no evidence of any action on the part of the Respondents which resulted in Mr S being unable to make this payment in good time before he left HPE.
41. The circumstances which Mr S now finds himself were not caused by any maladministration on the part of the Respondents, but affordability and timing issues attributable to himself.
42. I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
19 March 2020