

## Ombudsman's Determination

Applicant	Mr N
Scheme	The Weir Group Pension and Retirement Savings Scheme ( <b>the Scheme</b> )
Respondents	The Trustee of the Weir Group Pension and Retirement Savings Scheme ( <b>the Trustee</b> )  Capita

## Outcome

1. Mr N's complaint against the Trustee and Capita is partly upheld. To put matters right, for the part that is upheld, Capita and the Trustee shall pay Mr N £2,000, that is £1,000 each, in recognition of the severe distress and inconvenience which he has suffered.

## Complaint summary

2. Mr N has complained that:-
  - In 2019 Capita, the current administrator of the Scheme, failed to provide him with details of the cash equivalent transfer value (**CETV**) and early retirement benefits available to him in a timely manner.
  - Capita provided him with numerous CETV and early retirement quotations over the years showing incorrect information about the benefits available to him, upon which he relied to his financial detriment by leaving employment with the Weir Group in May 2018.
  - He has suffered considerable distress and inconvenience dealing with this matter.

## Background information, including submissions from the parties

3. Mr N became a deferred member of the Scheme on 30 June 2015 when it was closed to future accrual of benefits. His Normal Retirement Date (**NRD**) in the Scheme is his 65<sup>th</sup> birthday in October 2022.

4. The deferred pension available to Mr N from his pensionable service accrued directly in the Scheme, calculated at his date of leaving (**DOL**) 30 June 2015, was £10,726.43 per annum.
5. Mr N also transferred pension rights from three of his former pension arrangements into the Scheme, details of which are summarised in the table below.

	<b>Transfer-In 1</b>	<b>Transfer-In 2</b>	<b>Transfer-In 3</b>
	Reinstatement of Mather & Platt deferred pension from Scottish Amicable policy 669RU656	From Ingersoll Dresser Pumps (UK) Ltd Pension Scheme	From Prudential policy number 50128238/50298498
Date on which the transfer value ( <b>TV</b> ) was paid into the Scheme	13 September 2001	20 April 2001	4 July 2002
TV amount	£20,117	£10,776	£11,597
Pre 88 Guaranteed Minimum Pension ( <b>GMP</b> ) calculated as at the date on which TV was paid into the Scheme.	£1,536.60 per annum	£0	£15.08 per annum
Post 88 GMP calculated as at the date on which TV was paid into the Scheme.	£0	£307.32 per annum	£216.84 per annum
Excess pension calculated as at the date on which TV was paid into the Scheme.	£880.51 per annum	£1,311.62 per annum	£1,840.87 per annum
Total pension as at the date on which TV was paid into the Scheme.	£2,417.11 per annum	£1,618.94 per annum	£2,072.79 per annum
GMP Revaluation Rate applicable during deferment.	Fixed rate of 8.5% per annum	Section 148 orders to DOL the Scheme, then at a fixed rate	Section 148 orders to GMP Age 65

		of 4.75% per annum thereafter	
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The information shown in the above table was used by Mercer, the Scheme actuary, in November 2019 to calculate Mr N's CETV and (early) retirement benefits. It included some amendments made by Mercer to the data which had previously been used in the retirement illustrations and CETV quotations issued by Capita to Mr N.

6. Mercer says that\*:-

- Its transferred in GMP figures for Mr N and associated revaluation rates were derived from Mr N's GMP details which Capita had obtained from HMRC's online GMP calculator.
- Mr N's GMP figure for Transfer-In 1 at NRD in Capita's records was around £10,500 per annum higher than the one shown in HMRC's records.
- It and the Trustee therefore decided to use HMRC's GMP figure for Transfer-In 1 henceforth to calculate Mr N's pension rights from the Scheme. It was the most prudent option because they could not justify the overstated GMP figure at NRD, shown in Capita's records for Mr N compared to the HMRC ones, as correct at a life event such as retirement or death.
- HMRC data showed a GMP associated with Transfer-In 1 at DOL the Mather & Platt scheme in April 1987, of £490.36 per annum, which revalued at a fixed rate of 8.5% per annum to Mr N's NRD, his 65<sup>th</sup> birthday. The revalued GMP at NRD was £7,854.60 per annum.
- Capita's records showed the same GMP at DOL the Mather & Platt scheme for Transfer-In 1 but the revalued figure at NRD was significantly higher because: (a) an incorrect revaluation rate of 6.25% per annum had been used to revalue the GMP up to the date it was transferred into the Scheme on 13 September 2001; and (b) an incorrect number of 34 fixed rate revaluations at 8.5% per annum had been applied to increase the GMP from 13 September 2001 to NRD. The correct number of revaluations was 20, 34 was the number of revaluations from the date he became a deferred member of the Mather & Platt scheme to NRD.
- This was the only material change made to the data held by Capita for Mr N.
- It adjusted the excess over GMP pension figures to reflect the difference in value between the transferred in GMP figures held by Capita and HMRC.

\*This information was supplied by Mercer in October 2021 after Mr N sought an explanation in his response to the Adjudicator's Opinion on how the GMP available to

him at NRD from Transfer-In 1 had been mistakenly overstated by approximately £10,500 per annum.

7. Mr N left employment with the Weir Group in May 2018.
8. Details of the estimated pension and tax-free lump sum figures shown on the retirement quotations which Mr N received from Capita prior to his decision to leave the Weir Group can be found in the table below.

Quotation Issue Date	Proposed Retirement Date	Annual Pension (£)	Pension Commencement Lump Sum (£)	Reduced Annual Pension (£)
5/11/2015	10/2015	£22,827.56	£109,315.08	£16,397.26
7/7/2017	10/2017	£26,943.66	£127,506.48	£19,125.96
7/8/2017	10/2022	£38,942.71	£177,616.15	£26,621.41

9. The covering letters sent with these quotations said that:

“Your estimated retirement options in relation to your benefits under the rules of the Scheme are set out in the enclosed **Estimate of Retirement Benefits**.

The decision to retire, and if so, on which option to take should be considered carefully having read the additional information which has been included with this letter, in particular the **Benefit Notes**...

If you decide to apply to proceed with your proposed retirement, please contact Capita. Capita will then proceed to issue a retirement application pack to you.”

10. The Benefit Notes included the following proviso:

**Legal Information**

All entitlements to benefits are subject to the Trust Deed and Rules governing the Scheme and also the requirements of current and future legislation.

The benefits provided by the Scheme are subject to overriding tax and pensions legislation.”

11. Mr N also received a CETV quotation from Capita in November 2017 which showed that:-

- His total deferred pension at DOL, 30 June 2015, was £28,854.22 per annum which included Pre 88 GMP and Post 88 GMP of £10,395.84 and £1,308.32 per annum, respectively.

- Fixed rate revaluation would be applied to the GMP during deferment.
- The total CETV available to him of £554,245.96 was guaranteed until 31 January 2018.

According to Capita, the CETV calculation had been verified by the Scheme actuary.

12. Mr N provided Age Partnership, his former Independent Financial Adviser (**IFA**), with copies of the erroneous early retirement and CETV quotations which he received in July and November 2017 so that it could compare the benefits available to him in the Scheme with those from an annuity on the open market.
13. In its report titled “Your Pension – Income Options Report”, Age Partnership supplied Mr N with information of the pension income options available to him from a pension pot of £600,000. Under the section “About You”, the report said:

“During our conversation, you confirmed a number of things which are important to you:

  - You plan to fully retire on or around 02/04/2018.
  - You wished to take an income from your pension fund. You indicated your preference to take a guaranteed income for life from your pension plan...
  - You wish to discuss your pension income options further with a regulated financial advisor.”
14. After carrying out appropriate calculations based on the information which Mr N had supplied, Age Partnership advised him in December 2017 that:-
  - It would take only five years for the cumulative total value of his benefits in the Scheme to become greater than those available with the annuity on the basis of: (a) 25% tax free cash being taken, (b) a 50% spouse’s pension, (c) income being paid monthly in arrears with no escalation and (d) a 20 year guarantee period.
  - The benefits available in the Scheme were very valuable and could not be improved upon on the open market.
  - He should consider preserving the deferred pension for as long as he could and initially draw income from the Weir Group’s money purchase Legal & General pension scheme which he joined following the closure of the Scheme.
15. On 11 October 2018, Capita sent Mr N another “Estimate of Retirement Benefits”, as requested. This quotation showed that Mr N was entitled to the following estimated benefits from the Scheme if he retired early in October 2018:
  - a full pension of £28,431.41 per annum; or

- a maximum tax-free lump sum of £133,696.32 plus a residual pension of £20,054.45 per annum.

This quotation also included the disclaimer as shown in paragraph 10 above.

16. On 22 October 2018, Capita sent Mr N another quotation which showed that he was entitled to the following estimated benefits from the Scheme if he retired on his NRD, in October 2022:

- a full pension of £38,472.81 per annum; or
- a maximum tax-free lump sum of £175,472.96 plus a residual pension of £26,320.93 per annum.

This quotation included the disclaimer as shown in paragraph 10 above and the covering e-mail said that “all figures are estimates only and are in no way guaranteed”.

17. In April 2019, Mr N's new IFA asked Capita to provide it with details of the current CETV and the early retirement benefits available to Mr N from the Scheme assuming he decided to retire in October 2019.
18. The Scheme is a contracted out final salary scheme. The ability to contract out of the State Second Pension (or State Earnings Related Pension Scheme before 6 April 2002) on a salary related basis was abolished from April 2016 following the introduction of the new State Pension. Because of the abolition of contracting out on a salary related basis, HM Revenue and Customs (**HMRC**) developed a service for the reconciliation of membership and GMP data held by schemes.
19. Capita had difficulties reconciling Mr N's GMP in the Scheme because of the complex nature of the transferred-in GMPs and the problems it encountered obtaining further information from HMRC.
20. Between April and August 2019, the IFA sought regular updates on its request from Capita. Capita replied that it was unable to provide the requested information because it had not yet completed the GMP reconciliation for Mr N.
21. On 15 August 2019, Mr N complained to Capita about the poor service which it had provided to him and his IFA when dealing with his request and subsequent enquiries.
22. By 1 October 2019, Mr N had still not received a response to his complaint from Capita despite having sent it several reminders. He consequently referred the matter to the Trustee on 8 October 2019 and informed the Trustee that he hoped to take his pension benefits from the Scheme at age 62.
23. On 11 October 2019 the Trustee confirmed that Mr N's complaint would be dealt with under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).

24. On 29 November 2019 Capita sent the requested retirement quotations to Mr N and his IFA. Details of the pension and tax-free lump sum figures shown on these quotations can be found in the table below.

<b>Proposed Retirement Date</b>	<b>Annual Pension (£)</b>	<b>Pension Commencement Lump Sum (£)</b>	<b>Reduced Annual Pension (£)</b>
11/2019	£22,240.31	£106,971.15	£16,045.67
10/2020	£23,665.39	£113,176.46	£16,976.47
10/2021	£25,540.96	£121,210.11	£18,181.52
10/2022	£27,582.03	£129,797.81	£19,469.67

25. These quotations all included the following disclaimer:

“Please also note that these figures are for illustration purposes only and are not guaranteed in any way”. [original emphasis]

26. Mr N also received a CETV quotation dated 29 November 2019 which showed that:-

- His total deferred pension at DOL was £21,657.72 per annum which included Pre 88 GMP and Post 88 GMP of £4,459.03 and £764.41 per annum, respectively.
- Different revaluation rates would be applied to the three transferred-in GMPs included in the pension during deferment.
- The total CETV available to him of £532,472 was guaranteed until 28 February 2020.

27. In its Stage One IDRPs decision letter dated 12 December 2019, the Trustee informed Mr N that:

“Upon receiving your complaint...my priority was to take action to enable the quotations to be issued to you as soon as possible. Given that Capita had been unable to reconcile your GMP and were unable to obtain further information from HMRC, I referred the calculations to the Scheme Actuary. Due to the complexity of the benefits...the Actuary took longer than anticipated to carry out the calculations. It was necessary to search through historic files and examine historic data, to be absolutely sure that the calculations would be carried out correctly...I understand that you are disappointed that the quotations show lower benefit levels than quotations you have received in the past. During the calculation process, the Actuary discovered that errors had been made in the calculation of transferred-in benefits...at the time the transfers were received, and were made by Weir’s in-

house pensions administration team, prior to the administration service being passed to an external provider. Once discovered, these errors had to be rectified, and the resulting quotation calculations arrived at lower figures than had previously been quoted. Whilst I fully sympathise that the level of benefits quoted has not met with your expectation, I regret that the previous quotations cannot be honoured. The Trustee is bound by law to pay benefits to members in accordance with the Scheme's Trust Deed and Rules (**the Scheme Rules**), and to treat all members fairly...

Capita fully acknowledges that the service you received is unacceptable and offers you their sincere apologies for the delays that you encountered. They accept that they should have handled your enquiries better. Your feedback has been recorded to ensure that steps are taken to improve the service they provide.

In recognition of the failings in the service provided, and the resulting inconvenience and stress you have experienced, Capita is offering you a goodwill payment of £750."

28. Mr N was dissatisfied with this reply. He said that:-

- He received numerous incorrect benefit quotations over the years, including several from Capita since 2015 on behalf of the Trustee, upon which he had relied to his considerable financial detriment.
- He decided to leave the Weir Group in May 2018 because he thought that he could afford to do so based on the incorrectly overstated figures supplied by Capita. He would have continued working for the Weir Group if he had been provided with the correct figures.
- He accepted a part time job at a school in 2018 so that he could "transition into a much less stressful life choice" and start taking his retirement benefits in the Scheme before his NRD.
- He has suffered considerable distress and inconvenience because of the mistakes made by Capita.
- The Trustee and Capita should disclose all the information which they hold about his benefits in the Scheme so that he and his IFA can check whether the figures calculated in November 2019 by the Scheme Actuary are correct.

29. The Trustee apologised to Mr N in its Stage Two IDRPs decision letter dated 22 April 2020, for: (a) the delay in providing him with the information requested by his IFA in April 2019; (b) the incorrect CETV and benefit quotations sent to him over the years; and (c) the distress and inconvenience these mistakes would have caused him.

30. The Trustee also said that:-



- There was no evidence, however, to show that: (a) Mr N would have remained in his employment with the Weir Group if he had received the correct figures; and (b) that he had suffered unavoidable financial loss by relying on the incorrect quotations.
- The retirement quotations issued to Mr N clearly stated that: (a) the figures shown were estimates only and not guaranteed in any way; and (b) his retirement benefits would be calculated and paid in accordance with the Scheme Rules.
- The correct CETV and early retirement figures supplied in November 2019 superseded the wrong figures previously supplied despite Mr N having said that he had relied on them in his financial planning for retirement.
- It cannot provide Mr N with details of how the Scheme Actuary had calculated the CETV provided in November 2019.
- It would like to offer him an improved goodwill award of £1,000 in recognition of the obvious distress and inconvenience which he has experienced dealing with this matter.

31. Mr N declined the improved award and referred his complaint to the Pensions Ombudsman.

### **Mr N's position**

32. Prior to his decision to leave the Weir Group in 2018, he had already been carefully planning for his retirement for many years. He had met with several IFAs who carried out full reviews of his existing pension and investment arrangements. He had provided them with copies of the erroneous quotations which he had obtained from Capita for this purpose.
33. He has provided evidence demonstrating a clear acceleration in his plans to leave the Weir Group and accept a new part-time role on a reduced salary after receiving the incorrect CETV quotation in November 2017.
34. This decision would have been “completely irrational and ill thought out” if it had solely been based on a motivation to transition to a more relaxing lifestyle. It was influenced by his increasing confidence in his financial position based on the numerous incorrect benefit quotations which he had received over the years.
35. He says that:
- “Any document can be disclaimed to a certain degree, but the burden on the company to supply accurate information remains, especially in the case of sensitive financial information which can influence a particularly important life changing decision.

...each forecast issued was an opportunity for someone to review the calculations and advise of irregularities, the fact that no such notifications were received only served to increase my level of confidence in the information as supplied.

...I have demonstrated that my financial planning was made in good faith, based on consistent requests for information which I trusted to be fair and accurate, concluding with the 2017 CETV.”

36. The reinstatement of the pension benefits available to him from the Mather & Platt Scheme into the Scheme (Transfer-In 1) was not carried out correctly. Only part of the redress payment of £7,964.14 calculated as at 1 February 2001 which was available to augment his Scottish Amicable personal pension policy was used to reinstate his benefits in the Scheme. (The Trustee strongly refutes this allegation see paragraphs 39 and 40 below).
37. The goodwill award for £1,000 does not reflect the severity of the distress and inconvenience which he has experienced. He declined the award because it was subject to a waiver of his rights to take any subsequent advisory or legal action.

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

38. The Scheme Actuary discovered that mistakes had previously been made in the calculation of the benefits available to Mr N from his first transfer of pension rights into the Scheme (Transfer-In 1). This resulted in the overstatement of the pre-88 GMP available at NRD by approximately £10,500 per annum which was reflected in all the quotations issued to Mr N prior to November 2019.
39. The benefits available to Mr N from the Mather & Platt scheme were fully reinstated in the Scheme correctly to leave him in the same position as if the transfer had never taken place. It informed Mr N, in its letter dated 18 February 2002, that on receipt of the TV for £20,117, it had reinstated his Mather & Platt deferred pension as at DOL, 16 April 1987, of £1,270.93 per annum, including a GMP of £490.36 in the Scheme. Effectively, Mr N is no worse off after these benefits were fully reinstated.
40. The alternative offer of an augmentation payment of £7,964.14 into Mr N's Scottish Amicable policy was available only if he had elected not to choose the reinstatement option. This payment was subject to recalculation if Mr N had not accepted the offer within five weeks unless he had asked for an extension. It was not available to provide him with additional benefits in the Scheme above what he was entitled to if he had not transferred his pension rights from the Mather & Platt scheme to this personal pension policy.
41. The figures shown on the retirement quotations were estimates and did not confer on Mr N a legal entitlement to receive the amounts quoted. Furthermore, these quotations included a disclaimer stating that all benefit entitlements would be subject to the Scheme Rules and legislation. It can only pay Mr N the benefits to which he is legally entitled under the Scheme Rules.

42. Mr N has said that he decided to retire early and take on a part time role so that he could lead a less stressful life and receive his pension before attaining NRD. This suggested that he had lifestyle reasons for leaving the Weir Group in May 2018 which were unconnected with the amount of benefit available to him from the Scheme.
43. If Mr N had based his decision to leave employment in May 2018 on the erroneous benefit quotations, it is reasonable to expect that he would either have taken his early retirement benefits or transferred his pension rights elsewhere around that time.
44. Mr N did not do this after receiving the early retirement quotation in July 2017 showing the estimated benefits available to him if he retired on 17 October 2017 or the CETV quotation which was sent to him in November 2017.
45. It is therefore unclear whether Mr N would have remained in his employment after May 2018 even if he had been provided with the correct figures on the early retirement and CETV quotations issued to him before this date.
46. It is satisfied that the early retirement and CETV figures sent to Mr N in November 2019 have been calculated correctly by the Scheme Actuary in accordance with the Scheme Rules and pensions law.
47. Mr N has received all the available retained data about his membership of the Scheme from it, Capita, and Aon, (the former Scheme administrator) in response to his Subject Access Requests (**SARs**). It refutes his continued allegations that they have not fully complied with his requests.

## **Adjudicator's Opinion**

48. Mr N's complaint was considered by one of our Adjudicators who concluded that there had been maladministration on the part of the Trustee and Capita. The Adjudicator's findings are summarised below.
49. A complaint of negligent misstatement must be based upon an inaccurate statement, usually called a 'representation'. That statement is usually made by spoken or written words, but it can also be made by conduct. The representation must be a statement of past or present fact or, in some circumstances, of the law. It must be clear and unequivocal.
50. Part of Mr N's complaint was essentially that Capita provided him with several CETV and early retirement quotations over the years showing incorrect information about the benefits available to him upon which he relied to his financial detriment by leaving employment with the Weir Group in May 2018.
51. As these quotations were statements about Mr N's pension entitlement they were representations made by Capita on behalf of the Trustee.

52. In the Adjudicator's opinion, the retirement quotations were not, however, clear and unequivocal representations because they included a disclaimer which stated that:-
- (i) the benefits quoted were estimates only;
  - (ii) Capita would send him a retirement application pack showing the actual benefits payable if he informed it that he wished to proceed with his retirement; and
  - (iii) his benefits would be strictly limited to his entitlement as provided in the Scheme Rules.
53. If Mr N decided to enter any financial commitment based on the figures shown on these retirement quotations, it was quite apparent that he would do so at his own risk.
54. The CETV quotations sent to Mr N by Capita set out the deferred pension to which he was entitled at his DOL the Scheme in addition to providing him with a CETV. A CETV is the value of the benefits accrued by a member of a pension scheme which may be required to be paid as a transfer payment to another registered pension scheme. The purpose of a CETV quotation is not therefore to provide details of Mr N's (early) retirement benefits in the way that a retirement quotation would.
55. Mr N had argued that:
- (i) he would not have left the employment of the Weir Group in May 2018 if he had not received the incorrect quotations. The Trustee and Capita could be expected to have realised that he was likely to take a decision based, even in part, on the information it provided;
  - (ii) it was clear from the evidence that he had been planning his retirement for many years before his decision to leave the Weir Group in May 2018. He had met with several IFAs who carried out full reviews of his existing pension and investment arrangements using the quotations which he had obtained from Capita for this purpose;
  - (iii) even where figures were expressed as "estimates", he should therefore be able to rely on them as not being wildly inaccurate so that he may use them in his financial planning, albeit at his own risk; and
  - (iv) if the IFAs had been provided with the correct figures, the financial advice which they gave him about whether it would be in his best interests to take early retirement benefits or transfer his pension rights could perhaps have been different. In turn, he might have acted differently based on their recommendations.
56. The overstated benefit figures shown on the quotations sent to Mr N were caused by a mistake made by the in-house administrator in its calculation of the Pre 88 GMP

which was included in the deferred pension available to him from the first transfer of pension rights into the Scheme (Transfer-In 1) back in 2001.

57. Unfortunately, this error was only discovered belatedly by the Scheme Actuary in November 2019 when asked to calculate the (early) retirement benefits and CETV available to Mr N.
58. The fundamental duty of trustees is to give effect to the provisions of the trust deed, failure to do so is in breach of this trust. Trustees' duties are many and include: (a) paying out the correct benefits at the right time; and (b) keeping accurate records of members and their dependants.
59. In practice, trustees can delegate many of these duties such as the day-to-day responsibility of administering a pension scheme to a third-party administrator or an in-house administration team. The ultimate responsibility for ensuring that the duties are carried out, nevertheless, remains with the trustees.
60. The Trustee owed a duty of care to ensure the accuracy of any information provided to Mr N concerning the benefits available to him from the Scheme. Regrettably, it failed to do this until November 2019. The erroneous statements were false representations and not something that could have been made by somebody who was exercising reasonable care.
61. It was therefore the Adjudicator's view that there had been negligent misstatement by the Trustee only, because Capita was not responsible for the original error.
62. Although Mr N received incorrect details of the benefits available to him from the Scheme, it did not, however, confer on him a right to these benefits which were quoted by mistake. If he had acted to his financial detriment based on the reasonable belief that the figures were correct, then he may be compensated for the harm.
63. The Adjudicator considered the extent to which Mr N would likely have acted differently had he known the correct figures at the point when he made his financial decision to leave the Weir Group, without using the benefit of hindsight. It was always difficult for a person to prove what they would have done differently had they known the true position. The Adjudicator had seen no clear evidence that Mr N would have acted differently if he had received the correct benefit figures.
64. The Adjudicator also had some doubts as to the reasonableness of Mr N relying on the November 2017 CETV quotation, in his decision to leave the Weir Group. The CETV was guaranteed for three months only and during this time, Mr N decided not to take up the option to transfer. Mr N was not entitled to the expired CETV even if that figure had been correct.
65. In the circumstances, the Adjudicator was not, on the balance of probabilities, persuaded that the misstatements were a significant cause of Mr N's decision to leave the Weir Group.

66. Mr N also could not claim for a loss that he could have mitigated. In his case, the loss was loss in income and other benefits that he would have received had he remained in employment with the Weir Group until such time as he would have retired.
67. But if Mr N suspected that he might have suffered a loss, he had a responsibility to take reasonable steps to mitigate his loss.
68. Mr N was currently working on a part time basis at a school. The salary which he was earning from this role would partially mitigate his financial loss. The Adjudicator had, however, seen no evidence that Mr N had attempted to seek alternative higher paid employment that could more fully or wholly make up the shortfall in his salary and his benefits.
69. In effect, Mr N's decision not to seek such form of employment to fully redress the shortfall represented a choice on his part and suggested that he valued a "less pressured" environment rather than to try and address the shortfall. The Adjudicator appreciated it was a choice Mr N would have preferred not to have had to make and that it was a choice made in the context of his having already resigned from the Weir Group.
70. Consequently, the Adjudicator was of the view that Mr N had not suffered an actual financial loss for which he should be compensated. What Mr N had suffered was a loss of expectation. He expected to receive the higher benefits from the Scheme but was not entitled to the incorrectly stated benefits. The Trustee could only pay him the correct pension calculated in accordance with the Scheme Rules.
71. Another possible defence to be considered is estoppel. The Trustee would be prevented from going back on the incorrect benefit quotations. Like negligent misstatement, estoppel must be based upon an inaccurate statement, usually called a "representation".

The three requirements which must be met to establish estoppel by representation are:

- (i) a clear representation or promise made by the defendant on which it is reasonably foreseeable that the claimant will act;
  - (ii) an act on the part of the claimant that was reasonably taken in reliance on the representation or promise; and
  - (iii) the claimant is able to show that he/she will suffer detriment if the defendant is not held to the representation or promise.
72. It was the Adjudicator's opinion that the retirement quotations were representations made by Capita on behalf of the Trustee. The quotations were also undoubtedly inaccurate. It was the Adjudicator's view that the quotations were not unequivocal though. They contained a clear warning that they were not promises of payment and what was payable was only that due under the Scheme Rules.

73. The Adjudicator accepted it was foreseeable that the quotations would be used by Mr N to inform retirement planning. The Adjudicator was not, however, persuaded from the available evidence that Mr N had clearly demonstrated he had completely relied upon the quotations when deciding to end his employment with the Weir Group in May 2018. He told the view that the main reason for leaving was because of the travelling and the stress of his then role at the Weir Group.
74. Mr N had not, in the Adjudicator's view, met all the requirements for a successful estoppel defence.
75. Capita and the Trustee were consequently not estopped from paying the correct benefits in accordance with the Scheme Rules and ignoring the incorrect overstated figures.
76. The Adjudicator considered whether the incorrect information constituted maladministration which had resulted in non-financial injustice such as distress and inconvenience.
77. There was no dispute that Capita provided Mr N with incorrect information in the quotations for early retirement benefits and the CETV available to him in the Scheme. Mr N should have been given correct figures and the failure to do so was clearly maladministration on the part of Capita.
78. Mr N had also complained that in 2019 Capita failed to provide him with details of the CETV and early retirement benefits available to him in a timely manner. The Trustee had already upheld this part of Mr N's complaint. In the Adjudicator's view, this failure constituted further maladministration attributable to Capita.
79. Although it was the Adjudicator's opinion that Mr N had not suffered any actual financial loss as a direct consequence of the maladministration, it was clear that he had experienced severe distress and inconvenience.
80. The Adjudicator noted that the Trustee and Capita had offered Mr N a goodwill award of £1,000 in recognition of this. In the Adjudicator's view, this was lower than the award that the Pensions Ombudsman would likely direct given the seriousness of the maladministration. The Adjudicator considered an award of £2,000 was justified.
81. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome.
82. Mr N says that:-
  - (i) Capita should have carried out the GMP reconciliation with HMRC prior to the Scheme actuary calculating and verifying the CETV shown on the quotation sent to him in November 2017.
  - (ii) His annual salary reduced by approximately £42,000 per annum after taking up a part time role in 2018. If he had received the correct benefit figures from the Scheme administrators during the 20 years up to May 2018, he would not have

left the Weir Group because he simply could not have afforded to do so. Any lifestyle choice was only made possible by relying on these incorrect figures.

- (iii) The pension forecasts showed “without exception” annual increases in his estimated pension and these figures “strengthened” his confidence during his retirement planning.
- (iv) He did not take early retirement benefits or transfer his pension rights from the Scheme around the time he left the Weir Group because, in December 2017, Age Partnership had advised him that it would be in his best interests to preserve his deferred pension in the Scheme for as long as he could.
- (v) The fact that CETVs are calculated by actuaries and guaranteed for three months should provide him with “a high of confidence” on which to base his future decisions.
- (vi) He had meetings with Pension Wise to discuss the retirement quotations which he received from Capita in July and August 2017. The appointment summary dated 9 August 2017 prepared by Pension Wise said that “User intends to get a part time job if he does leave his current employer”. This proved that he was only thinking of leaving the Weir Group and not retiring at the time.
- (vii) In January 2018, he discussed his future plans and the financial advice received from Age Partnership with family members. They supported his decision to leave the Weir Group and look for another role. He has submitted witness statements prepared by them and his friends in support of his application, details of which are shown in the Appendix.
- (viii) Between May 2018 and November 2019, it was impossible for him to mitigate any financial losses because he was unaware that his correct benefits from the Scheme would be considerably lower than expected.
- (ix) He applied for a few jobs, albeit unsuccessfully, at the beginning of 2020. There was only four months between December 2019 and March 2020 when he could realistically have looked for another role before the UK became embroiled in the global Covid-19 pandemic.
- (x) To try mitigating any financial losses from March 2020 onwards would have been very risky for him. He was classified as a key-worker and this provided an element of job security which would be put in jeopardy if he changed employment.
- (xi) In January 2020, he had to make a withdrawal of £9,000 from his Legal & General pension scheme as financial support because of this protracted complaint.



- (xii) By providing him with numerous erroneous pension forecasts and CETV quotations over the years, the Trustee, Capita (and the former Scheme administrators) are responsible for the serious situation which he now finds himself. The fact that the mistakes remained undiscovered until November 2019 has robbed him of his planned retirement at age 62.
- (xiii) The considerable amount of time which he has spent dealing with this complaint has had a significant impact on his health.
- (xiv) He is not convinced by the explanation given by Mercer that its calculations of his revised benefits are correct because they were based on “assumptions, prudence and incomplete investigations”. In particular, Mercer’s figure for the transferred in GMP in respect of Transfer-In 2, appears to be different from the one shown in HMRC’s records. It is not acceptable for the Trustee to reduce his benefits from the Scheme on this basis.
- (xv) In October 2021, Capita mistakenly sent him another annual benefit statement showing overstated pension and tax free lump sum benefits available to him at NRD. These benefits were apparently calculated by Capita using the original data held in its records instead of Mercer’s revised data. Capita has apologised for the error in its letter dated 21 October 2021 and sent him a revised benefit statement.
- (xvi) The award of £2,000 in recognition of the non-financial injustice which he has suffered is inadequate given the exceptional circumstances of his case and the further maladministration attributable to Capita which has come to light after the Adjudicator’s Opinion was issued in July 2021.
- (xvii) The responses which he received from the Trustee, Aon and Capita, to his SARs for all the historical information about the benefits available to him from the Scheme held in their records, have been most unsatisfactory. Mercer and Prudential were, however, able to supply additional information about the reinstatement of his Mather & Platt deferred pension. He will be making a separate complaint about this issue to the Information Commissioner Officer.

83. I note the additional points raised by Mr N but I agree with the Adjudicator’s Opinion.

### **Ombudsman’s decision**

- 84. Mr N has argued that he has changed his position irreversibly by leaving the Weir Group in May 2018, as a consequence of the numerous incorrect CETV and retirement quotations supplied by Capita and the Trustee over the years, and for that reason he should be entitled to the benefit as misstated.
- 85. The provision of incorrect information repeatedly over the years about Mr N’s pension in the Scheme clearly constituted maladministration on the part of the Trustee and Capita. However, a misstatement of benefits does not of itself give rise to an entitlement to the benefits. Although, Mr N received incorrect details as to his

entitlement, it does not confer on him an absolute right to the benefits erroneously quoted.

86. The starting point is that Mr N is only entitled to the benefits provided by the rules of the Scheme. Exceptionally, in cases where incorrect information has been given redress may be provided if it can be shown that financial loss or non-financial injustice has flowed from reliance on the incorrect information. For example, the member may have taken a decision in reliance on the accuracy of the information, which they would not otherwise have taken. However, they must be able to prove both that they relied on the accuracy of the information provided and that it was reasonable to do so.
87. Mr N maintains that he would not have left the employment of the Weir Group if he had not received the incorrect quotations and the Trustee and Capita should have realised that Mr N was likely to make a decision based on the information it provided.
88. It is clear from the evidence that prior to his decision to leave the Weir Group in 2018, Mr N had been carefully planning his retirement for many years. He had met with several IFAs and sought full reviews of his financial position after providing them with copies of the incorrect quotations obtained from Capita for this purpose.
89. Although the retirement quotations provided were undoubtedly inaccurate, they also contained a clear warning that they were not promises of payment and what was payable was only that due under the Scheme rules. While it was foreseeable that the statements would be used to inform retirement planning, given the clarity of the warnings on each quotation Mr N's decision to leave his employment was done so at his own risk.
90. Mr N says that he would have continued to work for the Weir Group if the errors had been brought to his attention before he made his decision to leave. If so, the loss that Mr N could claim would be loss in the income and other benefits, such as those in the Legal & General pension scheme, that he would have received if he had remained in employment from May 2018 until such time as he would have retired.
91. In their witness statements, Mr N's family and friends have said that:-
  - Mr N intended to work as a part time caretaker at a local school for a year or so before accessing the benefits available to him from the Scheme.
  - He would use personal savings to supplement what he earned from his part time job in order to make ends meet financially until he fully retired.
  - His role at the Weir Group had become increasingly onerous and untenable. He was unhappy at having to work for long periods away from home and wished to reduce the amount of travelling that he was required to undertake.

92. However, by opting for a lower paid part-time role without taking the benefits available from the Scheme, it is apparent to me that the loss of his salary from the Weir Group was not the significant factor in Mr N's decision to leave the company in May 2018.
93. Mr N was able to leave the Weir Group because he considered that the money available to him from his part-time job and his personal savings would be sufficient to meet his financial needs until he fully retired.
94. This is not a case of Mr N trying to replicate his salary from the Weir Group by taking a part-time role to supplement his pension benefits from the Scheme. I find, on the balance of probability, that Mr N's desire to reduce the amount of travelling and the pressure associated with his role at the Weir Group was the determining factor in his decision to leave the company.
95. Mr N would have needed to balance this decision against the loss of up to four years' income and other benefits available from the Weir Group. In my opinion, the advantage of giving up his higher salary in exchange for less travelling and stress at work would still have weighted Mr N's decision in favour of leaving the Weir Group when he did. But he would, in my view, have done so with the expectation of working part-time for three or four years, rather than one, which is the position in which Mr N finds himself now. I consider the consequence of the incorrect information which Mr N received is therefore a loss of expectation, rather than actual financial loss because he would still have left the Weir Group in May 2018.
96. In any event, Mr N cannot claim for a loss that he could have mitigated, whether he in fact did so or not. It is unfortunate that Mr N's attempts to seek a new higher paid position which could more fully or wholly mitigate his perceived financial loss have been unsuccessful and hindered by the ongoing Covid-19 pandemic. While it is regrettable that Mr N currently has not yet been able to find an opportunity which would enable him to do so, this does not mean that his circumstances will not change for the better in the future especially with Covid-19 now transitioning from a pandemic to endemic phase.
97. Mr N has doubts that Mercer's calculations of his revised benefits are correct. In his view, it was consequently improper of the Trustee to have accepted them. However, having carefully studied Mercer's explanation of its calculations, I am satisfied that Capita's record for Mr N's GMP at NRD in respect of Transfer-In 1 was erroneously overstated by around £10,500 per annum when compared with the figure shown in HMRC's records. As the Trustee could not justify Capita's overstated GMP at NRD to HMRC, it was reasonable for Trustee and Mercer to accept HMRC's figure for the GMP as correct and use it to calculate the benefits available to Mr N from the Scheme henceforth.
98. Mercer says that it made some other amendments to the data which Capita had previously used in the retirement illustrations and CETV quotations issued to Mr N but it is confident that these were immaterial changes. I see no reason to disagree with this statement. If, as Mr N contends, Mercer has used a transfer in GMP figure for

Transfer-In 2 which is different from what is shown in HMRC's records in its calculations, then it will be open to the Trustee to justify this to HMRC when Mr N eventually retires so that HMRC may rectify its records accordingly, if appropriate.

99. I agree with the Trustee that the benefits available to Mr N from the Mather & Platt scheme have been fully reinstated in the Scheme correctly to leave him in the same position as though the transfer had never taken place, essentially for the reasons shown in paragraphs 39 and 40 above.
100. Although, I fully sympathise with Mr N's circumstances, I do not consider that he has suffered any actual financial loss. There is no doubt though that he has suffered severe distress and inconvenience because of the maladministration identified and attributable to Capita and the Trustee.
101. I note that during the Adjudicator's investigation Capita offered Mr N a goodwill award of £1,000 in recognition of this. This is in addition to the £1,000 offered by the Trustee during the IDR. My awards for non-financial injustice are modest and not intended to be punitive. It is regrettable that Capita made another mistake after the Adjudicator issued his Opinion but I consider the combined award of £2,000 to be equitable given the circumstances.
102. I partly uphold Mr N's complaint and make the appropriate direction below.

## **Directions**

103. Within 28 days of the date of this Determination, the Trustee and Capita shall each pay Mr N £1,000 in recognition of the severe non-financial injustice which he has suffered.

**Anthony Arter**

Pensions Ombudsman  
21 January 2022

## **APPENDIX**

### **Witness Statement from Mr T**

"I am a friend of Mr N and have been for the last 21 years, in that time we have had very few secrets between us. We have often discussed our finances and in particular taking early retirement which I had done many years ago.

Mr N always talked of his intention to also do this and retire before state pension age and believed his works pension would enable him to do this, based on what I know, he took on a part time job as a stop gap and he intended it to last for a year or so before collecting his private pension, and I understood this is why he left Weirs..."

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### **Witness Statement from Mr L**

"I met Mr N approximately 9 years ago...and I soon became good friends with Mr N and his family...

One of the things that Mr N was very passionate about was looking forward to his retirement years. He often spoke about retiring early and was hoping to purchase a property abroad to enable him to enjoy his retirement within a warmer climate with his family and friends. When Mr N spoke about his intentions to leave his full time management role from Weirs and take up a part time care taker role at a local school he was very excited as he saw this as his first step towards retirement. He only envisaged being in this role for a maximum of 1 year. He hoped by this time that he would be able to fulfil his dream of owning a property abroad from his pension funds and enjoying his retirement life. When his plans did not materialize as envisaged, this caused Mr N much stress and worry in his life..."

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### **Witness Statement from Mr N's wife dated 28 July 2021**

"When it comes to making decisions, we have always sat down to talk it through, especially the usual matters of importance..."

I have been with him during the appointments with his pension advisers, seen the pension quotes and agreed with him to look at taking early retirement in 2019.

We called on the children to air their views and raise any concerns they had but they all agreed that we should do what we thought was right.

So in early 2018 he started to look for another job, which he found at a local school.

I am not saying the last couple of years have been good as they should have been and there has been some difficult and stressful times. These are mainly due to the time it has taken to get this issue resolved has resulted in money that we planned to use to support

us being used up and we are using other means including our ISA's to carry on with his complaint."

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#### **Witness statement from Mr N's eldest son**

"I have been aware of my dad's retirement plans for many years now...I have been shown some of the retirement documents which he has received over the years. I recall my dad bringing up the topic in January 2018 whilst we were having a family meal. All of the family were present and dad explained that he had received some encouraging estimates from his work (Weir) pension and that he was looking to transition into a part-time role with a view to fully retiring in a further year or two. After this period he was intending to fully retire ahead of time and that the Weir pension would have had a couple of extra years to grow to a point he would feel comfortable.

He went on to explain to us that in the short to medium term he would be living of a combination of the income earned from a new part-time job and from some personal savings. Dad wanted us to be aware that during this period that he and Mum would have to make some financial sacrifices and reduce outgoings and sought our support for his decision. My sister, brother and I all supported my dad's decision and we agreed to help him with anything he needed.

There is no doubt in my mind that my dad would not have left his position at Weir had he not been happy with the figures supplied to him in the run up to him leaving. My dad has always been guided by his finances when making big family decisions. Put simply, he would never do anything which he could not afford..."

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#### **Witness statement from Mr N's younger son**

"In 2018 my dad made his intentions clear during a family dinner at their home that he wanted to leave the Weir Group and take semi-retirement. He explained that after years of hard work, careful saving, pension planning and meetings with advisors he would be able to enjoy a comfortable retirement, supporting himself and my Mum.

At the time of his decision my dad's role within the Weir Group had become increasingly onerous and untenable as he was being asked at his advancing age to work for long periods away from his family and friends. Given the circumstances at the time, we fully supported his decision as a family and were not expecting any of the subsequent difficulty that has arisen given how meticulous my dad was regarding his pension planning.

My dad ultimately found part-time work as a caretaker at a local school and left the Weir Group hoping to enjoy the semi and eventually, the full retirement his planning had afforded him.

Unfortunately, this situation has now rumbled on for several years causing nothing but stress to both my parents, who have both worked their entire adult life and continue to do so into their mid-60s."

**Witness Statement from Mr N's daughter**

“...Early 2018, my two brothers and I were invited round to my parents for Sunday Dinner as they wanted to have a “Family Meeting.” Whilst I was aware at the time that my parents had held various meetings with Advisors at their home, it was during dinner we were informed as to the nature of these meetings. My father explained that he wanted to take early semi-retirement from the Weir Group and expanded that it was due to the following factors:

- 1) Meetings with Financial Advisors: They had reviewed my father's collection of various financial settlement summaries and had provided him with details that should he decide on getting a job closer to home with less travelling etc. then he and my mother would be comfortable financially with what was on offer.
- 2) He said that whilst he was not ready to take full-time retirement, he would consider part-time employment for a year or so in which time his pension would grow even further.

When they asked for our thoughts, there was a shared agreement amongst my brothers and I that we wanted them to do what was ultimately best for them and essentially start enjoying a life without work. My parents have worked hard all their lives and supported us throughout which is why I didn't feel that my parents needed our backing but respect that they wanted to be open and ask for our opinions.

Following the discussion my father was quickly able to find part-time employment as a Caretaker at a local primary school and leave the Weir Group. As you are now fully aware, this is a position that he still holds today, two years longer than planned. The issues arising from him starting the process of receiving his documented pension and this subsequent claim and delays were completely unexpected. I personally feel that this has led to health issues caused by unnecessary stress and strain to my parents relationship because they not only have they had to use their savings but negatively adjust their lifestyle...”