

Ombudsman's Determination

Applicant	Mr D
Scheme	Euler Trade Indemnity Pension Scheme (the Scheme)
Respondents	The Trustee of the Euler Trade Indemnity Pension Scheme (the Trustee)

Outcome

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

Complaint summary

2. Mr D's complaint is that he was not told that an actuarial review (**AR**) was imminent and that it would commence shortly after he received a cash equivalent transfer valuation (**CETV**) in April 2018.
3. Mr D said, had he been informed of the AR, he would have accepted the CETV and arranged his pension transfer rather than waiting until later in the year, by which time the AR had been completed and transfer values had fallen as a result.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. Mr D was a member of the Scheme between 8 March 1998 and 2 November 2008 and held deferred pension benefits. The Scheme is a defined benefit pension arrangement.
6. On 16 March 2018, Mr D requested a CETV, which he received on 11 April 2018 (the **First CETV**). The transfer value of £375,718 was guaranteed until 28 June 2018.
7. Mr D said he discussed the matter with his independent financial adviser (**IFA**) and decided not to "rush the process" since bond yields were stable throughout the summer of 2018. Mr D also said that he and his IFA "were confident" that a similar transfer valuation would be "achievable" later in the summer. He took no action and the guarantee period expired on 28 June 2018.

8. Mr D requested a further CETV on 1 August 2018. This second CETV was calculated on 9 August 2018, by which time the AR had been completed.
9. On 16 August 2018, the second CETV was issued and quoted a transfer value of £326,931 which was 13% lower than the first CETV. This figure was guaranteed until 8 November 2018.
10. On 4 September 2018, Mr D emailed Buck Consultants (**Buck**), the Scheme Administrators, to ask why the valuation had fallen since the first CETV.
11. On 5 September 2018, Buck replied saying its actuarial staff had prepared the following response:-
 - The main reason for the reduction in transfer values was that the approach to “deriving the discount rates” used to calculate transfer values had changed as part of the AR.
 - Discount rates were effectively the assumed future investment returns on assets payable until benefits are paid. The higher the discount rates, the less money was required to be held in the Scheme to cover future benefits payments, resulting in lower transfer values.
 - The changes adopted created a risk that older members taking transfer values, calculated on the current basis rather than the new post AR basis, could be removing assets from the Scheme above the amount held in reserve under the new proposed funding basis. The new approach provided more consistency for the membership overall but did have the effect of lowering transfer values for members who were over age 45.
 - The Trustee had also revised longevity assumptions, which had also decreased transfer values slightly.
 - The change in calculation of transfer values had not affected the first CETV as the change was made during the guarantee period for that CETV.
12. On 6 September 2021, Mr D responded by email and asked the following questions:
 - Could Buck confirm when the changes to both the discount rate and longevity assumptions were implemented?
 - Could Buck confirm why the transfer value changes, or even the fact that the Trustee had requested a review of transfer values, had not been communicated to him in the previous CETV letter dated 11 April 2018?
13. On 7 September 2018, Buck responded as follows:-
 - The changes to the transfer value basis were implemented when the new transfer value instruction was signed by the Trustee, with effect from 26 May 2018.

- The potential issue, that transfer values being paid out were greater than the reserve, and were therefore reducing the security of remaining members, was identified at the beginning of April 2018. The Trustee was informed of this concern on 12 April 2018 and the decision to proceed with the AR was made on 16 April 2018, which was after the CETV letter had been sent out to Mr D.
14. On 17 September 2018, Mr D complained to the Trustee that he had not been informed about pending or actual changes to the approach to calculating transfer values. He raised the following points:-
- Buck had told him that the potential issue with transfer values was identified at the beginning of April 2018. This was after the valuation of his CETV on 29 March 2018.
 - He believed he should have been told at the point his CETV arrived on 11 April 2018 that the transfer valuation methodology was under discussion with the Trustee.
 - Further, he should have been given a specific warning when the decision to implement the changes to the calculation methodology was adopted on 26 May 2018, since he was in possession of a guaranteed offer.
 - Had the Trustee made him aware in good time, he would have executed his transfer within the guarantee period.
 - He asked the Trustee to make good on the earlier guarantee of £375,718 and allow him three months in which to arrange a pension transfer.
 - He sought an apology from the Trustee and compensation for the time spent in dealing with the matter, and for the distress and inconvenience he had suffered.
 - He also wanted the Trustee to require Buck to improve its communication to members who were holding a guaranteed CETV when a significant change in approach was under way.
15. On 9 October 2018, the Trustee responded to the complaint and said:-
- It has a duty to ensure that CETV calculations are appropriate for all Scheme members.
 - The assumptions and approach underlying the calculation of CETVs are the responsibility of the Trustee and are subject to change at any time.
 - Due to certain strategic decisions that had recently been made, and on the advice of the Scheme Actuary, an AR was carried out between 16 April 2018 and 26 May 2018 (the **review period**), following which changes were implemented.

- There is no legislative obligation for members of pension schemes to be informed of a change in the transfer value basis. Accordingly, the Trustee decided not to provide communication about the AR.
 - The Trustee does not wish to be seen to influence member decision-making and be exposed to complaints that it interfered with members' decision-making processes by communicating such changes.
 - The Trustee considered that, in line with legislation, a three-month window was long enough for Mr D to have considered whether, or not, to accept a transfer value.
 - It was not the role of Buck to communicate any AR information, but rather the Trustee's role. Buck therefore was not to blame for the lack of communication, which was the effect of a conscious decision on the part of the Trustee, and Buck has no need to improve its communication policy.
 - It provided Mr D with details of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) if he wished to make a formal complaint.
16. On 5 November 2018, Mr D applied for formal consideration of his complaint, raising the following points:-
- He suffered a major heart attack in 2010 and had a lowered life expectancy. As a result, he wanted to take early retirement, and pass any residual pension to his children after his death.
 - He believed he had been treated unfairly due to the Trustee's failure to communicate its intention to conduct an AR and the changes in the calculation factors for CETVs.
 - The situation was causing him stress and anxiety, which was unhelpful, given his heart condition. He asked the Trustee to pay his new scheme the sum of £49,000 which was the difference between the original CETV and the amount he accepted as a transfer in October 2018.
 - He urged the Trustee to show compassion to him and to imagine his position and the implications it carried for him and his family.
17. On 21 January 2019, the Trustee issued its Stage One IDRP response saying:-
- Mr D had offered no new information that might change the response provided to him on 9 October 2018.
 - It restated the findings it had set out in its letter of 9 October 2018.
18. Mr D did not accept this outcome and applied for a Stage Two IDRP decision, making the following points:-

- Buck wrote to another deferred Scheme member on 30 May 2018 and said transfer values were temporarily suspended. Mr D felt the Trustee should also have communicated this information to him and informed him that an AR was taking place.
 - Since he was treated differently from another Scheme member, he was being discriminated against.
 - To rectify this discrimination, the Trustee should pay him the full £48,787 by which his CETV had fallen between the first and second quotes.
 - The fact that the Trustee was informed of the issue on 12 April 2018, one day after he received his CETV, meant that Buck knew there was an issue on 11 April 2018 when it sent him the CETV.
 - He should not have been given a CETV as the Trustee and Buck had prior knowledge that there was a problem with valuations from early April. This was a further example of inconsistent treatment of Scheme members.
 - He repeated his earlier points about the state of his health, the stress and anxiety the matter was causing him, and the need for the Trustee to take this into consideration.
19. On 11 November 2019, the Trustee issued its Stage Two IDR decision to Mr D saying:-
- It understood the complaints process could be stressful and thanked Mr D for his understanding and patience.
 - On Mr D's point about inconsistent treatment, it said that when the other member had requested his CETV, the transfer value basis review was already under way. However, in Mr D's case, his application for a CETV had been received prior to any such review commencing. Therefore, a letter stating that CETV was suspended pending the review was not sent to Mr D.
 - It reiterated its previous point that there was no legal obligation on the Trustee to inform members when a change in transfer value basis was being implemented. Further, that a three-month window for considering whether, or not, to accept a transfer value is long enough.
 - Regarding dates and awareness of the issue with transfer values, Mr D was sent a CETV because at the time of its calculation, there was no suspension in place as the AR was yet to commence.
 - Had Mr D indicated he wanted to proceed with the transfer within the guarantee period of the first CETV, the guaranteed sum would have been honoured, regardless of the suspension on providing new transfer quotes or the AR.

- There was always the possibility that, following the lapse of the first CETV, any future CETV would be lower.

20. The Trustee's position:-

- The Trustee undertakes periodic reviews of the transfer value basis for the Scheme.
- It is entirely for the Trustee, acting on actuarial advice, to set the appropriate transfer value basis.
- On 12 April 2018, the Scheme Actuary advised that the transfer basis for the Scheme should be reviewed.
- Buck informed members who requested a CETV during the review period that there was a suspension pending the outcome of the AR. The Trustee's practice in only informing members making new CETV requests during the review period was entirely reasonable.
- The first CETV was guaranteed for three months as required by legislation, and expired on 28 June 2018. Mr D was aware that a new CETV request had to be made after that date, should he wish subsequently to transfer out his Scheme benefits.
- There is no obligation for the Trustee to communicate a change in the transfer basis to the membership at any point during the guarantee period of an existing CETV.
- The Trustee complied with the statutory process in giving Mr D a period of certainty in which to consider whether, or not, to accept the original CETV.
- The decisions taken by the Trustee were reasonable in all the circumstances and were consistent with trustee duties and the statutory provisions governing the CETV process.

21. Mr D's position:-

- He was treated unfairly and inconsistently when compared to other members when the Trustee failed to inform him of the transfer value basis review.
- Had he known about the AR in good time, he could have transferred before the guarantee period ended.
- His poor health was the reason he wanted to transfer his pension so that he could take early retirement. The complaint process was causing him stress and anxiety for which he sought compensation.
- He believed the Trustee's unfair treatment of him merited the payment to him of the difference between the first and second CETV in compensation.

Adjudicator's Opinion

22. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-

- When Mr D received the first CETV, he made the conscious decision not to transfer his pension at that time, assuming that he could obtain similar or higher transfer values later in the year. There was nothing in the evidence to support that belief and it was simply Mr D's opinion, and that of his IFA, that the future outlook would support similar or greater returns than the first CETV had offered.
- There was no duty imposed on the Trustee by legislation to notify members of an imminent AR, or that an AR was in the process of being carried out.
- The first duty of the Trustee was to the membership as a whole to ensure that all promised and safeguarded benefits could be paid to members as they fell due. If factors required alteration to maintain this duty, the Trustee was obliged to act. If this resulted in lower transfer values then it was for the individual member to decide whether to retain their benefits in the Scheme or take a cash transfer to another arrangement.
- The Trustee had met all of the requirements of its duty to Mr D in respect of the CETV and its decision to carry out an AR without giving him warning, either prior to carrying out the AR or during the process of completing it.

23. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D 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 D which are summarised below:-

- A transaction was unfair if one party possessed salient information and did not share it with the other party. If he had known the AR was underway, he would have proceeded to transfer his pension within the guarantee period.
- At least one other member was informed that an AR was underway during his CETV's guarantee period, but members with an existing guarantee were not informed and were thus denied salient information that could have helped them make an informed decision to transfer.
- He believed the Scheme Actuary had decided that, because he was over 45, his transfer value should be reduced following the AR.
- He asked how the decision to reduce transfer values for the members over age 45 was reached. He felt this outcome was "very wrong".
- He did not believe that account had been taken of his special circumstances. His health meant his life expectancy was likely reduced. He wanted to enjoy the pension for which he had worked hard and gave up the right to guaranteed

benefits so that his family could inherit a lump sum rather than a reduced pension on his death.

- He felt no compassion had been shown and was “deeply hurt and offended” that the Trustee could have exercised discretion in his case, but had not done so.

Ombudsman’s decision

24. Mr D has complained that he was not told that an AR was being considered, nor that it was carried out during the guarantee period of his CETV. He contends that the Trustee has disadvantaged him as a result, and that he would have moved swiftly to accept the first CETV and arrange the transfer of his benefits had he been informed of the AR. He also questions why the Trustee has seen fit to reduce transfer values for older members, a change he believes to be unfair.
25. Mr D also feels that his personal situation should be taken into account and the Trustee should exercise its discretion to pay him the difference between the guaranteed values of the two CETVs he obtained in April 2018 and August 2018.
26. I understand Mr D’s disappointment, but the Trustee can only operate within the Scheme Rules. There is no discretion within the Scheme Rules to pay Mr D anything other than the guaranteed value of the CETV, provided a transfer takes place within the guarantee period.
27. Mr D has stated that, after receiving the first CETV, he made the decision to wait and see what might be obtainable later in the year, instead of accepting the CETV on offer in April 2018 and arranging his transfer accordingly. However, he made that decision in the knowledge that he had health issues, which he said was likely to reduce his life expectancy. There was no certainty that a CETV acquired later in 2018 would provide similar or greater figures than that contained in the CETV acquired in April 2018. The Trustee and the Administrator did not imply or hold out the possibility of better figures later in the year. The Trustee cannot be held responsible for Mr D’s decision to delay taking any action.
28. While Mr D’s health situation is unfortunate, the Trustee has no obligation to pay him anything more than the sum guaranteed by the second CETV. Further, it has no moral obligation to pay him a higher sum regardless of his previous loyalty to his employer, or his desire to help his family as much as possible in the future.
29. The Trustee’s primary duty is to ensure the continuing health of the Scheme as a whole. It must be maintained for the benefit of all members, both existing and future pensioners. The Trustee must take actuarial advice, and then must make decisions based upon that advice for the benefit of the membership.
30. The Scheme Actuary’s advice was that an AR should be considered, and the Trustee acted upon that advice. As a result, an AR was carried out during the guarantee period of Mr D’s first CETV. The Trustee has said it did not tell Mr D about either the possibility of an AR being carried out or that the AR was being carried out, as it had no

duty to do so, there being no legislative requirement for pension scheme trustees to share such information with members.

31. Indeed, the Trustee said it was important not to take an action that could precipitate a run of transfers, particularly by older members, as such action could result in the Scheme having insufficient resources to maintain its pension commitments to the remaining members.
32. I have considered this issue and conclude that the Trustee's decision not to inform the Scheme membership if an AR was being carried out is reasonable. The Scheme Rules give the Trustee the power to carry out an AR if it believes this is appropriate for the Scheme's financial viability, and following actuarial advice. There is nothing in the Scheme Rules that states the membership must be informed either of the possibility of an AR or that it is underway while a member is in possession of a CETV with a current guarantee period. It is also important to note that the outcome of the AR was not a foregone conclusion and could have perhaps resulted in a more favourable calculation basis.
33. Further, the fact that some members were informed of the AR is not pertinent to Mr D's situation. Those members who were informed of the AR were told they could not obtain a CETV because an AR was either imminent or underway. Mr D, on the other hand, already had a CETV, with a guarantee period. He could therefore rely on the guaranteed figure being available regardless of the outcome of the AR, provided he took action in time to effect his transfer before the guarantee period expired. Mr D chose not to do so.
34. I do not uphold Mr D's complaint.

Anthony Arter

Pensions Ombudsman

22 October 2021