

Ombudsman's Determination

Applicant	Mrs S
Scheme	Debenhams Retirement Scheme (the Scheme)
Respondents	Debenhams Pension Trust Ltd (the Trustee), and Mercer

Outcome

1. I do not uphold Mrs S' complaint and no further action is required by the Trustee, or Mercer.

Complaint summary

2. Mrs S' complaint against Mercer and the Trustee concerns delays in facilitating her transfer. Specifically:-
 - She made a valid application to transfer the CETV of her benefits within three months of the guarantee date. Mercer intentionally delayed the transfer, in the knowledge that the Scheme would be entering a Pension Protection Fund (**PPF**) assessment period (the **Assessment Period**). She has suffered a financial loss as a direct result.

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. In September 2018, Mrs S requested a CETV illustration.
5. In January 2019, Mrs S was quoted a CETV of £112,163 (the **Higher CETV**). This was guaranteed for three months.
6. In February 2019, Mercer took over the administration of the Scheme.
7. On 11 February 2019, Mercer received completed transfer paperwork from the receiving scheme.
8. On 26 February 2019, Mercer asked the receiving scheme to complete a personal pension declaration form so that it could proceed with the transfer.

9. On 9 April 2019, the receiving scheme returned the completed declaration form. It attached evidence to show that it was a registered pension scheme.
10. On 16 April 2019, Mercer notified Mrs S' independent financial adviser (the **IFA**) that the "transfer had been authorised and settlement letters issued".
11. On 24 April 2019, Mercer informed the receiving scheme "that the payment was still waiting for authorisation and settlement letters were due to be issued shortly".
12. When a sponsoring employer lodges a company voluntary arrangement (**CVA**) proposal in court, an Assessment Period will begin.
13. Section 138: "Payment of scheme benefits," of the Pensions Act 2004 (**PA 2004**), provides that where a scheme enters an Assessment Period:

"The benefits payable to or in respect of any member under the scheme rules during the assessment period must be reduced to the extent necessary to ensure that they do not exceed the compensation which would be payable to or in respect of the member in accordance with this Chapter..."
14. On 26 April 2019, the Scheme entered an Assessment Period after Debenhams proposed a CVA.
15. On the same day, Mercer acknowledged that it had misinformed the IFA concerning the status of the transfer. It clarified that the payment had not yet been authorised.
16. In May 2019, the Trustee notified Mrs S that the transfer could not be completed because the Scheme had entered an Assessment Period.
17. On 15 August 2019, Mercer informed Mrs S that she could take a reduced CETV.
18. On 22 August 2019, Mercer misinformed Mrs S that she could not proceed with a transfer.
19. On 24 September 2019, Mrs S complained under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). Briefly, she stated that:-
 - She requested a transfer as she had rental properties which would provide her with an income in the future. She was informed that the transfer would take 6/8 weeks. Eight months had elapsed and she still had not received her transfer payment.
 - She was told that the transfer had been completed on 16 April 2019. She was then told that Mercer was waiting for three signatories and that the transfer would be completed by the end of the following week.
 - On 8 May 2019, she was told that transfers from the Scheme had been suspended. She contacted Mercer regularly after this.
 - On 31 July 2019, she asked for her complaint to be referred to the Trustee.

- On 21 August 2019, she was informed that Mercer was waiting for one final item. The following day, she was “extremely disappointed” to be told that the transfer would not be going ahead after all.
 - She decided to transfer her pension to make her and her husband’s lives “easier.” This matter has caused her distress and has affected her physical and mental health.
 - After speaking with Mercer on 6 September 2019, she became unwell. Her GP sent her to the hospital, as he suspected that she had suffered a heart attack. The doctors asked her whether she was experiencing stress. When she explained what had happened regarding her transfer, they could not rule out that this was a contributory factor in her symptoms.
20. On 6 November 2019, the Scheme Secretary issued a response to Mrs S’ complaint and enclosed a new CETV illustration. The Scheme Secretary warned that the reduced CETV figure of £70,756 (the **Reduced CETV**) could not be “revisited or topped up” if the Scheme subsequently came out of the Assessment Period.
21. The Scheme Secretary apologised for the “failures of communications” Mrs S had experienced in connection with her transfer request. The Scheme Secretary also apologised for the distress Mrs S had suffered because of the delay in completing the transfer.
22. Briefly, the Scheme Secretary explained that:-
- A reduced CETV would be payable, in line with the PPF compensation level rules.
 - Under pension legislation, a transfer payment had to be issued within six months of the date of calculation. Consequently, the Trustee had to obtain confirmation from the PPF that the transfer could be made.
 - The PPF had confirmed that the six-month time limit did not apply in Mrs S’ case. So, the Trustee could pay the CETV, at the reduced level, in line with the PPF compensation level rules.
23. The Scheme Secretary offered Mrs S a distress and inconvenience award of £1,000 (the **Offer**).
24. **Mrs S’ position**
- She contacted Mercer on several separate occasions. Eventually, she complained to the Trustee.
 - Mercer failed to relay clear and accurate information in a timely manner.
 - She reluctantly accepted the offer of the Reduced CETV. She has suffered sleepless nights, distress, and anxiety.

25. The Trustee and Mercer's position

- The Trustee was prevented from paying Mrs S the Higher CETV, as the Scheme had entered an Assessment Period. The Trustee has no power to pay additional amounts in respect of Mrs S' transfer.
- At the time the Scheme entered the Assessment Period, the statutory six-month time limit for making a transfer payment under s99(2) of the Pension Schemes Act 1993 had not been exceeded. The time taken to process the transfer is not out of line with other pension schemes.
- The Trustee has acknowledged that Mercer made administrative errors in Mrs S' case. The Offer is appropriate and in line with the Pensions Ombudsman's guidance on awards for non-financial injustice.

26. Mrs S rejected the Offer and referred the matter to The Pensions Ombudsman (**TPO**) for an independent review.

Adjudicator's Opinion

27. Mrs S' complaint was considered by one of our Adjudicators who concluded no further action was required by the Trustee, or Mercer. The Adjudicator's findings are summarised below:-

- Under Section 138 of the PA 2004, benefits payable under the scheme rules, during the Assessment Period, must be reduced to ensure that they do not exceed the levels of PPF compensation. The Trustee would have acted contrary to the law if it had paid Mrs S the Higher CETV.
- The events that led to the Scheme entering the PPF were outside Mercer's control. However, the provision of incorrect information on the part of Mercer, concerning the status of the transfer, and its mishandling of the transfer application, have compounded matters.
- The Adjudicator considered that the Offer was in line with what I would direct for non-financial injustice in similar cases. The Adjudicator noted that the Offer was still available to Mrs S to accept.

28. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mrs S.

29. Mrs S has asked that I review her case and issue a final decision. She considers that Mercer has unfairly treated her, as there were several instances where it failed to provide information or confirm the correct position. She initially requested to transfer her pension when she reached age 55, she is now approaching age 59; this matter has had a huge impact on her life.

Ombudsman's decision

30. During an Assessment Period, trustees must not take steps to pay benefits or discharge the scheme's liabilities. There are some exceptions, for example, where a member made a valid application to transfer the CETV of their benefits before the Assessment Period commenced.
31. The Trustee was able to proceed with the transfer in this case because Mrs S made a valid application to transfer before the start of the Assessment Period. However, the CETV was payable at a reduced rate, in line with section 138 of PA 2004.
32. I empathise with Mrs S' position and acknowledge that she has suffered a loss of expectation of the Higher CETV. This is an unfortunate set of circumstances and is not of her own making.
33. I can only remedy financial loss where the loss is as a direct consequence of maladministration on the part of the respondent(s). On reviewing the evidence, I find that Mrs S' perceived loss of the Higher CETV was ultimately due to the operation of the PPF regulations rather than excessive delays in facilitating the transfer.
34. Mercer received the transfer paperwork from the receiving scheme on 11 February 2019. On 26 February 2019, Mercer requested that the scheme complete a declaration form. I note that the declaration form was returned on 9 April 2019, approximately two weeks before the Scheme entered an Assessment Period.
35. Based on the specific circumstances of the case, I do not find that the alleged delay in completing the transfer constitutes maladministration. There is no evidence that Mercer intentionally delayed the transfer. In taking this view, I have considered the fact that there was a change of administrators in February 2019, this would likely have impacted the Scheme's response times.
36. The complaint justifies a finding of maladministration to the extent that Mercer misinformed the IFA that the transfer payment had been authorised. I note that the Trustee and Mercer subsequently misinformed Mrs S that the transfer could not be completed because the Scheme had entered an Assessment Period, which likely contributed to Mrs S' distress.
37. I find that the Offer adequately remedies the injustice caused by the maladministration and is in line with what I would direct for non-financial injustice in similar cases. Mrs S should contact the Trustee if she wishes to accept the Offer.
38. I do not uphold Mrs S' complaint.

Anthony Arter

Pensions Ombudsman
22 August 2022