

Ombudsman's Determination

Applicant	Mr M
Scheme	Judicial Pension Scheme (the Scheme)
Respondent	XPS Administration Limited (XPS)

Outcome

1. I do not uphold Mr M's complaint and no further action is required by XPS.

Complaint summary

2. Mr M has complained about the continuous delays caused by XPS when trying to transfer some of his benefits to a new pension provider. He has argued that the delay in completing the transfer resulted in a drop in his fund value of over £6,500. As a result, he would like a payment made into his new pension plan to negate the financial loss he has suffered and for XPS to cover the costs of his financial advisor's fees.

Background information, including submissions from the parties

3. Regulations 10 and 11 of The Occupational Pension Schemes (Transfer Values) Regulations 1996 (**the Regulations**) are quoted in the Appendix.
4. Mr M was a member of the Scheme and he was permitted to make additional voluntary contributions (**AVCs**), which were held in a separate fund. These AVCs were paid into the Judicial Additional Voluntary Contribution Scheme (**the AVC Scheme**). The AVC Scheme is administered by XPS and managed by the Ministry of Justice (**MOJ**). The funds for the AVC Scheme are held with Prudential.
5. XPS has an agreed service level agreement (**SLA**) with MOJ of 10 working days for responding to all transfer related queries. This is the same for both new and open queries.
6. In October 2017, Mr M contacted his appointed independent financial advisor (**IFA**) to begin the process of transferring his AVC Scheme benefits. Mr M intended to transfer his AVC Scheme benefits to a separate arrangement, which was also held with Prudential.

7. On 16 October 2017, the IFA sent XPS a letter of authority along with a request for a retirement illustration, a transfer value quotation, and the amount of tax-free lump sum available. The IFA chased for a response to the request for the information on 31 October 2017.
8. On 1 November 2017, XPS provided the IFA with its requested information. XPS responded to the request two days over its SLA. On the same day, the IFA emailed XPS as the information regarding the tax-free lump sum was missing. The IFA chased this again on 16 November 2017.
9. On 17 November 2017, XPS provided the IFA with its requested information regarding the tax-free lump sum. XPS responded three days over its SLA.
10. On 22 November 2017, the IFA made a request for the transfer discharge forms.
11. On 7 December 2017, XPS wrote to Prudential asking for the necessary transfer discharge forms so Mr M could transfer his AVC Scheme benefits to a new arrangement. The XPS request was two days over its SLA.
12. On 19 December 2017, XPS chased Prudential for a response, and sent the IFA a holding email.
13. On 29 December 2017, Prudential wrote to XPS and said that transfer discharge forms were not required for the AVC Scheme. It only needed a formal notification in writing.
14. On 2 January 2018, the IFA telephoned XPS chasing for an update.
15. On 5 January 2018, XPS sent the IFA the transfer value quotation. The unguaranteed transfer value, as at 3 January 2018, was £207,029.39. XPS said that it should take between four and eight weeks for the transfer to be completed. The IFA returned Mr M's completed section of the transfer discharge forms on 11 January 2018.
16. On 17 January 2018, Prudential sent XPS a letter with the transfer discharge forms enclosed and said the forms needed to be completed.
17. On 1 February 2018, XPS telephoned Prudential querying the transfer discharge forms it had received. Prudential told XPS to ignore these forms as these were sent in error.
18. On 15 February 2018, XPS confirmed to Prudential that the transfer should be completed. It updated the IFA on the same day. Prudential exceeded its SLA by one day.
19. On 27 February 2018, the transfer from the AVC Scheme to the receiving arrangement with Prudential completed. The final transfer value was £199,308.49.
20. On 27 February 2018, the IFA, on behalf of Mr M, raised a complaint against XPS. It said that:-

- XPS requested the transfer discharge forms from Prudential. However, Prudential told XPS that no transfer discharge forms were necessary. The IFA questioned whether XPS should have been aware of this process.
 - It appeared that XPS should have been able to complete the transfer on or around 17 January 2018. Using the information available on Prudential's website, the estimated transfer value at this date was £206,238. So, the delays had caused a financial loss.
 - As a result of the delays, XPS should pay the difference in the transfer values into Mr M's new pension fund. Also, it should make a payment for the distress and inconvenience Mr M has suffered and to cover the IFA fees Mr M had incurred of £292.50.
21. On 1 March 2018, XPS acknowledged the complaint. It said it had requested further information from Prudential and gave the option to raise a formal complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
22. On 13 March 2018, XPS responded to the complaint as follows:-
- It apologised for the few occasions it had missed the SLA of 10 working days. The reason was because of high volumes of work. Further, the process of internal AVC transfers is unusual and had to be agreed while the transfer was progressing.
 - As it received transfer discharge forms from Prudential on 17 January 2018, it would not have been possible to complete the transfer on this date.
 - The transfer value quotations are not guaranteed and fluctuate in line with current market values.
 - It did not uphold the complaint as the transfer was completed within an acceptable timeframe.
23. The IFA was dissatisfied with XPS' response and said that the unusual internal transfer process was not Mr M's fault and he should not be disadvantaged as a result of this.
24. In June 2018, it was decided that the complaint would be dealt with under stage two of the IDRP. Under stage two of the IDRP, Mr M should have received a response by October 2018. MOJ wrote to the IFA and said it would not be able to meet this timescale as it was waiting for further information from Prudential.
25. In November 2018, MOJ provided its stage two IDRP response. It said:-
- The statutory time limit for the completion of a transfer of pension funds is six months from receipt of the necessary forms.

- As a professional adviser, the IFA should have reasonably known that the transfer value was not guaranteed and would fluctuate.
- It did not uphold the complaint.

Adjudicator's Opinion

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

- Mr M requested a transfer value quotation on 22 November 2017 but did not receive this until 5 January 2018. Following receipt of the request, it took XPS 12 working days to contact Prudential for the transfer discharge forms, which the Adjudicator deemed to be the only avoidable delay caused by XPS.
- In the Adjudicator's view, although XPS missed its SLA by two days, between 22 November and 7 December 2017, it cannot be held responsible for the time it was waiting for the transfer discharge forms from Prudential.
- Mr M argued that XPS was in receipt of all the necessary forms to proceed with the transfer on or around 17 January 2018. The Adjudicator accepted that by 11 January 2018 Mr M had completed all the necessary documentation. However, a further delay occurred when XPS received Prudential's letter, dated 17 January 2018, saying that it was necessary to complete transfer discharge forms. Having previously been informed that no transfer discharge forms were required, it was understandable that XPS queried this with Prudential.
- It is reasonable to assume that the letter, dated 17 January 2018, would have taken at least two days to reach XPS. So, XPS contacting Prudential on 1 February 2018, was within its SLA of 10 working days. Once Prudential had confirmed to XPS that it could ignore the transfer discharge forms it had sent in error, XPS then took a further 11 working days to confirm to Prudential that the transfer could proceed. So, XPS' response was one working day outside of its SLA.
- Under the Regulations, XPS had six months to complete the transfer. Overall, the transfer was completed in just over three months which is not unreasonable. While the Adjudicator accepted that XPS missed its SLA on several occasions, totalling eight working days, this did not amount to maladministration.
- XPS cannot be held responsible for Prudential's processes.

27. Mr M did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr M provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr M.

Mr M's additional comments

28. The SLA of 10 working days to take action, chase for information or reply is an inadequate response time.
29. The intention of an SLA is questionable if it does not amount to maladministration when missed.

Ombudsman's decision

30. Mr M has complained that there was an unnecessary delay in the transfer process. I note the transfer was completed in just over three months and within the statutory six-month time frame. I can understand Mr M's frustration regarding the procedural issues which occurred during the transfer, but I find that there has been no breach by XPS in its required duties.
31. Mr M has questioned why SLAs are in place if there is no penalty for missing them. The XPS SLAs are an agreement between XPS and MOJ. The intention is for XPS to aim to perform certain agreed actions within a given timeframe. The SLAs are not legally binding and missing an agreed SLA by a short amount of time does not automatically constitute maladministration.
32. XPS has an agreed SLA with MOJ of 10 working days in handling new and existing transfer queries. This is a similar timeframe and practice for many pension providers and I do not find it unreasonable. While Mr M is understandably frustrated that the SLAs were not met on several occasions, I do not find that any of these individual instances constituted a considerable delay.
33. The Regulations require that a pension provider completes a transfer within six months of a valid request by the member. In many cases where it is a straightforward transfer it should be completed in a much shorter timeframe. However, the time taken for Mr M's transfer was not unreasonable and, although XPS completed some actions outside of its SLA, I do not agree that these were sufficiently significant to be regarded as maladministration.
34. I do not uphold Mr M's complaint.

Anthony Arter

Pensions Ombudsman
12 April 2021

Appendix

The Occupational Pension Schemes (Transfer Values) Regulations 1996 (SI 1996/1847)

Regulation 10

Part 3 Statements of Entitlement and Calculations of Transfer Values

“(1) Subject to paragraph (2), if the trustees of a scheme, having received an application under section 95 of the 1993 Act, fail to do what is needed to carry out what the member requires within six months of the appropriate date the member’s cash equivalent, as calculated in accordance with regulations 7 to 9, shall be increased by the amount, if any, by which that cash equivalent falls short of what it would have been if the appropriate date had been the date on which the trustees carry out what the member requires.

(2) If the trustees of a scheme, having received an application under section 95 of the 1993 Act, fail without reasonable excuse to do what is needed to carry out what the member requires within six months of the appropriate date the member’s cash equivalent, as calculated in accordance with regulations 7 to 9, shall be increased by-

(a) interest on that cash equivalent calculated on a daily basis over the period from the appropriate date to the date on which the trustees carry out what the member requires, at an annual rate of one per cent. above base rate; or, if it is greater,

(b) the amount, if any, by which that cash equivalent falls short of what it would have been if the appropriate date had been the date on which the trustees carry out what the member requires.”

Regulation 11

Part 3 Statements of Entitlement and Calculations of Transfer Values

“(1) Subject to paragraph (1A) and (1B), a member to whom paragraph (1C) applies is entitled to receive from the trustees, on request, the information mentioned in Schedule 1 in writing.

(1A) Paragraph (1) does not apply where the request is made within 12 months of the last occasion that such information was provided to the member.

(1B) information provided under paragraph (1) is to be provided by the trustees as soon as reasonably practicable, and in any event within three months after the date that the member makes the request.

(1C) This paragraph applies-

(a) to a member who is currently accruing rights to one of the categories of benefits; and

(b) to a member who is no longer accruing rights to money purchase benefits unless, in respect of those benefits, a crystallisation event under section 93(7) has occurred.”