

Ombudsman's Determination

Applicant	Mr T
Scheme	Wales and West Utilities Pension Scheme (the Scheme)
Respondent	The Trustee of Wales and West Utilities Pension Scheme (the Trustee)

Outcome

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

Complaint summary

2. Mr T's complaint is that his Cash Equivalent Transfer Value (**CETV**) has decreased. He does not consider that he has been treated fairly as CETVs for other Scheme members have increased.

Background information, including submissions from the parties

3. Mr T was an active member of the Scheme until he opted out on 20 June 2018.
4. In July 2017, Mr T received his annual benefit statement (**ABS**), which showed an estimated CETV of £630,000 based on his accrued pension to April 2017. The ABS said:

"As an illustration, the estimated transfer value based on your accrued pension as at 5 April 2017 is about:

£630,000

This figure is only an indicative estimate of the size of your transfer value as at 5 April 2017 and is not guaranteed. You should not make any financial decisions solely on the basis of this illustration.

In particular the actual amount will vary over time and in future the value could be substantially higher or lower than the figure above. It depends on a range of factors, including

- financial market conditions when it is calculated;

- the level of benefits you build up in the Scheme;
 - the statutory requirements that apply for the calculation at the time of transfer, and how those requirements are applied by the Trustee of the Scheme.”
5. In November 2017, Wales & West Utilities Ltd (**the Employer**) wrote to the Trade Union confirming its agreement to postpone any discussion about changes to the Scheme until 2019 (**the November 2017 Letter**). This was in relation to the defined benefit section of the Scheme.
 6. On 11 January 2018, Mr S contacted the Administrators of the Scheme (**the Administrator**) to request a CETV.
 7. On 6 February 2018, the Administrator quoted an estimated CETV amounting to £630,747 to Mr S. It warned that “This figure is only an indicative estimate of the size of your transfer value and is not guaranteed. You should not make any financial decisions solely on the basis of this illustration.”
 8. On 20 April 2018, Mr T requested an opt out form from the Administrator which was issued on 27 April 2018 following receipt of a letter of authority from Mr T’s Independent Financial Adviser (**the IFA**), received on 25 April 2018.
 9. On 11 May 2018, the Administrator issued an estimated CETV of £530,074 to Mr T. The information confirmed the figure was not guaranteed and was only an estimate.
 10. Mr T then contacted the Administrator for an explanation of why his CETV had gone down. He was advised this was due to the changes in the assumptions used to calculate the CETV in February 2018.
 11. On 30 May 2018, Mr T asked the Administrator for another opt out form which was issued on 1 June 2018
 12. On 30 June 2018, following receipt of the completed opt out form, Mr T became a deferred member and ceased to accrue further benefits, and on 13 July 2018, Mr T was issued with a leaver information pack (**the Leaver Pack**) setting out the options available to him for his pension benefits.
 13. On 31 July 2018, the Administrator issued a CETV information pack to Mr T (**the Transfer Pack**). This provided a guaranteed CETV of £551,177. This was guaranteed from 23 July 2018, for three months (**the July 2018 CETV**).
 14. On 7 August 2018, the Administrator also sent a copy of the Transfer Pack to the IFA and on 30 August 2018, received notice from the receiving pension plan (**the Receiving Scheme**) that Mr T wanted to transfer his pension benefits.
 15. All the necessary signed and completed transfer documents were received by the Administrator on 28 September 2018, who, on 23 October 2018, issued a payment of

£554,790 to the Receiving Scheme, which included Mr T's additional voluntary contributions.

16. On 20 December 2018, Mr T complained that his CETV had reduced significantly and that not all his contributions into the Scheme had been taken into account. He also complained that CETVs, provided to other members, had increased over the same period. He was concerned about the reduction in his CETV, as the Employer had promised there would be no changes to the Scheme.
17. On 6 February 2019, the Trustee replied under Stage One of the Internal Dispute Resolution Procedure (**IDRP**) and said:-
 - The CETV provided in the ABS in July 2017 was estimated.
 - The ABS warned that the CETV could not be relied on to make financial decisions as it was not guaranteed.
 - The CETVs provided in February and May 2018 were also estimated and could not be relied on.
 - Mr T was advised of the reason for the CETV reducing and still proceeded with the transfer. Consequently, any decision made by Mr T to opt out of the Scheme, was taken with the full knowledge and understanding of the drop in his estimated CETV and the reasons why this had occurred. He could, at that point, have decided to remain in the Scheme.
 - Once Mr T had opted out of the Scheme, he was then provided with a guaranteed CETV but still retained the right to retire from the Scheme rather than transfer.
 - The CETV was calculated based on assumptions of what his pension would be worth if it was provided as a single lump sum amount. The Trustee was legally obliged to review the assumptions used in CETV calculations; the new assumptions were implemented on 20 February 2018.
 - The pension contributions received by the Scheme did not affect the CETV. Mr T's CETV was calculated using his pension, which was based on the number of years he had remained in the Scheme, and his salary at the point he left the Scheme. The guaranteed CETV would have taken into account any additional pensionable service he had accrued.
 - It was part of the normal course of business that the Trustee reviewed the assumptions for CETVs and made changes to update these.
 - There would be differences in CETVs for different members. The assumptions used in the calculation of CETVs took into account various factors, such as life expectancy, which would be different for different members.

18. On 24 February 2019, Mr T appealed the Trustee's decision. He said that the reduction in his CETV, in excess of £100,000, was "totally unacceptable" and he had been treated unfairly.
19. On 7 May 2019, Mr T had a meeting with the Trustee and presented his appeal in person. He remained unhappy that his CETV had reduced.
20. On 19 June 2019, the Trustee replied under Stage Two of the IDRP and said:-
 - In February 2018, the Trustee updated its investment strategy and the assumptions used to calculate CETVs.
 - The Trustee was ultimately responsible for calculating the CETV and must follow a strict legal process. The Trustee took advice from the Scheme's actuarial advisers to make sure the assumptions used to calculate the CETV were appropriate.
 - To calculate the CETV the Trustee had to decide how much money the Scheme was required to hold on a given day to pay a pension to a member. As the Trustee could not predict future events, it had to make a number of assumptions in order to calculate CETVs.
 - The CETV calculation was highly sensitive to the circumstances of each member. For example, age, length of service, pensionable salary, and the date the CETV was requested. As each member's personal circumstances was different, this meant the assumptions used in the calculations of CETVs would result in a different outcome for each member.
 - As the assumptions were updated each month, a small difference, in the timing of a CETV calculation for two members with similar service, could have a big impact. Also, the assumptions used did not affect all members in the same way.
 - While the changes in the assumptions reduced CETVs for members close to age 60, the CETV for some of the younger members may have increased.
 - The November 2017 Letter confirmed that the Employer had agreed to postpone discussions, about potential structural changes to benefits under the defined benefit section of the Scheme, until 2019. The benefits available from the Scheme remained unchanged and existing members could continue to accrue additional pension. The Employer's agreement to postpone discussions did not mean the Trustee could not make the necessary day to day changes to ensure good governance and administration of the Scheme.
 - At the meeting with the Trustee in May 2019, Mr T was concerned there was an error in the calculation of his CETV. This had been reviewed and the calculations were correct. The Scheme Auditor had performed an independent check of the calculation and confirmed it was satisfied with the methodology and figures used.

Adjudicator's Opinion

21. Mr T'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:-

- The Adjudicator said that there were caveats contained in the accompanying notes, which explained that the CETV illustration, provided as part of Mr T's ABS in July 2017, was estimated. It was clear that the subsequent CETV illustrations provided in February and May 2018 were also estimated and were not guaranteed. Consequently, as the CETV illustrations were not guaranteed they could not be relied on when making financial decisions.
- Mr T only became entitled to a guaranteed CETV once he had successfully opted out of the Scheme. As Mr T wanted to transfer his benefits, there was a requirement for him to leave the Scheme first. When Mr T opted out at the end of June 2018, it was only then that he was provided with a guaranteed CETV of £551,177. As the required transfer paperwork was subsequently received within the three month guarantee period the guaranteed CETV figure was paid to the Receiving Scheme.
- A CETV represents the expected cost of providing the member's benefits within a scheme. The CETV is a value determined by using actuarial principles, which requires assumptions to be made about the future course of events affecting the Scheme and the member's benefits. CETVs are subject to external market conditions. So, they can fluctuate considerably depending on the date of calculation.
- The Trustee had explained that it changed the assumptions used to calculate CETVs in February 2018. When Mr T was quoted the lower CETV in May 2018, he was advised that the reason for the reduction in his CETV was due to the assumptions changing. This was before Mr T opted out of the Scheme and before he was provided with the guaranteed CETV illustration in July 2018. Consequently, he made his decision to proceed with his opt out and transfer with the full knowledge of why his CETV had reduced.
- It was the Trustee's responsibility to monitor and review the appropriateness of assumptions used to calculate CETVs. The Trustee was entitled to change the assumptions, provided this was based on actuarial advice. The change in assumptions was of particular importance as the Trustee had also changed the investment strategy for the Scheme.
- Although Mr T's CETV was lower, when compared to the estimated CETVs, this did not mean that the Trustee had done anything wrong. It also did not mean that the value of his pension from the Scheme had reduced.
- Mr T's benefits in the Scheme, which would have been payable from his normal retirement date, had remained the same. He was paid a CETV that had been

calculated in accordance with the correct calculation basis and assumptions in force at the time.

- Mr T had argued that he had been treated unfairly because other members of the Scheme had received an increase in their CETVs over the same period. A CETV is based on the expected cost of providing benefits in respect of a specific member, so it will be different for each member depending on the member's individual circumstances. This would include, but is not limited to, assumptions relating to investment returns, life expectancy, retirement date, and the amount of the pension.
- The Adjudicator considered Mr T's assertion that the November 2017 Letter meant that no changes to the defined benefit section of the Scheme would occur until 2019. The Adjudicator noted that the Scheme basis remained unchanged, and that active members continued to accrue benefits under the defined benefit section of the Scheme. The Adjudicator also noted that the review of the assumptions used to calculate CETV did not change the basis of the benefits provided under the Scheme. Had Mr T remained in the Scheme, his pension would be unaffected by the change in the CETV assumptions.

22. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T provided his further comments:-

- The CETV, quoted in the 2017 ABS, was only indicative to the extent that there may be future changes in the financial markets. However, the value of his CETV changed as a result of an amendment to the assumptions used to calculate the CETV. This had taken "money" away from him.
- He could not see how the Adjudicator could agree that it was right to change the assumptions used to calculate CETVs without notifying members. In his view, this was a "deplorable" way to conduct business.
- The change to the assumptions used to calculate CETVs targeted older members; this was also a "deplorable act" and amounted to age discrimination.

23. I note the additional points made by Mr T which do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

24. Mr T's position is that he was treated unfairly when the Trustee changed the assumptions used to calculate CETVs. He is concerned that CETVs for other Scheme members increased while his CETV reduced in value.

25. I acknowledge that Mr T was disappointed when his CETV went down from the estimated value quoted in his 2017 ABS. It is clear that the figure given in the 2017 ABS was an estimate and did not give rise to an entitlement to take the figure quoted to him. Mr T was provided with caveats in the accompanying notes that made it

sufficiently clear that he should not rely on the CETV estimate when making financial decisions. It was also made clear that the subsequent CETV illustrations, provided in February and May 2018, were also estimates and were not guaranteed.

26. The Trustee updated the assumptions used in the calculation of CETVs in February 2018, following a change to the Scheme's investment strategy. This does not amount to maladministration and is in keeping with the proper and efficient management of a pension arrangement. The Trustee has a fiduciary duty to manage the Scheme's investments and secure sufficient assets for payment of retirement benefits. To perform this duty, it must ensure that it only pays CETVs that reflect the correct member benefits within the Scheme. Payment of any CETV, above its true value, would erode the assets available to pay retirement benefits.
27. The Trustee was entitled to make changes to the underlying assumptions used to calculate CETVs following actuarial advice. It was reasonable for the Trustee to do so taking account of the changes to the Scheme's investment strategy.
28. Mr T has said that the Trustee should have told members that the assumptions were under review. I am mindful that there was no duty on the Trustee to notify members that it was reviewing the CETV assumptions as this is within the normal functions of a trustee. It is important to note that trustees of defined benefit schemes will undertake a review of the scheme's actuarial factors from time to time.
29. In the absence of any statutory duty on trustees to inform members regarding changes to assumptions used in the calculation of CETVs, the Trustee's action in this case do not amount to maladministration.
30. Mr T considers that he has been treated unfairly as his CETV reduced while CETVs for other members of the Scheme increased during the same period. On reviewing the evidence, I do not find that the Trustee has miscalculated his CETV. A CETV is a value determined by actuarial principles, which requires assumptions to be made about the future course of events affecting the Scheme and the member's benefits. As each member's benefits and circumstance vary, it follows that the value of the CETV in respect of each member will vary accordingly.
31. Mr T has argued that the November 2017 Letter meant that no change could be made to the CETV basis.
32. I find that the change to the CETV assumptions did not alter the Scheme and Mr T's pension benefits remained unchanged. Had his benefits remained in the Scheme, his pension payable on retirement would not have been impacted by the change in the CETV assumptions.
33. Mr T was entitled to a guaranteed CETV once he had opted out of the Scheme and became a deferred member. He was provided with the Leaver Pack, which set out his options, including the option to remain in the Scheme. Following advice from the IFA, Mr T transferred his pension benefits in full knowledge that his CETV was lower than the estimated figures quoted to him in 2017 and early 2018. Having reviewed the

evidence, I do not find that there are any grounds for me to direct the Trustee to augment his CETV or reverse the transfer. I am satisfied that Mr T's CETV was calculated in accordance with the correct calculation basis and assumptions in force at the time.

34. I do not uphold Mr T's complaint.

Anthony Arter

Pensions Ombudsman
27 January 2022