

Ombudsman's Determination

Applicant	Mrs E
Scheme	Barclays Bank UK Retirement Fund (the Fund)
Respondents	Barclays Pension Funds Trustees Limited (the Trustee) Willis Towers Watson (WTW)

Outcome

1. I do not uphold Mrs E's complaint and no further action is required by the Trustee or WTW.

Complaint summary

2. Mrs E's complaint is that her Cash Equivalent Transfer Value (**CETV**) was recalculated and a lower value was paid to Royal London. She said that this was despite the fact that the member's portion of the transfer agreement had been returned to WTW before the expiry of the guarantee on the original CETV illustration.

Background information, including submissions from the parties

3. Mrs E is represented by her independent financial adviser (**the IFA**). A second independent financial adviser (**the second IFA**) was also involved in the transfer of Mrs E's benefits out of the Fund.
4. Mrs E was a member of the Fund with a defined benefit preserved pension entitlement. The Fund was administered by WTW and managed by the Trustee.
5. On 22 August 2018, Mrs E telephoned WTW to request a CETV illustration.
6. On 24 August 2018, WTW issued a CETV illustration to Mrs E. The CETV quoted was £423,154.16 and it was guaranteed until 24 November 2018. The covering letter stated that:

"We must be in receipt of all completed forms by 24 November 2018 to secure the guaranteed transfer value. If we receive the 'transfer agreement' or 'Confirmation of Appropriate Independent Advice' form after 24 November 2018, the transfer value will be recalculated and it may be higher or lower than the value shown on the enclosed statement. If your revised guaranteed

transfer value is higher, or within 10% of the amount shown on the statement of entitlement, we will go ahead and pay the revised transfer value.”

7. Mrs E decided she wanted to transfer her benefits in the Fund to a personal pension scheme with Royal London.
8. On 23 November 2018, the second IFA emailed WTW. He attached a copy of the completed member's portion of the transfer agreement. He said that he was looking to secure the CETV of £423,154.16 which was due to expire on the next day.
9. On 24 November 2018, the guarantee on the CETV illustration dated 24 August 2018 expired.
10. On 26 November 2018, the IFA wrote to WTW. He provided a copy of the confirmation of appropriate independent advice form together with other information required for the transfer to proceed.
11. On 28 November 2018, Royal London wrote to WTW. It provided the completed receiving scheme portion of the transfer agreement.
12. On 2 January 2019, WTW emailed Mrs E to confirm that a CETV of £409,877.29 had been paid to Royal London.
13. On 31 January 2019, the IFA emailed WTW. He raised a complaint, stating that the email of 23 November 2018 was adequate to hold the guarantee on the CETV illustration.
14. On 4 February 2019, WTW acknowledged the IFA's complaint.
15. On 25 February 2019, WTW responded to the IFA's complaint of 31 January 2019. It detailed the information that it needed before the guarantee expired in order to hold the originally quoted CETV. This was not only the intention on the part of the member to transfer, but also confirmation that the receiving scheme was willing and able to accept the transferable rights, and that the receiving scheme satisfied prescribed requirements.
16. On the same day, the IFA emailed WTW. He said that its insistence that the receiving scheme documentation be received before the guarantee expiry date was incorrect. He stated that its internal processes could not override pensions law.
17. On 10 April 2019, WTW wrote to the IFA in response to his email of 25 February 2019. It said that the legislation was very clear about the necessity, within the three-month guarantee period, for confirmation to be provided of the receiving scheme's willingness and ability to accept the payment.
18. On the same day, the IFA responded. He stated that there was a three-month period after the expiry of the guarantee that WTW had to check that suitable advice had been given and that the receiving scheme was a legitimate pension scheme.

19. On 12 April 2019, WTW emailed the IFA. It said his email of 10 April 2019 had been accepted as invoking stage one of Scheme's two stage Internal Dispute Resolution Procedure (**IDRP**).
20. On 26 June 2019, the Trustee wrote to the IFA. It offered that his complaint could be moved directly to stage two of the IDRP.
21. On 1 July 2019, the IFA accepted the Trustee's offer to pass his complaint straight to stage two of the IDRP. The matter would then be considered by the Trustee.
22. On 12 August 2019, the Trustee provided its stage two IDRP response. It did not uphold the IFA's complaint as it had not received all the necessary forms to complete the transfer within the three-month guarantee period.

Summary of Mrs E's position

23. The email of 23 November 2018 was adequate to hold the guarantee on the CETV illustration. The Pensions Regulator (**TPR**) had provided 'DB to DC transfers and conversions' guidance (**the Guidance**). The Guidance stated that, in order to hold the guarantee, the member must have confirmed that they wished to proceed with the transfer. In addition, they must have indicated the scheme to which they wished to transfer their benefits.
24. There was a further three-month period after the guarantee expiry date, during which the transfer must be completed. The Trustee could have checked that suitable financial advice had been given and that the receiving scheme was a legitimate pension scheme during this period.
25. TPR's website provided a timeline for statutory transfers over £30,000. In that timeline there was a 10-day window after the guarantee on the CETV had expired, during which the proof of independent advice could be provided. There was no reason why the receiving scheme portion of the transfer agreement could not have been provided in that window.
26. The transfer agreement returned on 23 November 2018 specified that the receiving scheme was a personal pension scheme. It included a member declaration which stated: "I have been accepted as a member of the receiving scheme" and "The administrator of the receiving scheme has agreed to accept the transfer".
27. The fact that WTW had recalculated the CETV breached pension transfer legislation. While every ceding scheme had its own internal processes, those processes cannot breach overriding pensions law.
28. The IFA had dealt with similar cases in the past. Pension administrators, including WTW, had been willing to accept that the member declaration was adequate to hold the guarantee on the CETV.

29. It took nearly a year for the Trustee to decide that the complaint raised by the IFA on behalf of Mrs E would not be upheld. This was outside normal complaint response timescale guidelines.

Summary of WTW's position

30. According to The Pension Schemes Act 1993 (**the Act**), the Trustee needed to be in receipt of confirmation that the receiving scheme was willing and able to accept the transferable rights. Also, it needed confirmation that the receiving scheme satisfied prescribed requirements. These requirements were reflected in the transfer agreement which had to be completed by both the member and Royal London.
31. In order to hold any CETV figure, the Trustee had to receive the fully completed transfer agreement before the guarantee end date. In this case it did not receive this in time.
32. The documentation required to affect the transfer was clearly stated in its letter to Mrs E dated 24 August 2018, together with the timescales within which the information needed to be provided.
33. It had received all of the outstanding documentation within one month of the guarantee end date. So, it recalculated the CETV and, as it was within 10% of the original figure, it made the CETV payment.
34. It appreciated that the IFA may previously have raised an identical complaint in connection with a pension arrangement that was administered by WTW. However, WTW's team that worked on the Fund was responsible for administering it in accordance with the Trust Deed and Rules and the processes agreed with the Trustee.
35. Its Barclays team was unable to comment on the processes undertaken by other pension arrangements, even those which were also administered by WTW.

Summary of the Trustee's position

36. The letter that WTW issued with the CETV illustration on 24 August 2018 clearly stated what documentation needed to be returned before the guarantee expired.
37. It was entitled to require all of the documentation to be returned and this was consistent with legislation. It had been involved in similar cases in the past and the CETV was recalculated.
38. There was no reason for Mrs E or the IFA to expect the original CETV to be secured by submitting only part of the transfer agreement.
39. The Guidance stated that the confirmation of appropriate independent advice must be submitted within three months from the day on which the CETV illustration was provided to the member.

40. It was satisfied that the response times to the complaint complied with its agreed service standards and the statutory requirements. The decision to offer to fast-track the complaint to the second stage of the IDRP was intended to streamline the process and potentially reduce the overall timeframe.

Adjudicator's Opinion

41. Mrs E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or WTW. The Adjudicator's findings are summarised below:-
- The Adjudicator noted that the Act covers the requirements when taking a CETV. See the Appendix for an extract from the relevant section of the Act.
 - The Adjudicator took the view that the Trustee would not have known if Mrs E's application satisfied the 'ways' referred to in subsection 95(1) of the Act unless it had the receiving scheme's details and was able to check that it met either subsection (a), (b), (c) or (d) of 95(2). The Adjudicator was of the opinion that Mrs E's application could not have been treated as complete unless all of this information was provided within the guarantee period as set out in 95(1A).
 - The Adjudicator said that, if it was sufficient for Mrs E to return only her part of the paperwork, she would have been able to take as long as she wanted to find a receiving scheme and supply the details to the Trustee, with the CETV continuing to be guaranteed. In the Adjudicator's opinion, this would not have been correct.
 - The IFA argued that TPR states that an extra 10 days is available for the provision of the confirmation that independent advice had been received. He also argued that it would not be unreasonable for the receiving scheme section of the transfer agreement to be provided within that same timescale.
 - The Adjudicator noted that, in the Guidance, TPR stated: "Members must also be informed that the authorised independent adviser's confirmation that appropriate independent advice has been obtained by the member must be in the required form and be provided to the trustees within three months of the day on which the statement of entitlement was provided to the member".
 - Furthermore, the Adjudicator noted that the Guidance also stated that: "Trustees have discretion to honour a transfer in the event member confirmation is received after the three-month period, for example, if there has been a delay in obtaining appropriate independent advice."
 - The Adjudicator was of the opinion that TPR was not suggesting the 10-day extension should be allowed in every case. In the Adjudicator's view, it was for the Trustee to decide if it should exercise its discretion to allow further time. However, it did not have to do so and, this discretion did not extend to any other information. The Adjudicator noted that the Trustee had not chosen to exercise this discretion.

- In the Adjudicator's view, in its letter of 24 August 2018, WTW was clear in relation to its requirements for the CETV that it had quoted to be paid. It stated that it must receive all completed forms by 24 November 2018 to secure the guaranteed transfer value. It went on to say that, if it received the transfer agreement or the confirmation of appropriate independent advice form after 24 November 2018, then the transfer value would be recalculated.
- The Adjudicator noted the comment made by the IFA that it took nearly a year for the Trustee to decide that the complaint would not be upheld. Before the IDRП complaint was raised, the IFA made an initial complaint on 31 January 2019. WTW responded to this complaint on 25 February 2019. Further comments were made by the IFA on 25 February 2019. WTW responded to these comments on 10 April 2019. In the view of the Adjudicator, none of these response times were excessive.
- On 10 April 2019, the IFA made further comments and it was these comments that triggered the IDRП. The Adjudicator noted that the Trustee did not provide its formal response under stage two of the IDRП until 12 August 2019. In his view, eight weeks would normally be a reasonable timescale for the provision of a response. However, he noted that the Trustee did look to shorten the IDRП by offering to move the IFA's complaint straight to stage two of the procedure. The Adjudicator noted that the IFA agreed with this approach.
- In the opinion of the Adjudicator, the time taken by the Trustee to provide its stage two IDRП response was longer than would have been expected. However, the Adjudicator took the view that there was not an excessive delay in the end-to-end procedure due to the bypassing of stage one of the IDRП.

42. Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

43. No further evidence was provided by Mrs E or the IFA.

44. I agree with the Adjudicator's Opinion.

Ombudsman's decision

45. Mrs E's complaint is about the transfer of her benefits from the Fund to her personal pension scheme with Royal London. She is unhappy that WTW recalculated the CETV. It took this action when the receiving scheme portion of the transfer agreement and the confirmation of appropriate independent advice were not provided until after the guarantee on the original CETV illustration had expired. She said that the completed member's portion of the transfer agreement, which was provided before the guarantee expired, was adequate to secure the original CETV.

46. I am satisfied that, in its letter of 24 August 2018, WTW clearly stated the forms that it required to be completed and returned by 24 November 2018 to secure the value

quoted in the CETV illustration. These were the transfer agreement and the confirmation of appropriate independent advice. It also made it clear that it would recalculate the CETV if it received any of these forms after that date.

47. Given that WTW stated its requirements for the guarantee on the CETV to be held, I have considered whether, from a legal perspective, it was permitted to take such a stance.
48. Under subsection 95(2) of the Act, confirmation was required that the trustees or managers of the receiving arrangement were able and willing to accept payment in respect of Mrs E's transferrable rights. I find that it was reasonable for WTW to assert that it must receive the receiving scheme portion of the transfer agreement by 24 November 2018. The receiving scheme was required to confirm it was willing and able to accept the payment in order for Mrs E's application to satisfy the 'ways' referred to in subsection 95(1) of the Act. The application was not valid until all the required information had been provided.
49. The IFA has stated that other providers were willing to accept some of the documentation after the guarantee expiry date. In addition, he said that WTW had been willing to do this when working on other schemes. He also said that guidance issued by TPR suggested that it was permissible for the confirmation of appropriate independent advice form to be received up to 10 days after the guarantee expiry date.
50. I do not agree that WTW was obliged to follow administration procedures used by other schemes. It was the administration procedures that it had agreed with the Trustee that were relevant to Mrs E's case. In the event that the confirmation of appropriate independent advice form was received after the three-month period, the Trustee had discretion to honour the transfer. However, the Trustee has chosen not to exercise this discretion.
51. The IFA said that it took nearly a year for the Trustee to decide that Mrs E's complaint would not be upheld. The longest delay that the Trustee was responsible for was from 10 April 2019 to 12 August 2019, while it considered its response under the IDRP. I agree with the Adjudicator that the time that the Trustee took to provide a response was longer than would be considered normal. However, the end-to-end IDRP had been shortened by all parties agreeing that the complaint could be considered directly under stage two of the IDRP.
52. In summary, I find that WTW was permitted to ask that all forms be returned by 24 November 2018, in order for the guarantee on the CETV illustration that it had provided to be held. In relation to the delay in the Trustee providing its IDRP response, I acknowledge that this took longer than it should, however, I do not agree that this delay caused Mrs E significant distress and inconvenience, sufficient to warrant an award for redress.

53. I do not uphold Mrs E's complaint.

Anthony Arter

Pensions Ombudsman
25 August 2021

Appendix

Extract from the Pension Schemes Act 1993

Chapter 1 Transfer Rights: General

“95 Ways of taking right to cash equivalent

- (1) A member of a pension scheme who has acquired a right to take a cash equivalent in accordance with this Chapter may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent in one of the ways specified below.
- (1A) In the case of a right acquired under section 94(1), the application must be made -
 - (a) within the period of 3 months beginning with the guarantee date shown in the relevant statement of entitlement, and
 - (b) if the cash equivalent relates to benefits that are not flexible benefits, by no later than the date that falls one year before the member attains normal pension age.
- (2) In the case of a member of an occupational pension scheme that is not an unfunded public service defined benefits scheme, the ways referred to in subsection (1) are -
 - (a) for acquiring transfer credits allowed under the rules of another occupational pension scheme -
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's transferrable rights, and
 - (ii) which satisfies prescribed requirements;
 - (b) for acquiring rights allowed under the rules of a personal pension scheme -
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's transferrable rights, and
 - (ii) which satisfies prescribed requirements;
 - (c) for purchasing from one or more insurers such as are mentioned in section 19(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy prescribed requirements;
 - (d) for subscribing to other pension arrangements which satisfy prescribed requirements.”