

## Ombudsman's Determination

Applicant	Mr E
Scheme	Trafalgar House Pension Trust ( <b>the Trust</b> )
Respondent	Trafalgar House Trustees Limited ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

2. Mr E has complained that:-
  - The Trustee did not give him adequate information or notice that, after attaining his Normal Retirement Age (**NRA**) of 65 in March 2019, he would have to pay a fee of £1,000 plus VAT of £200 for a recalculation of the cash equivalent transfer value (**CETV**) available to him from the Trust.
  - He was consequently denied an opportunity to complete the transfer of his pension rights from the Trust before his NRA in order to avoid paying this fee which he considers to be extortionate.

## Background information, including submissions from the parties

3. The Trustee delegated the day-to-day administration of the Trust to Trafalgar House Pensions Administration Ltd (**THPA**) but remained responsible for its proper running.
4. In October 2018, THPA sent a retirement quotation to Mr E which showed the estimated benefits available to him from the Trust at his NRA. In its covering letter, THPA informed Mr E that:

“You have a statutory right to elect to transfer your defined pension benefits at any time up until one year before your Normal Retirement Date (**NRD**), although the Trustee may allow you to transfer after this date.”

5. On 18 January 2019, Mr E telephoned THPA in order to request a CETV quotation. At that time, THPA did not record telephone conversations. However according to the note made of this call by THPA:-
- Mr E said that he wanted to transfer his pension rights from the Trust to an income drawdown policy before his 65<sup>th</sup> birthday in March 2019 with the assistance of his Independent Financial Adviser (IFA).
  - THPA replied that the IFA should stress in its written request for a CETV quotation that it also required the necessary discharge forms.
  - THPA explained to Mr E that if the completed discharge forms were not returned by the “guarantee date”, which was three months after the CETV calculation date, the CETV available to him would have to be recalculated.
  - A fee of £1,000 plus VAT would be payable by Mr E for the new CETV because at the time of recalculation, his NRD would have passed.
  - Mr E said that he understood what THPA had told him.
6. On 4 February 2019, THPA sent to the IFA a CETV quotation which showed that Mr E was entitled to a CETV of £41,446 that was guaranteed until 1 May 2019. It also sent a copy of this quotation to Mr E with a covering letter which said that:
- “Generally, we only offer one free Transfer Quote in any 12 month period. So if you miss the deadline to confirm that you want to transfer or you decide not to go ahead with a transfer right now, and need another Transfer Quote Pack within a year of this one, we may have to charge for it. We will confirm any costs with you before we go ahead.”
7. Mr E appointed a new IFA which sent a letter dated 14 April 2019 to THPA in order to request:
- confirmation of the charges application for a new CETV calculation; and
  - an immediate retirement quote.
- THPA received this letter on 26 April 2019.
8. On 30 April 2019, the new IFA telephoned THPA. According to the recording made by the new IFA of this call, THPA had said that it would recalculate Mr E’s CETV without charge if the completed discharge forms were returned to it after the CETV guarantee date had expired.
9. However, in its letter dated 23 May 2019, THPA informed the new IFA that: (a) it would no longer provide a free CETV calculation for Mr E since his NRD had elapsed; and (b) a charge of £1,000 plus VAT would be therefore payable by Mr E if he wanted the Trust Actuary to recalculate the CETV available to him.

10. THPA received Mr E's completed discharge forms on 10 July 2019.
11. On 26 July 2019, the new IFA telephoned THPA for an update on the transfer and was told that payment would be made in the following week.
12. THPA discovered that the new IFA had not completed and signed its form concerning the provision of financial advice. On 31 July 2019, it consequently returned this form to the new IFA. In its covering letter, THPA said that it would now arrange payment of the CETV on receipt of the completed form.
13. THPA received the completed form on 9 August 2019.
14. In its letter to Mr E, dated 28 August 2019, THPA said that:

"I regret to inform you that the transfer figure was only guaranteed to 1 May 2019 and because you have now past (sic) your NRD we can no longer calculate the revised transfer value.

...However, we can still ask the Trust Actuary to prepare a transfer out quotation for you but there is a charge of £1,000 plus VAT to be paid first."
15. According to a note made by THPA of a telephone conversation with Mr E, on 9 September 2019, Mr E said that:-
  - He did not recall being informed during the telephone call on 18 January 2019 that a fee of £1,000 plus VAT would be payable if he required a CETV calculation after attaining his NRA.
  - THPA did not notify him of this fee in writing and its CETV documentation only said that "there may be a charge".
16. In his letter dated 6 October 2019 to THPA, Mr E requested copies of any Trust literature and correspondence sent to him previously which showed explicitly that he would have to pay this fee. He also said that THPA should have confirmed in writing what it said during the call in January 2019 and its telephone note was not proof of what was discussed.
17. Mr E was dissatisfied with THPA's response to his letter of 6 October 2019.
18. THPA therefore sent him another letter on 31 October 2019 which said that:

"As previously advised, there is no statutory requirement to provide a transfer value to members who are within one year of reaching their NRD. However, in order to accommodate members as far as possible the Trustee has given their consent to providing transfer value quotations up to the NRA..."

The above consent was given by the Trustee on the understanding that there would be no additional costs incurred by the Trust in providing late transfer value calculations. The cost of referral to the Trust Actuary is currently £1,000

plus VAT. All members requesting quotations or requotes after NRD are required to settle an invoice for the same referral fee.

All transfer values have a guaranteed period of three months in which time the transfer documents must be signed and returned in order to progress the transfer payment. If the member is under the age of 65 the transfer value can be run again and if the value has increased then the payment will be made automatically. If the value has reduced then we will seek final clarification that the transfer is to proceed...

It is unfortunate that, at the time you/your IFA enquired about the progress of the transfer payment, it was not noted that you had passed your NRD. Had you been under age 65, and the necessary documents received within the given timeframes, it would have been possible to re-run the final transfer...without the payment of a fee. I apologise again that the Administrators who took your calls neglected to confirm your age and as a result provided incorrect comments.”

19. Mr E decided to pay the fee of £1,000 plus VAT to THPA so that the CETV available to him could be recalculated by the Trust Actuary.
20. The Trust Actuary determined that Mr E's CETV had increased to £47,478 on recalculation.
21. THPA sent a CETV quotation to Mr E on 13 November 2019 showing this new figure.
22. THPA paid the revised CETV into Mr E's Royal London income drawdown policy on 15 November 2019.
23. On 26 November 2019, Mr E made a complaint under the Trust's Internal Dispute Resolution Procedure (**IDRP**) which was not upheld by the Trustee.
24. In its decision letter to Mr E, dated 20 December 2019, the Trustee said that:

“...You were verbally advised that there would be a fee payable if not all documentation was received within the guarantee period once you had passed your NRA.

There have however been some administrative shortcomings...The process and requirements for the provision of transfer values and the associated fee when members are close to their NRD should have been made more consistently.

The Trustee does therefore accept that you and your IFA received inconsistent information when telephone calls were made to THPA to check on progress.

As a result the Trustee has asked THPA to consider an offer of compensation of £250 to reflect your experience.

25. Mr E accepted the compensation payment of £250 from THPA in January 2020 before referring his complaint to The Pensions Ombudsman (**TPO**), my Office.

### **Mr E's position**

26. The Trustee did not bring to his attention via THPA, either verbally or in the Trust literature sent to him, that he would have to pay a fee of £1,000 plus VAT for a CETV calculation after his NRD had elapsed.
27. He should have been sent details of this “extortionate” fee in writing at least 18 months prior to his NRD. If he had been informed of this fee in a timely manner, he would most likely have begun the transfer process during 2017 or 2018 in order to avoid having to pay it.
28. In June 2011, he was told by THPA that the cost of a CETV recalculation was £100 plus VAT. Its penal fee of £1,000 plus VAT is therefore unjustified. He has therefore been overcharged by around £800 plus VAT which should be reimbursed to him.

### **The Trustee's position**

29. THPA informed Mr E verbally on 18 January 2019 that he would have to pay a fee of £1,000 plus VAT if he required a recalculation of the CETV after his NRD had elapsed.
30. THPA confirmed this fee in writing to Mr E's new IFA and to him in its letters dated 23 May 2019 and 28 August 2019, respectively.
31. THPA provided Mr E with the information which he had requested within reasonable timescales and in accordance with statutory requirements.
32. In 2011, Mr E was under his NRA and the cost quoted for a CETV calculation of £100 plus VAT reflected the fact that THPA could carry out this calculation using its CETV software.
33. Once Mr E had passed his NRA in March 2019, the CETV calculation became more complex and required direct involvement of the Trust Actuary.
34. The marked difference between the fees quoted to Mr E in 2011 and 2019 for a CETV calculation therefore not only reflected inflationary increases but also, more importantly, the additional complexity of the CETV calculation once Mr E's NRA had passed.
35. The fee of £1,000 plus VAT is not specifically mentioned in the Trust literature because:
- the number of members requesting CETV calculations after their NRD has elapsed is very small; and
  - the fee amount is determined by the Trustee and may be subject to change.

## Adjudicator's Opinion

36. Mr E'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:-

- Mr E complained that the Trustee failed to adequately inform him in a timely manner that he would have to pay a fee of £1,000 plus VAT for a recalculation of the CETV available to him once he had passed his NRD in March 2019.
- In accordance with the Occupational and Personal Pension Schemes Act (Disclosure of Information) Regulations 2013 (**the Disclosure Regulations**), the Trustee was obliged to disclose certain documents and information to Mr E. However, most of the information only needed to be disclosed at Mr E's request. The information which Mr E said he should have received from THPA in writing at least 18 months prior to his NRD concerning the fee payable for a CETV calculation after his NRA fell into this latter category. The Trustee was therefore not obliged to have provided this information in writing unless Mr E specifically requested it. If Mr E had done so and the Trustee had failed to provide a satisfactory response, then Mr E might have had a valid case.
- In any event, according to the telephone note made by THPA of its conversation with Mr E on 18 January 2019, it informed him verbally that a fee of £1,000 plus VAT would be charged for the recalculation of the CETV once he had passed his NRD and Mr E replied that he understood this.
- Mr E said that he did not recall being told about this fee during the telephone call. It was unfortunate that THPA did not record telephone calls back in January 2019. However, its note of the call was detailed and indicated that THPA had taken some care to ensure that all the salient points discussed with Mr E were recorded accurately.
- Based on the available evidence, it was the Adjudicator's view that, on the balance of probabilities, THPA did mention this fee to Mr E during the call.
- The letter which THPA sent Mr E with the CETV quotation in February 2019 said that if he did not confirm that he wanted to transfer by 1 May 2019, he could be charged a fee for a new CETV calculation. If Mr E had been unclear about what this meant, it was open to him to seek clarification from THPA with the assistance of his IFA, if necessary.
- From the letter dated 14 April 2019 to THPA, it was evident that the new IFA was aware a fee would be payable for a new CETV calculation once the guarantee date of 1 May 2019 had expired. However, THPA mistakenly informed the new IFA during the telephone call on 30 April 2019 that this was not the case, and it

would recalculate Mr E's CETV without charge. In the Adjudicator's view, this mistake constituted clear maladministration on the part of THPA.

- However, in its letter dated 23 May 2019, THPA rectified its error by informing the new IFA that it would charge Mr E a fee of £1,000 plus VAT for a recalculation of his CETV by the Trust Actuary because he had passed his NRA.
- It was unfortunate that when the new IFA asked for an update on the progress made with the transfer in July 2019 that THPA did not make it clear that Mr E's CETV would have to be recalculated before payment and a fee was required for this calculation.
- However, having received THPA's letter dated 23 May 2019, it should not have come as a surprise to the new IFA that THPA subsequently notified Mr E on 28 August 2019 that the payment could only be made after the CETV had been recalculated by the Trust Actuary, for which a fee of £1,000 plus VAT would be payable.
- Mr E considered the fee charged for the CETV recalculation to be exorbitant. However, it was not for the Pensions Ombudsman to impose charging policies onto the Trustee and THPA. They were entitled to exercise their commercial judgment when setting their fees for the Trust.
- While the Adjudicator did not consider that Mr E has suffered any actual financial loss, as THPA corrected its maladministration, it was clear that he suffered some distress and inconvenience. The Adjudicator noted that the Trustee, through THPA, offered Mr E £250 in recognition of this, which Mr E accepted. In the Adjudicator's view, this payment was equitable. The Pensions Ombudsman's awards for non-financial injustice start at £500 for significant distress and inconvenience. In the Adjudicator's opinion, the degree of non-financial injustice which Mr E has suffered was not sufficient to warrant the minimum award.

37. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome.

38. Mr E says that:

"I agree I did not suffer any financial loss in respect of the CETV. However I did in respect of the CETV recalculation fee. THPA told my Financial Advisor there would be no charge and I was not notified what the charges would be in writing prior to my 65th Birthday...

...I was very distressed and inconvenienced by the lack of correct information coming from THPA in a timely manner. The amount they stated of £1,000 + VAT created a lot of problems. I had to obtain this amount of money or accept an annuity from THPA. I did not want the annuity. My size of pension fund was

very small in comparison to many funds at 65 years of age. The amount of monthly pension would have been very little use to me. It felt as though I was getting blackmailed into accepting the annuity by them raising the level of the recalculation fee...THPA has stated they do not normally get requests for a CETV calculation hence I believe they used the figure to deter or prevent me from moving my fund. These actions from THPA created a very significant amount of stress and inconvenience to me at the time..."

39. I note the additional points raised by Mr E, but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

40. Mr E says that he has suffered an actual financial loss because he had to pay a fee of £1,000 plus VAT to THPA so that the CETV available to him could be recalculated by the Trust Actuary.
41. For essentially the reasons given by the Adjudicator in his Opinion, I find that THPA was under no obligation to inform Mr E in writing prior to his NRA of 65 that a fee of £1,000 plus VAT would be charged for a CETV calculation after his NRD.
42. Furthermore, I find that, on the balance of probabilities, that THPA informed him verbally during the telephone conversation on 18 January 2019 of this calculation fee.
43. THPA also sent Mr E a letter in February 2019 which said that if he did not confirm by 1 May 2019 that he wanted to transfer, he could be charged a fee for a new CETV calculation.
44. If Mr E had been unclear about what this meant, it had been open to him to seek clarification from THPA.
45. If Mr E had done this, there was ample time remaining for him to have completed the transfer before the CETV guarantee date of 1 May 2019 expired.
46. Mr E decided, however, to change his IFA while the transfer was ongoing which lengthened the timescale for its completion. He did this despite knowing that a fee would be payable for a revised CETV calculation if he had not confirmed to the Trustee that he wished to transfer by 1 May 2019.
47. Mr E also had the alternative of a pension provided under the Trust but he decided that a transfer remained the better option even taking into account the fee. His expectation must therefore be that in the end he will be better off.
48. There is no dispute that THPA mistakenly informed the new IFA during the telephone call on 30 April 2019 that it would recalculate Mr E's CETV without charge. This mistake clearly constituted maladministration on its part. THPA rectified its error though by informing the new IFA in its letter dated 23 May 2019 that it would charge Mr E a fee of £1,000 plus VAT for a recalculation of his CETV.



49. The Trustee and THPA are entitled to exercise commercial judgment when setting their fees for the Trust and may therefore pass on the cost of the Trust Actuary to recalculate Mr E's CETV to him.
50. As I do not consider that the Trustee was responsible for Mr E's failure to complete the transfer before a CETV recalculation was required after his NRD, the fee of £1,000 plus VAT, which the Trustee has applied, is therefore lawful.
51. When deciding whether to direct an award for non-financial injustice, I assess each case on its facts and merits. Having carefully considered the submissions and evidence, I find that the degree of non-financial injustice which Mr E has suffered does not merit the minimum payment of £500 which I could award under such circumstances.
52. Therefore, I do not uphold Mr E's complaint.

**Anthony Arter**

Pensions Ombudsman  
10 March 2022