

## Ombudsman's Determination

Applicant	Mr D
Scheme	Allport Cargo Services Limited Retirement and Death Benefits Scheme <b>(the Scheme)</b>
Respondent	Entrust Pension Limited ( <b>Entrust</b> )

## Outcome

1. I do not uphold Mr D's complaint and no further action is required by Entrust.

## Complaint summary

2. Mr D complained that:-
  - His cash equivalent transfer value (**CETV**) of £236,279 calculated on 20 December 2016 by KPMG, the Scheme administrator, on behalf of Entrust, the Scheme trustee, was too low.
  - If he had transferred his pension rights from the Scheme in mid to late 2018 instead of on 15 February 2017, his CETV would have been significantly higher.
  - In January 2019, Entrust refused his request for KPMG to provide him with details of how his CETV of £236,279 had been calculated.

## Background information, including submissions from the parties

3. Mr D was a deferred member of the Scheme.
4. In December 2016, KPMG calculated that the current CETV available to Mr D was £236,279.
5. This CETV was guaranteed for three months from 20 December 2016. It had been calculated using: (a) the CETV assumptions<sup>1</sup> adopted by Entrust on 17 October 2012

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<sup>1</sup> Full details of the assumptions can be found in the document entitled "Summary of assumptions used in transfer value calculations" that Entrust signed on 17 October 2012.

after taking advice from the Scheme actuary; and (b) the market conditions on the last working day in November 2016.

6. Mr D sought independent financial advice before deciding whether or not to transfer.
7. He asked his independent financial adviser (**IFA**) to check with KPMG that his CETV had been calculated correctly because it seemed somewhat low to him.
8. KPMG reassured Mr D's IFA that the CETV figure of £236,279 was correct.
9. Mr D subsequently elected to transfer his pension rights from the Scheme.
10. His IFA arranged for the completion and return of the requisite transfer discharge forms to KPMG so that the transfer could proceed.
11. KPMG paid the CETV of £236,729 to Mr D's receiving scheme on 15 February 2017.
12. Following the Scheme actuarial valuation as at 5 April 2017, the Trustee decided to review the CETV assumptions. It sought advice from the Scheme actuary before deciding on the basis to adopt for future CETV calculations.
13. In May 2018, the Scheme actuary provided Entrust with a report<sup>2</sup> containing full details of the recommended financial and demographic assumptions for use in the calculation of CETVs.
14. On 16 May 2018, Entrust implemented the new assumptions recommended by the Scheme actuary for CETV calculations.
15. In November 2018, Mr D asked KPMG to provide him with details of how his CETV of £236,279 had been calculated in December 2016.
16. Mr D said that:-
  - He had found out that members who transferred their pension rights from the Scheme after May 2018 received more generous CETVs than him.
  - He accepted that CETVs changed on a monthly basis. However, he believed that the CETV which could have been available to him now was almost double what he had received.
  - He did not think that this "discrepancy" could be explained by market fluctuations or "a slight change in the assumptions."
17. In December 2018, KPMG informed Mr D that:-
  - The Scheme actuary had confirmed that the actuarial factors used in the calculation of his CETV were based on market conditions, his gender and "various other factors" at the time of calculation.

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<sup>2</sup> This report dated May 2018 was entitled "Review of Cash Equivalent Transfer Value Bases."

- The CETV assumptions were amended in May 2018 so a CETV calculated before and after this change would be different.
18. KPMG also provided Mr D with details of the assumptions adopted by Entrust for use in CETV calculations before and after May 2018 for comparison purposes.
  19. In an e-mail dated 24 January 2019, KPMG notified Mr D that Entrust had refused his request for information on how the CETV of £236,279 had been calculated because it was not obliged to do so under the disclosure requirements.
  20. KPMG also said that:

“We note that you transferred your benefits out of the Scheme in 2017 following receipt of signed transfer forms which discharged the Scheme of any pension liability to you. Any subsequent change in both market conditions and the transfer calculation assumptions were therefore no longer relevant to your benefits as these had been discharged from the Scheme. For your information, the Trustee sets the basis of the transfers following advice from the Scheme actuary, so these assumptions can and do change periodically.”
  21. Mr D was dissatisfied with this response and made a complaint under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**).
  22. Entrust did not uphold Mr D’s complaint at both stages of the IDRP.
  23. In its Stage One IDRP decision letter dated 2 July 2019, Entrust said that:
    - It was responsible for calculating CETVs and must use certain economic, financial and demographic assumptions after taking advice from the Scheme actuary.
    - The assumptions must be set on a basis that would give the “best estimate” of the expected cost of providing the member’s benefits in the Scheme.
    - CETVs were calculated on a “best estimate” basis by working out the lump sum that was required to provide the pension available from the Scheme as at the member’s retirement age. The lump sum was then reduced depending on how far away from retirement the member was, so there were larger reductions at lower ages.
    - It was required to review the CETV assumptions from time to time. As advised by the Scheme actuary, it revised the assumptions on 16 May 2018.
    - Mr D’s CETV calculation was based on the previous CETV assumptions that applied at the time he transferred his benefits out of the Scheme.

- In addition to the variances which can arise from the use of different CETV assumptions and changing market conditions, there are other variables when it came to calculating CETVs which arose from a member's specific individual profile.
  - These different factors that influenced a CETV calculation made it difficult for a "like-for like" comparison to be made.
  - The CETV assumptions used to calculate Mr D's CETV were set in accordance with relevant legislation, regulatory guidance and advice from the Scheme actuary.
24. Entrust enclosed with its letter details of Mr D's CETV calculation and a summary of the CETV assumptions which it used before and after 16 May 2018.
25. In its Stage Two IDRPs decision letter dated 12 February 2020, Entrust added that:
- "The Board appreciates that it may be disappointing for members that a higher CETV might have been provided had they transferred their benefits after a certain point of time when circumstances had changed. However, members are under no obligation to accept a CETV quotation and ultimately, it is for the member to decide whether to proceed with a transfer having taken such advice as may be required and which the member deems necessary. It is noted that you received independent financial advice prior to transferring out your Scheme benefits and so had the benefit of such advice prior to making the decision to transfer."
26. Entrust provided the following additional information:-
- The Scheme actuary did not accept Mr D's assertion that his actuarial advice was "flawed". The assumptions used in the calculation of Mr D's CETV in December 2016 were appropriate at the time.
  - As part of the actuarial valuation as at 5 April 2017, the Scheme's funding plan and associated technical provisions assumptions were updated. This included the use of a lower discount rate assumption for the period after retirement on the basis that the funding plan was to hold lower risk assets as the Scheme matured.
  - The CETV methodology was reviewed in 2018 following the Scheme actuarial valuation as at 5 April 2017. A number of assumptions were updated as part of that review. The one which had the most significant effect on CETVs was the discount rate.
  - The previous CETV methodology did not use this approach. However, this did not mean that it was inappropriate or invalid.

- The guidance provided by the Pensions Regulator in relation to transfer values stated that:

"To inform decisions, trustees should discuss with their actuary the relevance of the scheme's funding plan as set out in the statement of funding principles. For example, where a scheme's funding plan implicitly assumes that investments underpinning benefits change at or approaching retirement, it might be appropriate to take this into account in deriving discount rates."
- The post-retirement discount rate assumption was reduced as part of the 2018 review of assumptions applicable to the calculation of CETVs. This had the effect of increasing CETV values from 16 May 2018.
- The calculation date also affects the amount of CETV available.

### **Mr D's position**

27. Mr D says that:

"The Trustee's stance seems to be that they followed the advice given and that is all they are required to do. However, if the advice given in May 2018 was so different from previous advice, that the CETV calculation was changed by almost 100% I would expect that alarm bells might have started to ring. In that event I would contend that the CETV calculations made based on that previous advice were not correct.

This is not a case of wishing I would have done something different with hindsight. I have previously said I accepted that market conditions change and a reasonable CETV change (up or down) is to be expected. So the reason I brought this action is that the CETV change was obviously completely unreasonable."

### **Adjudicator's Opinion**

28. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by Entrust. The Adjudicator's findings are summarised in paragraphs 29 to 48 below.
29. Mr D had a statutory right to a CETV as an alternative to deferred benefits from the Scheme.
30. On receipt of Mr D's CETV request, Entrust was required to provide him with a "statement of entitlement" of the CETV available to him from the Scheme as at a "guarantee date". KPMG did this on behalf of Entrust on 20 December 2016.

31. A scheme-specific approach to the calculation of CETVs and a shift in responsibility from the actuary to the trustees for the calculation and verification of CETVs was introduced on 1 October 2008.
32. So Entrust was responsible for setting the basis for the calculation of the CETV available to Mr D from the Scheme in December 2016.
33. The fundamental principle was that the CETV should be broadly equivalent to the expected cost of providing the benefit within the Scheme.
34. Entrust was required to set financial and demographic assumptions on a “best estimate” basis, having regard to the Scheme’s investment strategy and after obtaining advice from the Scheme actuary.
35. KPMG had used the assumptions which Entrust adopted on 17 October 2012 after receiving advice from the Scheme actuary. It also adjusted them to allow for current market conditions when calculating the CETV of £236,279 available to Mr D in December 2016.
36. The Pensions Regulator in its guidance suggested that trustees should review the CETV assumptions from time to time, for example following a scheme valuation and take account of changes, for example, on the scheme’s investment strategy and increases in longevity.
37. Entrust was consequently required to monitor the appropriateness of the CETV assumptions and update them periodically. It did this on 16 May 2018 based on advice received from the Scheme actuary following the completion of the actuarial valuation as at 5 April 2017.
38. Mr D had essentially complained that in December 2016, Entrust either miscalculated the CETV available to him or used flawed actuarial assumptions that had to be revised substantially in May 2018. In his view, it was unfair that the hypothetical CETV available to him in mid to late 2018 could have been double the amount that he received. He had also contended that he only decided to transfer on the basis that any change to his CETV would be reasonable.
39. The Adjudicator had, however, seen no clear evidence which substantiated what Mr D had, for example, a witness statement from an independent actuary in support of his position.
40. Furthermore, the Adjudicator could not disregard that the Scheme actuary had strongly refuted Mr D’s allegations and provided a sound explanation for doing so. The Adjudicator saw no reason to doubt the Scheme actuary’s professional view that it was appropriate for Entrust to have used in December 2016 the CETV assumptions adopted in October 2012 to calculate Mr D’s CETV once they were adjusted to allow for current market conditions.
41. It was a statutory requirement on Entrust to ensure that Mr D took independent financial advice on the transfer because his CETV was in excess of £30,000. The

Adjudicator noted that Mr D received such advice from his IFA and also confirmation from KPMG that the CETV of £236,279 had been correctly calculated before he decided to proceed with the transfer.

42. Mr D completed and returned the relevant transfer discharge forms to KPMG so that the transfer could proceed.
43. Having exercised his right to a CETV by making a “relevant application” in writing, Entrust was obliged to comply with Mr D’s request within six months of the “guarantee date” or, if earlier, the date on which he reached his normal pension age in the Scheme.
44. Entrust did what was necessary to comply with Mr D’s request in accordance with statutory timescales and was consequently discharged from any further liability to provide him with benefits from the Scheme.
45. Mr D also complained that in January 2019, Entrust refused his request for KPMG to provide him with details of how his CETV of £236,279 had been calculated.
46. In accordance with the Occupational and Personal Pension Schemes Act (Disclosure of Information) Regulations 2013 (**the Disclosure Regulations**), Entrust was required to disclose certain documents and information to Mr D.
47. However, provision of CETV calculation details was not covered by the Disclosure Regulations so Entrust was not obliged in January 2019 to provide Mr D with information on how his CETV of £236,279 had been calculated. The Adjudicator noted, however, that Entrust did in any case subsequently agree to supply him with this information in July 2019.
48. In the Adjudicator’s view, as Entrust had paid Mr D the correct benefits available to him from the Scheme and did not improperly refuse his request for CETV calculation details, there had been no maladministration on its part.
49. Mr D did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr D provided his further comments which do not change the outcome.
50. Mr D said that:-
  - Entrust should have reviewed the CETV assumptions following the Scheme actuarial valuation as at 5 April 2014. If it had done so, the CETV available to him in December 2016 would have been significantly higher.
  - Entrust should recalculate the hypothetical CETV available to him using the revised CETV methodology introduced in May 2018 and provide him with details.
  - He was unaware that he could have sought independent actuarial advice in order to support his complaint.
51. I note the additional points raised by Mr D but I agree with the Adjudicator’s Opinion.

## **Ombudsman's decision**

52. Essentially Mr D complained that in December 2016, Entrust either miscalculated the CETV available to him or used flawed actuarial assumptions that had to be significantly amended in May 2018.
53. The onus falls on Mr D to provide sufficient evidence to demonstrate that what he has said is correct. However, apart from his own views on the matter, I have seen no clear evidence to support Mr D's position.
54. I agree with the Adjudicator that the Scheme actuary's rebuttal of Mr D's allegations is sound. I see no reason to doubt the Scheme actuary's professional view that it was appropriate for Entrust to have used in December 2016 the CETV assumptions adopted in October 2012 to calculate Mr D's CETV once they were adjusted to allow for current market conditions.
55. I find that Mr D's CETV of £236.279 was calculated correctly by Entrust in December 2016 in accordance with the CETV assumptions in place for the Scheme at that time. I also consider that Entrust was fully entitled to change these assumptions in May 2018 following receipt of professional advice from the Scheme actuary.
56. Furthermore, I cannot disregard that:-
- Mr D had received appropriate independent financial advice from his IFA and confirmation from KPMG that the CETV of £236,279 was correct before he decided to proceed with the transfer.
  - On making the transfer, Entrust benefitted from a full discharge of any future liability to provide benefits to Mr D.
57. I find that there is no basis on which Mr D's CETV can legitimately be recalculated following the changes made in May 2018 to the CETV assumptions for the Scheme.
58. I do not uphold Mr D's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
7 March 2023