

Ombudsman's Determination

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

Outcome

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

Complaint summary

2. Mr S' complaint is that his Cash Equivalent Transfer Value (**CETV**) has decreased. He does not consider that he was treated fairly, as CETVs for other Scheme members increased over the same period.

Background information, including submissions from the parties

3. 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.
4. Mr S was an active member of the Scheme until he opted out at the end of March 2018.
5. In July 2017, Mr S received his Annual Benefit Statement (**ABS**), which showed an estimated CETV of £710,000 based on his accrued pension up 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:

£710,000

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 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.”

6. 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.
7. On 23 March 2018, Mr S requested an opt out form from the Administrators of the Scheme.
8. On 26 March 2018, the Administrators of the Scheme issued the opt out form to Mr S.
9. On 31 March 2018, following receipt of the completed opt out form, the Administrators of the Scheme updated their records and Mr S ceased to accrue further benefits.
10. On 10 April 2018, Mr S requested a CETV.
11. On 12 April 2018, the Administrators of the Scheme issued Mr S with the leaver information pack (**the Leaver Pack**) setting out the options available to him.
12. On 30 April 2018, the Administrators of the Scheme issued a CETV information pack to Mr S (**the Transfer Pack**). They quoted a CETV of £611,388, guaranteed from 26 April 2018 for three months (**the April 2018 CETV**).
13. On 9 May 2018, Mr S contacted the Administrators of the Scheme and asked why the CETV was lower than the value that had previously been quoted to him. Mr S was advised that this was because of the change in assumptions used to calculate CETVs.
14. On 14 June 2018, the Administrators of the Scheme received completed transfer forms from Mr S' independent financial adviser (**the IFA**) requesting to transfer Mr S' pension benefits out of the Scheme.
15. On 5 July 2018, the Administrators of the Scheme issued a payment amounting to £611,338 to Intelligent Money (**the Receiving Scheme**).
16. On 26 September 2018, the Administrators of the Scheme paid an amount of £14,187 to the Receiving Scheme. This was following an adjustment to the salary used in the calculation of Mr S' pension on leaving the Scheme.

17. On 16 October 2018, Mr S complained that the CETVs provided to his colleagues had increased over the period from 2017 to 2018, while his had decreased. He also complained that his pension contributions from July 2017 to 2018 were not reflected in the CETV. He did not consider that his CETV was correct or that he was being treated fairly. He explained he had many “sleepless nights” since transferring.
18. On 8 February 2018, the Trustee replied under Stage One of the Internal Dispute Resolution Procedure (**IDRP**). It did not uphold the complaint and said:-
- The CETV provided in the ABS in April 2017 was estimated.
 - The ABS warned that the CETV could not be relied on to make financial decisions, as it was not guaranteed.
 - 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.
 - It was only after Mr S had opted out of the Scheme on 31 March 2018, that he was provided with a guaranteed CETV quotation.
 - Mr S received advice from the IFA, based on the guaranteed CETV, before transferring. Consequently, the Trustee was not responsible for Mr S’ decision to transfer.
 - The pension contributions received by the Scheme did not affect the CETV. Mr S’ CETV was calculated using his pension, which was based on the number of years he had worked for the Employer 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 take into account various factors, such as life expectancy, which would be different for different members.
 - When Mr S opted out of the Scheme, he stopped accruing benefits while other members had remained in the Scheme. So, their pensionable salary would have increased, which would also account for the difference in the value of their CETVs.
19. On 1 March 2019, Mr S appealed the Trustee’s decision and disputed the reasons given for the reduction in the CETV. He said that he was unhappy that his CETV was lower than other members of the Scheme. He also said that his “end goal was to be

treated fairly.” Mr S explained that he did not consider he could have taken his pension from the Scheme, because he had opted out.

20. On 4 July 2019, the Trustee replied under Stage Two of the IDRP. It said:-

- The Trustee was ultimately responsible for calculating the CETV and had to 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 a CETV.
- The CETV calculation was highly sensitive to the circumstances of each member. For example, age, length of service, pensionable salary, and date the CETV was requested. As each member’s personal circumstances were different, this meant that the assumptions used in the calculations of CETVs would result in a different outcome for each member.
- The assumptions were updated each month. So, a small difference in the timing of the CETV calculation, for members with similar service, could impact the CETV significantly. 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.
- In February 2018, the Trustee updated the investment strategy adopted for the Scheme and the assumptions used to calculate CETVs.
- The changes to the CETV assumptions were needed to ensure the Trustee’s ongoing compliance with pension legislation.
- The April 2018 CETV was provided to Mr S after the change to the assumptions was implemented in February 2018. This demonstrated that the decrease in his CETV came largely as a result of the change in the assumptions.
- Mr S took advice from his IFA before transferring. He was not under any obligation to transfer and could have retained his rights within the Scheme.
- 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.

- Mr S was concerned there was an error in the calculation of his CETV. This had been reviewed and the calculation was correct. The Scheme Auditor also performed an independent check of the calculation and confirmed it was satisfied with the methodology and figures used.
- At no point was Mr S told that he was unable to draw his pension from the Scheme after he became eligible to do so.
- The Leaver Pack stated that Mr S could remain in the Scheme, and draw a pension when he retired, as an alternative to transferring out his benefits.
- The opt out form Mr S signed clearly stated that once he opted out it would not be possible to re-join the Scheme. Consequently, Mr S should have been aware of the implications of opting out and the benefit options available to him once he had done so.

Adjudicator's Opinion

21. Mr 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 it was clear from the caveats, contained in the accompanying notes, that the CETV illustration provided as part of Mr S' ABS in July 2017 was estimated. Consequently, it was not guaranteed and could not be relied on when making financial decisions.
- When Mr S opted out at the end of March 2018, it was only then that he was provided with a guaranteed CETV. As the required paperwork was 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 a member's benefits within the scheme. In the case of defined benefits arrangements, the CETV is a value determined using actuarial principles, which requires assumptions to be made about the future course of events affecting the Scheme and the member's benefits. CETVs were subject to external market conditions so 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 S was quoted the lower CETV amount in April 2018, he was advised that the reason for the reduction was a change to the assumptions used to calculate the CETV. Despite the reduction, Mr S proceeded with the transfer.
- Mr S has said that he considered he could not take his pension benefits from the Scheme and had to transfer his benefits. The Leaver Pack clearly sets out his

options, including his pension options if he remained a deferred member of the Scheme. The Leaver Pack also made clear that Mr S only had to take action if he wanted to transfer his pension benefits. In any event, this was the reason Mr S opted out of the Scheme. The Adjudicator noted that he had obtained advice from his IFA in connection with the transfer. This advice was based on the lower CETV of £611,338. The Adjudicator considered that it was more likely than not that the IFA, as part of that advice, would have fully informed him of all of his options, including remaining in the Scheme.

- It was the Trustee's responsibility to monitor and review the appropriateness of any assumptions used to calculate CETVs. The Trustee is entitled to change the assumptions used so long as any change is based on actuarial advice. The change in assumptions was of particular importance as the Trustee had also changed the investment strategy for the Scheme.
- The Adjudicator noted that the April 2018 CETV was lower, when compared to the estimated CETV in 2017. The Adjudicator also noted that this was following a review of the assumptions and did not mean that the Trustee had done anything wrong or that the value of Mr S' pension from the Scheme had reduced. Mr S' deferred benefits in the Scheme remained the same. Consequently, the CETV was paid in accordance with the correct calculation basis and assumptions in force at the time.
- Mr S maintained that he was treated unfairly by the Trustee. However, the Adjudicator did not consider that his argument could succeed in the circumstances. The CETV was based on the expected cost of providing specific member's benefits, so it would 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 S' assertion that the November 2017 Letter meant that no changes to 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 CETV assumptions, following the changes in the investment strategy of the Scheme, was part of the required ongoing duties of the Trustee. Consequently, it was outside of the scope of the November 2017 Letter. The amendments, to the assumptions used to calculate CETVs, did not change the basis of the benefits provided under the Scheme. Had Mr S remained in the Scheme, his pension would have been unaffected by the change in the CETV assumptions.

22. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments:-
- He considered that the Trustee should have notified members, who were close to attaining age 60, before changes were made to the CETV assumptions.
 - He also considered that the Trustee had made a serious administrative error by decreasing his CETV while increasing CETV for members who were younger than him, contrary to the Equality Act 2010.
 - He wanted to be treated fairly like the other members of the Scheme.
23. I note the additional comments by Mr S which do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

24. Mr 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 members increased while his CETV reduced in value.
25. I acknowledge that Mr S was disappointed when his CETV went down from the estimated value quoted in his 2017 ABS. It is clear that the CETV, in the 2017 ABS, was an estimate and did not give rise to an entitlement to take the figure that was quoted to him. Mr S was provided warnings in the accompanying notes that made it abundantly clear that he should not rely on the estimate when making financial decisions.
26. The Trustee updated the assumptions used in the calculation of CETVs in February 2018, following a change to the Scheme's investment strategy. The Trustee has a fiduciary duty to manage the Scheme's investments and secure sufficient assets for the payment of member's retirement benefits. To perform this duty, it must ensure that it only pays CETVs that reflect the member's benefits within the Scheme. Any overpayment of any CETV above their 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 S 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. Trustees of defined benefit schemes will undertake a review of the scheme's actuarial factors from time to time.
29. In the absence of a statutory duty on trustees, to inform members regarding changes to assumptions used in the calculation of CETVs, the Trustee's actions in this case do not amount to maladministration.

30. Mr S 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 circumstances will vary, it follows that the value of the CETV in respect of each member will vary accordingly.
31. Mr S has argued that the November 2017 Letter meant that no changes could be made to the CETV basis.
32. I find that the change to the CETV assumptions, did not alter the Scheme and Mr S' pension benefits from the Scheme remained unchanged. Had his benefits remained in the Scheme, his pension benefits would not have been impacted by the change in the CETV assumptions.
33. Mr S became entitled to a guaranteed CETV after he had opted out of the Scheme and become 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 S transferred his pension benefits in the full knowledge that his CETV was lower than the estimated figure quoted to him in 2017. Having reviewed the evidence, I do not find that there are any grounds for me to direct that the Trustee augment his CETV or reverse the transfer. I am satisfied that Mr S' CETV was calculated in accordance with the correct calculation basis and assumptions in force at the time.
34. I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
20 January 2022