

## Ombudsman's Determination

Applicant	Mr H
Scheme	ICI Pension Fund ( <b>the Fund</b> )
Respondents	The Trustee of the ICI Pension Fund ( <b>the Trustee</b> ) Willis Towers Watson ( <b>WTW</b> )

### Complaint Summary

1. Mr H's complaint concerns incorrect information he received from WTW regarding his benefit entitlement from the Fund. He argues that he relied on the information when making the decision to claim his pension from the Fund, instead of transferring his benefits to a personal pension plan (**PPP**). He asserts he has incurred a financial loss as a result.

### Summary of the Ombudsman's Determination and reasons

2. The complaint is not upheld because the redress offered by the Trustee is in line with what I would award in the circumstances, in recognition of the severe distress and inconvenience this situation has caused Mr H.
3. No further action is required by WTW.

## Detailed Determination

### Material facts

4. On 3 January 2017, WTW, the Fund's administrator at the time, sent Mr H an early retirement quotation (**the Quotation**) of his deferred benefits based on his proposed retirement date in October 2017. He was given the following options:
  - 4.1. a pension of £12,423.67 per annum; or
  - 4.2. a reduced pension of £9,729.90 per annum and a pension commencement lump sum (**PCLS**) of £64,866.
5. The cover letter to the Quotation said:

"You should note if the value of your final benefits is within 10% of the value shown on the enclosed quotation we will go ahead and set up the payment of your benefit without issuing a new quotation" (**the Caveat**).
6. On 15 January 2017, Mr H emailed WTW. He queried the difference between the retirement figures he was quoted on the Fund's online portal (**ePA**), in November 2016 for his normal retirement date (**NRD**) in July 2020, and the amounts shown in the Quotation for early retirement in October 2017. In the email, Mr H said:

"I know you will calculate the benefits again before commencing payment in October, and I don't wish to find a nasty surprise waiting!"
7. On 23 January 2017, WTW replied to Mr H and confirmed that the figures in the Quotation were correct. So, Mr H should disregard the figures quoted on the ePA.
8. On 25 January 2017, Mr H wrote to WTW and requested a Statement of Entitlement showing the cash equivalent transfer value (**CETV**) of his benefits, and a projection (**the Projection**) of the benefits he could receive if he retired in July 2020.
9. WTW said it was unable to provide Mr H with the Projection because it could not predict the rate of future increases on his deferred pension. Mr H's CETV was calculated to be £355,603.80 as at 9 February 2017 (**the CETV Quotation**), and was guaranteed until 9 May 2017.
10. Following receipt of the CETV Quotation, Mr H completed his own calculations to compare if it would be better to claim his benefits in the form of a pension from the Fund or transfer his benefits to a PPP. Based on his calculations, Mr H decided to apply for early retirement from the Fund from October 2017. He opted for the PCLS of £64,866 and the reduced pension of £9,729.90 per annum, and returned the relevant paperwork to WTW in February 2017.
11. On 5 October 2017, WTW wrote to Mr H and confirmed receipt of his retirement paperwork. It informed him that his PCLS, amounting to £58,548.65, would be paid into his bank account within the next few days and that his pension would be £8,782.30 per annum.

12. WTW explained that:

“In the original documentation issued it stated if the value of your benefits are within 10% of the value shown on the statement, we will go ahead and set up the payment of your benefits without issuing a new quotation. As the recalculation value was within 10% we have proceeded with your retirement set up.”

13. There were further exchanges between Mr H and WTW, concerning the reduction in his retirement benefits and whether he could cancel claiming his benefits from the Fund. This resulted in Mr H complaining through both stages of the Fund's Internal Dispute Resolution Procedure (**IDRP**). To support his complaint under stage one of the IDRP, Mr H said in summary:-

13.1. His decision to claim his pension from the Fund, rather than transfer his benefits to a PPP, was taken after he had obtained the Quotation and the CETV Quotation from WTW.

13.2. After analysing the figures, he decided to take early retirement from October 2017 and the option of the PCLS and reduced pension. However, the actual PCLS and pension were 9.76% lower than the figures shown in the Quotation.

13.3. Although the Quotation contained the Caveat, the Caveat should not apply in instances where the variance in the figures is due to multiple administrative errors.

13.4. Furthermore, he queried the figures at the time in an email and WTW confirmed to him that they were correct. WTW was aware that his decision on whether to transfer or claim his benefits from the Fund was based on a comparison of the figures in the Quotation and the CETV Quotation.

13.5. Once the error came to light, WTW should have contacted him and offered him the opportunity to re-evaluate his decision. He had no doubt that had he been given the choice, or been provided with correct information initially, he would have transferred his benefits.

13.6. According to his calculations, the total value of his PCLS and annual pension had been reduced by approximately £30,000 over the remaining expected lifetime of both him and his wife. This figure was based on an assumed annual inflation rate of 3% and would increase if future inflation over the next 25 years should exceed 3%.

13.7. His preferred resolution to his complaint would be for him to repay all the monies he had received from the Fund and then transfer his benefits out of the Fund.

14. On 14 May 2018, WTW responded to Mr H's complaint on behalf of the Trustee. WTW apologised on behalf of the Trustee and explained that it could only partially uphold his complaint. In summary it said:-

- 14.1. It accepted that incorrect figures had been provided in the Quotation. The error had largely occurred because WTW had incorrectly applied a statutory revaluation underpin test (**the Test**) to the portion of Mr H's benefits that had accrued before 1 January 1985.
- 14.2. The Test required the Fund to increase a member's deferred benefits in line with the increases set out in the Fund's Trust Deed and Rules (**the Rules**), or the increases required under pensions legislation, if higher.
- 14.3. Under pensions legislation, if a member left pensionable service before 1 January 1991, any benefits accrued before 1 January 1985 would not receive statutory increases during the period of deferment. Mr H joined the Fund on 9 July 1979 and ceased pensionable service on 14 August 1990. So, there was no statutory requirement for the Fund to apply the Test to the benefits he had accrued between 9 July 1979 and 31 December 1984 (**the Pre 1985 Benefits**).
- 14.4. WTW had incorrectly applied the Test to both his Pre 1985 Benefits and the benefits he had built up from 1 January 1985. As a result, the retirement benefits in the Quotation were overstated.
- 14.5. His Majesty's Revenue and Customs (**HMRC**) had confirmed that it was not permissible under tax legislation for Mr H to repay his benefits to the Fund and reverse the crystallisation of his benefits.
- 14.6. It was unacceptable that WTW had miscalculated the pension figures in the Quotation and had failed to correct this, after Mr H had queried the Quotation and the figures calculated via the ePA. However, the Caveat made it clear that his benefits may be subject to a variation at the point of payment; the final figures were within the 10% tolerance margin.
- 14.7. WTW should have contacted Mr H, once the error in the calculation came to light. Mr H should have been given the opportunity to reconsider his decision to retire from the Fund. However, it was not clear how Mr H had arrived at his calculated loss of £30,000, and whether this was based on foregoing the higher amount quoted or the lost opportunity to transfer his benefits. Both possibilities were addressed as a result.
- 14.8. The Trustee was required by law to pay benefits in accordance with the Rules. Although it was disappointing that Mr H was quoted higher pension figures than he was entitled to under the Rules, this error did not entitle him to the inflated figures.
- 14.9. WTW understood that Mr H had requested a CETV quotation in January 2017, so that he could fully consider his options. As a result of the incorrect figures quoted, which were not subsequently corrected, he missed out on the opportunity to transfer his benefits. However, Mr H did not provide any evidence of the receiving arrangement and the financial impact of not

transferring his benefits. As a result, it was unclear whether Mr H had suffered a financial loss because of the incorrect information he had received from WTW.

- 14.10. In light of the maladministration in providing the incorrect Quotation, and poor communication on the part of WTW, the Trustee was willing to offer Mr H £1,600 (**the Offer**), in recognition of the distress and inconvenience this situation had caused him.
15. Dissatisfied with the IDRPs stage one decision, Mr H appealed to the Trustee under stage two of the IDRPs. A summary of his submissions is detailed below:-
  - 15.1. It was inexcusable that an error of this “enormity” had occurred. WTW miscalculated his Pre 1985 Benefits whereas the CETV Quotation, which was calculated a month later, was calculated correctly.
  - 15.2. Furthermore, WTW missed at least three further opportunities to check the pension figures and to inform him of the error in the calculation.
  - 15.3. WTW had acknowledged that it should have informed him of the error in the pension figures. Particularly, because the final figures were close to the 10% tolerance limit. Instead, WTW put his benefits into payment, which triggered a crystallisation event that could not be reversed.
  - 15.4. It was reasonable for the Trustee to insert caveats in quotations to cover certain eventualities. However, the Fund was a defined benefit (**DB**) arrangement. The only variables which would have affected his benefits was a change in the revaluation rate or in the early retirement factors between the date of the Quotation and his date of retirement. It was unlikely that these variables would have caused a variance in the figures of almost 10%. Further, the Caveat should not have been used to excuse administrative errors.
  - 15.5. He appreciated that the legal position was that he could not claim benefits that have been overstated. His calculated loss of £30,000 was simply a “first stab” at quantifying the financial loss he had incurred by not transferring his benefits. He had since had the opportunity to quantify his financial loss; it was significantly greater than £30,000.
  - 15.6. He had requested the following quotations from WTW:-
    - 15.6.1. Early retirement from October 2017, with the option to exchange part of his pension for a PCLS.
    - 15.6.2. Retirement from his NRD, based on him taking the option of a full pension.
    - 15.6.3. A CETV quotation.

- 15.7. To quantify the value of his benefits over their remaining lifetime, he calculated the net present value (**NPV**) under each option. He used a range of different scenarios, various assumptions for future inflation and life expectancy.
- 15.8. He had provided WTW with details of the assumptions he used in his calculations. He had also confirmed that if the NPV had amounted to 75% or less than the figure quoted in the CETV Quotation, he would have transferred his benefits. This was based on his assessment of what he was prepared to forego for the certainty of staying with the Fund, rather than transferring to a PPP. As the pension figures shown in the Quotation had a calculated NPV in excess of 75%, he decided to stay with the Fund. However, the NPV of his actual retirement benefits was approximately £30,000 less than the NPV in respect of the retirement figures that were quoted in the Quotation.
- 15.9. To show his willingness to transfer his benefits from the Fund, he provided WTW with evidence that he had used the same methodology when comparing his options under one of his other DB arrangements. In respect of that entitlement, he had calculated NPVs of below 75% of the CETV. So, he transferred those benefits to a Royal London PPP, after engaging an independent financial adviser (**IFA**). The IFA agreed with his decision to transfer those benefits.
- 15.10. His willingness to transfer his benefits from the Fund was also evidenced by the telephone discussions he had with WTW in November 2017, and his subsequent correspondence with WTW. This prompted the Trustee to clarify with HMRC whether the crystallisation of his benefits could be reversed.
- 15.11. He had since calculated that his estimated financial loss amounted to £65,000<sup>1</sup>. He believed he had established a change of position defence for the following reasons:-
  - 15.11.1. It was reasonable for him to have relied on the incorrect figures WTW had provided in the Quotation.
  - 15.11.2. He made the decision to draw his retirement benefits from the Fund based on those incorrect figures. If the pension figures had been correct, he would have opted to transfer his benefits.
  - 15.11.3. His decision to retire from the Fund was irreversible, despite his best efforts to unwind his retirement. He had suffered financial loss as a direct result, which he had quantified.
  - 15.11.4. Given the circumstances of his case, it was reasonable to expect the Trustee to reimburse him for the financial loss he had incurred. The

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<sup>1</sup> Mr H has provided The Pensions Ombudsman with details of the methodology and assumptions he used to calculate his financial loss.

Trustee should either pay an appropriate lump sum to him as redress or honour the retirement benefits stated in paragraph 4.2 above.

15.12. He appreciated that he was receiving the level of benefits set out in the Rules. However, the Rules gave the Trustee the power to augment benefits on a discretionary basis. It was possible that the capital cost of augmenting his benefits was less than his calculated loss of £65,000.

16. On 11 February 2019, the Appeals Committee (**the Committee**) sent Mr H its decision under stage two of the IDRPs on behalf of the Trustee. The Committee made the following additional comments:-

- 16.1. It agreed that the Caveat should not be used as a general caveat for administrative errors.
- 16.2. It agreed that Mr H had reasonably relied on the incorrect information provided in the Quotation when deciding whether to transfer his benefits or claim his pension from the Fund. The Committee acknowledged that he queried the difference in the figures in the Quotation, and those obtained from the ePA, with WTW at the time.
- 16.3. Following guidance from its advisers, the Committee did not agree that Mr H had suffered a financial loss in connection with this matter. It had noted that Mr H's calculated loss was very sensitive to the assumptions he had used in his calculations. In particular, the assumed investment return of 5% per annum from 2017 to 2023, on the funds he would otherwise have transferred to a PPP.
- 16.4. While the Committee could not say whether investment returns of 5% per annum was a reasonable assumption, any investment returns Mr H would otherwise have achieved in a PPP would not have been guaranteed. Furthermore, a transfer to a PPP would have involved an element of risk. The actual investment returns could have been lower than 5% per annum, or his funds could have fallen in value. The pension from the Fund was guaranteed and was a valuable benefit.
- 16.5. Had Mr H sought a specific rate of return over the period from 2017 to 2023, through investments that provided guaranteed rates of return, the returns available to him would have been lower than 5%.
- 16.6. The Trustee's advisers had noted that, by directly comparing Mr H's pension and guarantees from the Fund with the benefits he would otherwise have received from a PPP, Mr H may have been in a better financial position as a result of not transferring his benefits out of the Fund.
- 16.7. Mr H may have understated the NPVs in his calculations. The CETV was calculated using the Fund's assumptions as a best estimate of the CETV of Mr H's benefits in the Fund and reflected the cost of providing those benefits. The

calculation was not intended to put Mr H in a better financial position than if he had remained in the Fund.

- 16.8. If Mr H had used the Fund's best estimate assumptions in his calculations, the NPV of his Fund benefits would be very close to 100% of the transfer value shown in the CETV Quotation. In October 2017, the discount rate used to calculate CETVs of benefits within the Fund was approximately 2% per annum. Using this rate, rather than the rate of 3% per annum Mr H used in his calculations, the resulting NPV was above his "benchmark" of 75%. Mr H also used a different mortality rate to the rate adopted by the Trustee.
- 16.9. The Trustee accepted that Mr H had lost out on the opportunity to transfer out his Fund benefits. However, based on the advice it had received from its advisers, the Trustee did not consider that he had suffered a financial loss.
17. The Trustee apologised for WTW's failure to highlight that the figures in the Quotation had been overstated before putting Mr H's retirement benefits into payment. In recognition of this, the Trustee increased the Offer to £2,000 (**the Increased Offer**).
18. The Trustee explained that the Increased Offer was at the higher end of what the Pensions Ombudsman would likely award for non-financial injustice in similar cases.

### **Mr H's position**

19. Mr H has provided The Pensions Ombudsman (**TPO**) with a copy of a report from an actuary he instructed in connection with this matter (**the Actuary's Report**) and his own calculations. He also made some additional comments, which are summarised in paragraphs 19.1 to 19.39 below, and include developments in his position during the course of TPO's investigation.

### Complaint overview

- 19.1. The Trustee accepts that he relied on the incorrect information from WTW and that it was reasonable for him to have done so. Yet it contends that he has not incurred a financial loss and has only offered him £2,000, for the distress and inconvenience it caused him.
- 19.2. A variance of 10% represents a large reduction in his pension benefits. Although he accepts that a mistake does not mean a member is entitled to benefits that have been misquoted, it is unfair that he was not given the opportunity to take appropriate action before his retirement benefits were set up. He respectfully suggests that the 10% variance, before a revised quotation is issued by WTW, needs to be reduced.
- 19.3. He disagrees with the Trustee's position and considers that he has suffered a significant financial loss. This is because the Actuary's Report shows that he has incurred a loss of approximately £48,000. This was calculated on the basis that he would have accepted the CETV Quotation, and subsequently purchased an annuity in October 2017.



- 19.4. Approximately 80% of his pension will not receive any increases after 1 July 2023. The 'lost' portion of his pension would have received investment returns until his death, had he transferred out. This makes the lost portion more valuable than a similar sum lost from the "pre 1988" Guaranteed Minimum Pension (**GMP**).
- 19.5. The reduction of 9.76% in the initial annual pension is equivalent to a significant sum over the expected lifetime value of his pension, especially when it is all taken from the part of his pension that would receive annual increases. The actual loss over time is well in excess of 9.76%. For example, the cost of purchasing an annuity that increases in payment is approximately 70% higher than the cost of purchasing a level annuity. He took this into account in his assessment of his overall financial loss.

#### Financial Planning prior to claiming his benefits from the Fund

- 19.6. Prior to claiming his benefits from the Fund, he undertook detailed financial planning. He did not need to draw his pension early from the Fund or take a PCLS. His choice of retirement options was considered carefully so that he could maximise the value of his benefits.
- 19.7. The reason he took a PCLS from the Fund was because doing so increased the NPV of his pension benefits under "all scenarios". In addition, the PCLS is tax-free, so for a basic rate taxpayer its value increases by an extra 25%, when compared with the pension which is taxed as income.
- 19.8. He had been planning his retirement since his wife retired in 2011. He started to plan his retirement in more detail in 2015, including carrying out cash flow forecasts covering the period from 2016 to 2025. His wife was already in receipt of an annual pension of £20,000 at that stage.
- 19.9. By the time he had made the decision to retire from the Fund, in early 2017, he had a clear picture of their expected income, everyday living expenses and the cost of providing for their additional needs.
- 19.10. On the basis of the quotations he had received from WTW, he left employment on 31 March 2017. He took an Uncrystallised Funds Pension Lump Sum (**UFPLS**) from his Self-invested Personal Pension (**SIPP**) in April 2017, to cover his living expenses to October 2017.
- 19.11. As taking early retirement from the Fund was not essential, the investment risk involved in transferring out his benefits would not have been a serious concern for him. If he had waited until he reached age 62, in 2020, before claiming his pension from the Fund or transferring out his benefits, he would have reduced his expenditure on non-essential items. Furthermore, he would have waited until he reached his 60th birthday in July 2018, to draw his pension from his other DB arrangement. The pension was smaller than his projected pension from the Fund and was paid at an initial rate of £4,600 per annum, and he

received a PCLS of £13,800. If it had been necessary, he would have taken a further UFPLS from his SIPP to supplement his income.

19.12. Had he taken the option of a CETV from the Fund, he would have taken an UFPLS from the transferred benefits and later purchased an annuity. He had in mind a provisional date of his 65th birthday to purchase an annuity. However, the actual timing would have been influenced by annuity rates and the investment performance of funds in his PPP.

19.13. The monthly pension payments from the Fund have been used for general living expenses, for example, food and household expenses.

#### Why financial advice was not sought

19.14. He did not receive any financial advice on whether it would have been better to transfer his benefits or claim his pension from the Fund. Based on his analysis of the transfer value shown in the CETV Quotation, when compared with the Quotation, he decided to claim his pension from the Fund.

19.15. He likes to make his own decisions after carrying out research. His detailed explanation of his approach to his retirement planning demonstrates this. He was happy to accept the pension from the Fund, so he did not need the services of an IFA. Had the Quotation been correct, his calculation of the NPV would have led him to engage an IFA in order to transfer out his benefits. The fact that he did not obtain financial advice should not be seen as evidence of his unwillingness to transfer.

19.16. An IFA would have been working with the information available at the time and would have compared the Quotation against the transfer value shown in the CETV Quotation. As his corrected pension was approximately 10% lower, he believes that an IFA would have advised him to transfer. In any event, this would have been his preferred choice.

19.17. He made his decision to transfer his other DB arrangement before engaging an IFA. He only provided the IFA with sufficient information to enable him to prepare his report. He accepted the IFA's choice of the Royal London PPP because its structure and past performance closely matched that of his existing PPP.

19.18. He believes that an IFA would have agreed with his desire to transfer, based on his and his wife's other income and financial resources, their lack of dependants, debt or mortgage, and on the financial analysis as required in 2017. When he or his wife dies, the other would have sufficient income to live comfortably. They had a stable long-term marriage, and over 20 years' experience of investing through stock markets. Any risk to their lifestyle as a result of transferring his benefits from the Fund to a PPP was small.

- 19.19. A DB pension may be a valuable asset, but he had never viewed his Fund benefits as quite so valuable. The benefits cannot keep up with inflation, since 80% is GMP with no inflation increases after age 65. Few people his age believe it likely that inflation can remain consistently at 3% or below over the next 20 to 30 years. Recent inflation figures add weight to this view.
- 19.20. In contrast, a PPP may, in the long term, meet or exceed inflation. Many would consider this likely, albeit not guaranteed. A PPP also offers the opportunity to leave remaining funds to their children, particularly if he or his wife should die younger than the Fund's assumed life expectancies.
- 19.21. He was a smoker for 40 years before finally giving up the habit in March 2017. While he currently has no life-threatening conditions, his life expectancy would have been reduced. This is not factored into the Fund benefits calculation. He did not include this factor in annuity costs obtained at any stage in his complaint. He has raised it now to show the factors he considered when making the decision on whether to transfer.
- 19.22. He was prepared to accept a 22% loss (by his own NPV calculations) in exchange for the somewhat reduced risk of taking the quoted pension benefits rather than transferring to a PPP. But he was definitely not prepared to accept the 30% loss that the actual pension benefits represent using the same calculation method.
- 19.23. He suggests that it is reasonable to believe that, on the balance of probabilities, the transfer would have gone ahead and the same IFA who advised on his other DB pension transfer would have suggested the same Royal London PPP or a very similar fund with similar returns over the period.

Calculation of loss and methods and assumptions used during the course of the complaint

- 19.24. It was now several years since he made the decision on whether to claim his pension from the Fund or transfer his benefits to a PPP. He had learned a great deal during this period, and his responses at the various stages reflected this. It is not surprising that estimates of his loss have varied over the course of the complaint. He is not an actuary, but he learns in response to new information.
- 19.25. He is clear that the original NPV method he used to determine which option to take works well, and he stands by it.
- 19.26. The Trustee maintains that he has not suffered a financial loss, and that the actual pension he is receiving is equivalent to the CETV he was quoted.
- 19.27. The Fund is free to use whatever factors it deems suitable in calculating the CETVs it offers. The CETV Quotation could have been correctly calculated whilst also still not actually being financially equivalent to the pension quoted.

Without full and complete details of the calculations it is not possible to fully verify this.

- 19.28. In several of its points the Trustee referred to a statement he had made in his IDRPs stage two submission, namely that if his calculated NPV was 75% or less of the CETV, he would have taken the CETV rather than the pension. He had used a 3% discount rate, publicly available on the Office of National Statistics 2016 life expectancies, and his wife's actual age.
- 19.29. He had realised that pension funds must use different factors in their calculation of CETVs. He had detailed his reason for accepting a difference of up to 25% as the certainty of claiming a pension from the Fund rather than a PPP. It was clear from the context of this statement that it referred to the comparison between the NPV as he had calculated it at the time, and the quoted CETV. It was inappropriate for the Trustee to extrapolate this as it had in one of its response letters, to use as a 25% 'tolerance' on growth rates, or that a 25% premium should be placed on benefits from the Fund rather than a purchased annuity.
- 19.30. One approach to loss involves using investment returns, assuming a transfer out had taken place. When calculating the gains he could have received from transferring into a PPP, it is reasonable to use the other DB arrangement he transferred into a PPP as a comparator. The Royal London PPP comparator is not exceptional. Its 7.52% compound annual growth rate (**CAGR**) between 21 April 2017 and 21 January 2022<sup>2</sup>, was similar to that of many of the popular global mixed investment funds. His other PPP had achieved 7.51% CAGR between the same two dates.
- 19.31. He has not yet taken any benefits from the Royal London PPP containing the cash from the other DB arrangement that he had transferred. The Royal London PPP has grown by 33% since April 2017. His plan is to use the funds in this PPP to purchase an increasing annuity at a future date to be decided.
- 19.32. The Trustee has said that the transfer of his benefits from the Fund may have taken six months, so he cannot claim investment returns for the whole period from February to October 2017. However, the transfer of his other DB arrangement was completed in seven weeks from the date of first email contact with the IFA, to the money being transferred to the Royal London PPP. This was built into his loss calculation. WTW was also his other DB pension's administrator. For the Trustee to say the transfer of his Fund benefits could have taken up to six months seemed highly unlikely.

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<sup>2</sup> This date is the reference calculation date used by Mr H in his most recent substantive loss calculation submitted.

Miscellaneous points

19.33. If this were a case where improper advice had been given by an IFA, resulting in a transfer from a DB pension scheme into a PPP, the Financial Ombudsman Service's website says:

“If we think your complaint should be upheld, and reinstating your pension benefits in the workplace scheme isn't possible, we'll tell the business to calculate whether you've suffered a financial loss. It will do this by comparing the value of the benefits you would have had with the workplace pension against those you actually have in the personal pension.”

19.34. The Financial Conduct Authority (**FCA**) Guidance document FC17-9<sup>3</sup> (**the Guidance**) gives the method for calculating any redress. There is no requirement that the member must actually purchase annuities at their normal retirement date or any other time. Although it is a rigorous calculation, it is an estimation of current loss based on an uncertain future loss. The Guidance also states that the client's individual demographic circumstances such as marital status and partner's age may be used where indicated.

19.35. In his case, the problem is the opposite way round. Incorrect information led him to take pension benefits from the Fund rather than transferring them to a PPP. The Guidance has to rely on estimates of PPP returns and annuity rates. In his case:-

19.35.1. The growth rates of his Royal London PPP are known for the period between when the transfer would have taken place and the current date. However future growth rates are unknown.

19.35.2. The actual cost to purchase annuities today, to replicate the actual pension benefits, can be obtained.

19.35.3. His current loss at the current date, based on the known current value of his Royal London PPP<sup>4</sup>, and the known cost to purchase annuities, could be calculated in a similar way to that given in the Guidance. This could be done without the use of estimations.

19.36. He had obtained three annuity quotations using the Legal and General (**L&G**) online quotation system, to match or better the pension he would have received last year and every year thereafter from the Fund<sup>5</sup>. He explained that after purchasing these annuities, the (notional) amount left in the PPP to which he would have transferred out was his current loss. This amounted to either £23,917 or £49,631.80, depending on the method of drawing benefits and

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<sup>3</sup> <https://www.fca.org.uk/publication/finalised-guidance/fg17-9.pdf>

<sup>4</sup> Mr H provided a spreadsheet detailing the value of his Royal London PPP.

<sup>5</sup> Mr H provided details of the three annuities.

associated tax consequences (**the Current Loss**)<sup>6</sup>. The annuity quotations did not include any lifestyle or medical enhancements. These annuities provided far better inflation protection than his pension from the Fund.

- 19.37. The calculation of the Current Loss followed the principles given in the Guidance to calculate redress but using actual figures rather than estimates. If repeated in March 2022, the calculated loss would be a little higher, due mainly to an increase in annuity rates as offered by L&G which more than outweighs a very small drop in fund value.

## **Summary of the Trustee's position**

20. The Trustee said in summary:-

### Response overview

- 20.1. It accepts that as a result of WTW's error Mr H has suffered distress and inconvenience. It apologised for this and has offered him £2,000 in recognition. This offer remains open to Mr H. It does not accept that Mr H has suffered a financial loss because of his decision to remain in the Fund and not transfer his benefits to a PPP.
- 20.2. While it accepts that Mr H may have lost the opportunity to plan his finances differently, it was not clear that he would have chosen to receive his benefits in a different form.
- 20.3. It cannot provide Mr H with a benefit which is higher than that which he is entitled to under the Rules, without verifiable evidence that he has suffered financial loss in line with the principle of negligent misstatement.
- 20.4. Mr H cannot rely on the benefit of hindsight to oblige the Trustee to pay him a higher benefit than he is entitled to. The mistake in his early retirement calculation does not automatically confer an entitlement on Mr H to that incorrectly quoted amount.
- 20.5. At the time Mr H decided to take his benefits from the Fund, it was not clear whether he could have received a higher benefit by transferring his benefits from the Fund. This was highlighted through the different levels of financial loss Mr H had argued he suffered, through his IDRPs, submissions to TPO, and his assessment of the expected growth.

### Whether Mr H would have transferred his benefits from the Fund

- 20.6. Mr H has benefitted from his Fund pension since 2017. In his submissions to TPO, he argues that he did not require the pension and could have left the benefits invested until a later date, on the basis that the pension was surplus to

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<sup>6</sup> Mr H provided details of the calculations he completed to establish the Current Loss. He revised the figure of £23,917 to £49,631.80 as a result of maximising the available funds by optimising the tax treatment of drawing his benefits, with a larger remaining balance (after purchasing annuities) reflecting his claimed loss.

his needs. However, Mr H did choose to take his benefits in 2017, including a cash lump sum, so made the decision to benefit from the Fund pension moving forward.

20.7. The Trustee accepts that Mr H may have decided to transfer his benefits out of the Fund had the Quotation been correct. But, on the balance of probabilities, it did not consider Mr H had proven he would have done so, given that:

20.7.1. Mr H had accepted the Caveat when he agreed to take an early retirement pension from the Fund, and he considered that such a caveat was reasonable; and

20.7.2. Mr H would have been required to take advice from an IFA in advance of the transfer, which might have impacted his decision.

20.8. The Trustee agrees that Mr H lost the ability to discuss the potential transfer with his nominated IFA, but there is no evidence to suggest that the IFA would have recommended Mr H transfer his benefits. This may have impacted on Mr H's decision to transfer out.

20.9. The Trustee notes that the industry starting point is that it is likely to be in the best financial interest of the majority of members to remain in their DB pension scheme, rather than to transfer out. By transferring out, a member exchanges a guaranteed income for a cash equivalent sum to be used to provide benefits, the ultimate value of which is unknown. Mr H understood this and placed a value on receiving a guaranteed benefit from the Fund of 25% of the CETV. This would also have formed part of Mr H's discussion with his IFA.

20.10. In his submissions to TPO, Mr H noted that an IFA would have been required to provide him with information on the higher rate of return for a PPP, which is 8% per annum. This figure is slightly higher than the growth rate used by Mr H in his calculations<sup>7</sup>.

20.11. Under the FCA rules, the IFA would have been obliged to provide projections based on the intermediate return rate of 5% per annum and the lower rate of 2% per annum. Either of these return rates would have produced returns, based on Mr H's calculations, that could not have provided him with an annuity similar to the benefit being provided by the Fund.

20.12. The IFA would have been required to provide Mr H with all this information in order to give him a balanced picture of the potential risks of transferring from a DB arrangement. It is not clear to the Trustee that an IFA would have advised Mr H to transfer his benefits if the Quotation had been correct. It is also not clear that the IFA would have advised that a growth rate of 7.52%, very near to the highest end of the possible projections, would have been likely. This is the case particularly when considering Mr H's risk appetite, which was

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<sup>7</sup> Mr H used a growth rate of 7.52% in his calculations.

demonstrated from the value he placed on receiving a promised, regular benefit from the Fund.

20.13. Mr H cannot rely on the analysis carried out by an IFA in connection with a transfer from a different DB pension scheme, to confirm that an IFA would have recommended a transfer from the Fund.

20.14. Given that Mr H has failed to demonstrate, on the balance of probabilities, that he would have taken a transfer of benefits from the Fund had he received correct figures in the Quotation, the Trustee does not consider that he has suffered any financial loss.

#### Calculation of loss

20.15. Mr H's approach to calculating loss varied at different stages of his complaint.

#### Calculation of loss: investment returns

20.16. Mr H has suggested that he would have invested his entire CETV in his existing PPP with Royal London. But it is impossible to determine how Mr H would have invested the CETV without applying the benefit of hindsight, and whether he would have considered the need to diversify any risk at the time, as he did, by retaining a pension in the Fund.

20.17. In his IDR stage two submissions, Mr H sought to quantify his financial loss at the time and argued that he would have left his CETV invested until he reached age 65, in July 2023. He assumed that investments in his proposed PPP would have offered a return of approximately 5% per annum. In his subsequent calculations, he used the date of January 2022 and a 7.52% growth rate. The calculations are specific to the date of assessment and had the calculations been carried out at an earlier date, the results may have differed. For this reason, the Trustee does not consider that the information Mr H provided proves that he has suffered a financial loss.

20.18. Mr H has asserted that he would have delayed the purchase of any annuity in the event of a stock market fall. However, this is speculative and assumes that any fall would be short-lived and subsequently corrected.

20.19. Although Mr H could no longer choose to invest his benefits under a PPP, he could have invested the benefits he received from the Fund in an alternative investment product. The investment of the Fund benefits would have resulted in a financial return.

20.20. Mr H has calculated the notional growth on his Fund benefits, had he transferred them, from April 2017. It is not possible to determine how long it would have taken Mr H to obtain advice from an IFA and return his forms, or for WTW to have processed the transfer. The Trustee did note that under the statutory timeframe it could have taken up to six months for the transfer to have been completed. This would have meant that the CETV may not have



been paid until early August 2017. So, the Trustee considers that the CETV may have been invested for a shorter period and the growth identified by Mr H may have been lower.

Calculation of loss: actuarial approach

- 20.21. The Trustee believes the calculations provided by Mr H and his actuary contain some factual inaccuracies in relation to the reflection of Fund benefits, have some limitations in their approach and are highly susceptible to the assumptions chosen.
- 20.22. As the analysis of Mr H's financial loss centres around the value of his benefits under the Fund and how those benefits could be replicated, it believes that it is appropriate to use the Fund's CETV assumptions.
- 20.23. The calculation of loss in the Actuary's Report did not take into account the PCLS Mr H opted to receive. It also assumed that Mr H's CETV would have received a return at the rate of 3% per annum, which would not have happened in practice.

Calculation of loss: current approach

- 20.24. Based on his calculations, Mr H argues that his Current Loss is approximately £49,631.80 (revised from £23,917). The Trustee disagrees with Mr H's calculation of his Current Loss because:-
- 20.24.1. Neither the actuary nor Mr H had included with their calculations the value that he placed on receiving a guaranteed income from the Fund. In his stage two IDRPs submissions, Mr H had placed a value of 25% of the NPV of the CETV, on the benefit remaining in the Fund and receiving Fund benefits.
- 20.24.2. The Trustee considers that, given Mr H had benefitted from this certainty, the tolerance adopted by him should be applied to the growth, not least because Mr H is relying on the benefit of hindsight in calculating the Current Loss.
- 20.24.3. Applying the value Mr H placed on the certainty of receiving a regular pension from the Fund to his initial growth assumption of 5%, would reduce it to 3.75%. This further highlighted that, using Mr H's approach to assessing loss, together with his stated risk appetite at the time, he would have suffered a loss if he had transferred out of the Fund.
- 20.24.4. Using the reduced growth percentage but keeping all other elements in Mr H's calculations the same, would result in the Current Loss being £1,500.
- 20.25. It would be surprising for an annuity quotation from an insurance company to be based on more generous factors than the Fund's CETV, particularly taking

into account the profit margin the insurer would have built in. The annuities Mr H used as examples are a simplification of the actual benefits Mr H would have received from the Fund.

20.26. Mr H has confirmed that the annuity quotations sought are standard from the L&G online quotation modeller. A guaranteed quotation would take into account Mr H's specific circumstances. On that basis, the Trustee considers that the L&G quotations cannot be relied upon as definitive proof of loss.

20.27. On the basis of the Fund actuary's advice, it does not believe that Mr H has suffered a financial loss. Rather, he has lost the opportunity to invest his CETV to try and obtain a possibly better long-term pension for himself and his wife than he is entitled to under the Fund. It noted that this opportunity came with risk and that he and his wife could end up with pensions on worse terms than those provided under the Fund.

## Conclusions

21. Mr H asserts that he has suffered a financial loss because of his reliance on the misinformation that he was given by WTW concerning the value of his benefits. Mr H argues that, had he been given correct information, he would have opted to transfer his benefits and not claim his pension from the Fund.
22. For a claim of negligent misstatement to succeed in this case, it is necessary for Mr H to prove that:-
  - (i) WTW provided a clear, unequivocal, incorrect representation to him.
  - (ii) WTW owed him a duty of care.
  - (iii) The duty of care shown was below a reasonable standard.
  - (iv) He reasonably relied on the incorrect information, and, in doing so, experienced a reasonably foreseeable, irreversible loss that he would not have suffered had WTW provided the correct information.
23. It is not disputed that WTW provided Mr H with incorrect information concerning the benefits he could receive if he claimed his pension from the Fund. WTW administers the Fund on behalf of the Trustee. So, it owed Mr H a clear duty of care as a beneficiary of the Fund, to provide him with correct information concerning the pension he could receive from the Fund at retirement. If WTW's provision of incorrect information fell below a reasonable standard of care, it will be responsible for any reasonably foreseeable consequences of it having provided that incorrect information.
24. WTW sent Mr H the Quotation in January 2017 and it included the Caveat. Following receipt of the Quotation, Mr H emailed WTW to query the figures, as he was concerned that they were too high. In response, WTW confirmed to Mr H that the figures in the Quotation were correct.

25. Following Mr H's query regarding the Quotation, WTW should have checked that the figures were correct before responding to him and confirming that they were. WTW's failure to do so resulted in it informing Mr H that the figures in the Quotation were correct, without exercising reasonable care.
26. As WTW was the correct entity for Mr H to have queried the figures with, I find that it was reasonable for Mr H to have relied on the incorrect information he had received from WTW.
27. Accordingly, I have considered whether, as a consequence of WTW providing incorrect information, Mr H has suffered any reasonably foreseeable and irreversible loss that he would not have suffered, had WTW provided him with correct information. It should be noted that the aim of any remedy, if a loss has been identified, would be to put Mr H in the position that he would have been in, had the incorrect information not been given. Further, the Trustee can only pay Mr H benefits he is entitled to from the Fund, in the absence of a successful claim.

### **The Transfer of Mr H's benefits from the Fund**

28. Mr H has made several arguments as to why he would have transferred and not claimed his benefits from the Fund, had he received correct information from WTW in 2017. This included completing his own calculations in relation to NPVs for different options.
29. I accept that Mr H had examined the transfer option when approaching retirement in 2017, and he attempted to undo the commencement of his pension when he was informed that a lower amount was being put into payment. I also understand that he transferred his benefits from another, smaller DB arrangement, into a Royal London PPP.
30. However, I am not persuaded, on the balance of probabilities, that Mr H would have proceeded to transfer his benefits from the Fund, had the Quotation been correct. There were significant decisions to take to complete the transfer, including: engaging an IFA; considering the advice; incurring associated costs, which would have been significant, possibly amounting to thousands of pounds<sup>8</sup>; and selecting a fund or funds for the destination of his CETV.
31. The legal requirements at the time when Mr H asserts he would have transferred his pension required transferring members to obtain financial advice. However, there was no requirement that the advice recommended the transfer should go ahead. Under section 48(1) of the Pension Schemes Act 2015 and regulation 7 of The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015, trustees were (and still are) obliged to check only that appropriate independent advice had been received in respect of certain proposed transfers. The substance of the advice was not the trustees' concern. Therefore, while Mr H would

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<sup>8</sup> Mr H had taken account of the potential IFA costs in his loss calculation included with his submissions to TPO.

have been required to procure financial advice and such advice may have influenced his decision, I acknowledge that the final decision of whether to transfer would have been Mr H's alone.

32. I accept that an IFA had recommended the transfer of Mr H's benefits from one of his other DB pension schemes. However, it does not follow that an IFA would have given the same advice concerning Mr H's benefits in the Fund. It is well known that having a DB pension is a valuable asset. In Mr H's case, he had three such pensions. When considering Mr H's entire pension portfolio, the IFA might not have advised Mr H to transfer his benefits, had he based his advice on Mr H's correct benefit entitlement from the Fund. This may have influenced Mr H's decision.
33. I note Mr H's comments concerning his preference in making his own decisions, and indeed the decision about the transfer was his to make. However, the CETV, and the pension Mr H could have received from the other DB pension scheme which he transferred, were much lower than those to which he was entitled from the Fund. So, there may have been more risk in transferring his benefits from the Fund to a PPP, than there was in transferring his benefits from the other DB pension scheme. This may have had an impact on Mr H's decision.
34. The risk associated with the transfer of Mr H's benefits from the Fund would have been augmented by transferring out more than one defined benefit entitlement. The transfer of Mr H's other DB arrangement cannot be used as a comparator for his pension from the Fund. I find that, on the balance of probabilities, the transfer would have been unlikely to have gone ahead.
35. This finding alone would mean that Mr H's claim for financial loss should not be upheld. This is because he would not have transferred, so would not have suffered a financial loss. However, even if Mr H would have transferred, had he been given correct information, it does not follow that he has suffered a financial loss which he can prove on the balance of probabilities.

## **Financial Loss**

36. I appreciate that Mr H took time and carefully completed his own calculations, comparing the benefits he would receive from the Fund with the benefits he could have received, had he opted to transfer them to an alternative pension arrangement. Based on these comparisons, he decided not to transfer. However, this is not sufficient to show that he has incurred a financial loss.
37. To establish if Mr H has incurred such a loss, there needs to be a comparison of the pension he received from the Fund with the benefits he could have received, had he transferred his Fund benefits.
38. Mr H argues that, had he transferred his benefits, he would have invested the transferred funds into his Royal London PPP, and he has specified the particular multi-asset fund he would have selected. He said that between 21 April 2017 and 21

January 2022, the Royal London PPP had achieved CAGR of 7.52% and that similar funds would have achieved similar growth over the same period.

39. I do not dispute Mr H's claim on the growth of his PPP between 21 April 2017 and 21 January 2022, in which other pension benefits of his had been invested. Also, I do not accept the Trustee's point that it would be appropriate to have reduced any investment growth claimed by 25%, to reflect the value Mr H put on receiving a certain benefit from the Fund. The 75% threshold (or 25% reduction) Mr H applied to compare his NPV calculation of his benefits with the CETV, when deciding whether to transfer, is relevant only to the question of whether he would have transferred out of the Fund in the first place, and not to the amount of loss suffered.
40. However, as I have already set out in paragraphs 28 to 34 above, in respect of his benefits from the Fund, I find that Mr H would not, on the balance of probabilities, have transferred out at all. It is unlikely an IFA would have recommended additional benefits to have been invested in a fund with an equity allocation approaching 70%<sup>9</sup> when Mr H was close to retirement. This fund is intended to be for someone who is not near to retirement, so not suitable for a short-term investment given the risk. Therefore, I find that he is not entitled to rely on the growth levels in this fund for the purposes of calculating loss.
41. Mr H's assessment of his Current Loss involves no actuarial or investment growth assumptions, just actual asset returns looking backwards, assuming he had transferred out, and annuity quotations received from the open market, which closely reflect the shape of his benefits from the Fund going forward. The Current Loss claimed is the sum remaining having deducted: the IFA costs; pension payments Mr H received from the Fund at the relevant time; and the capital sum required to provide the future annuities. I therefore understand Mr H's position that his loss calculation uses no estimates as to future returns and uses the actual cost of annuities.
42. The current loss calculation does however rely on the selection of a particular date, as this is required to ascertain the prevailing annuity rates on the open market and the invested funds available to purchase them, which fluctuate in line with market conditions. Mr H has submitted that the date of calculation should be used as the specific date for making the comparison.<sup>10</sup> However, the claimed loss could vary (as the result of the combination of varying investment performance and annuity rates), depending on the date selected for calculation, and could yield no loss at all.
43. Although Mr H provides evidence to support a loss as at 21 January 2022, it is not clear whether, assuming he had transferred his benefits from the Fund, he would in fact have de-risked and annuitised in January 2022 in this way. I expect Mr H would be satisfied with using alternative dates for the purposes of calculation, but in his

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<sup>9</sup> Royal London Governed Portfolio 4.

<sup>10</sup> Mr H submitted calculations using the date of 21 January 2022, which was when he undertook the calculation shortly before submitting it to TPO.

case, there is no compelling evidence to corroborate the use of any date in particular, which is problematic for this complaint.

44. Mr H has said that his plan was to use the funds in the Royal London PPP to purchase an increasing annuity at a future date to be decided. He had in mind a provisional target of his 65th birthday, but the actual timing could depend on annuity rates and investment performance. I accept the Trustee's point that any stock market falls may not be short lived and subsequently corrected. Mr H could not necessarily have solved any volatility problems by waiting for the right time to disinvest and purchase annuities.
45. Because of this, I find that any loss Mr H believes he has incurred is speculative.
46. There would be additional complications associated with calculating a financial loss which are not necessary to go into in detail. One example raised by the Trustee is that Mr H chose to take a full PCLS from the Fund. The Trustee has noted that the terms for commuting pension benefit on a PCLS basis would be less favourable than the corresponding value of his pension / annuity provided through a CETV.
47. Given the PCLS was a member option chosen by Mr H, he could not properly claim this loss. This is one example of an issue that may be encountered in trying to recreate the full actuarial value of the pension (represented by the CETV), by valuing the future cash flows Mr H is now receiving through his NPV methodology. The retirement options he chose may not have provided full actuarial value, although, I appreciate Mr H has attempted to replicate the Fund's assumptions as far as possible. In any event, I find that Mr H is receiving the full value of his defined benefit from the Fund.
48. Mr H asserts that he will incur a loss in the future because 80% of the pension he is in receipt of from the Fund will not receive any increases after his 65th birthday. In his view, had he transferred his benefits to a PPP his plan would have been to purchase an increasing annuity at a future date. The target date for doing so would have been his 65th birthday, but this would have been dependent on annuity rates and investment performance.
49. It is not known what annuity rates will be available to Mr H in the future, or how long after his 65th birthday Mr H will purchase an annuity and on what basis.
50. I find that any loss Mr H believes he will incur in the future is speculative.
51. Mr H has had the benefit of a monthly pension from the Fund since October 2017, and this has been subject to annual increases. He confirmed that he uses these monthly payments for everyday living expenses.
52. I do not find that Mr H has demonstrated that he has incurred a financial loss because he has taken his benefits from the Fund and not transferred them to an alternative pension arrangement.

**Non-financial injustice**

53. I find that WTW's maladministration in: (i) providing the Quotation in the first place which was incorrect; (ii) failing to check the figures on the Quotation prior to confirming to Mr H that they were correct; and (iii) its failure to inform Mr H of the correct position prior to putting his benefits into payment, has caused Mr H severe distress and inconvenience.
54. The Trustee has accepted that this situation has caused Mr H distress and inconvenience, and in recognition of this, has offered him £2,000.
55. I find this award to be appropriate in the circumstances.
56. Mr H may wish to contact the Trustee directly to accept the redress it has offered him.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
23 November 2023