

## Ombudsman's Determination

Applicant	Mr E
Scheme	Rothesay Life Pension Plan ( <b>the Plan</b> )
Respondent	Rothesay Life ( <b>Rothesay</b> )

## Outcome

1. Mr E's complaint against Rothesay is partly upheld. To put matters right, Rothesay shall pay Mr E £500 in recognition of the significant distress and inconvenience he sustained.

## Complaint summary

2. Mr E's complaint is about a delay in dealing with his ill health retirement pension (**IHRP**) application and cash equivalent transfer value (**CETV**) quotations. He believes unrealistic life expectancy factors were used in the calculation of the CETV.

## Background information, including submissions from the parties

3. Mr E was a member of the GEC 1972 Plan from October 1996 to February 2002. Telent was Mr E's employer (**the Company**). His normal retirement age (**NRA**) is age 55.
4. On 30 September 2020, Mr E's independent financial adviser (**IFA**), requested information from the Plan's administrators, Equiniti, regarding ill health retirement options and a CETV. Mr E was approaching his 49<sup>th</sup> birthday in October 2020.
5. On 15 October 2020, Equiniti provided the requested information to the IFA. The CETV was £108,451.10 and was guaranteed for three months. It also provided the relevant medical authority form (**the Form**) for Mr E to complete in order to release his medical information.
6. Mr E subsequently provided the completed Form to Equiniti, which was received by it on 10 November 2020. In support of his application, Mr E provided sick notes that had been given to the Company.
7. On 18 November 2020, the Company told Mr E that it would refer his case to the Plan's medical adviser (**MA**) which it did on 20 November 2020. The MA requested

that Mr E provide a specialist's report in order to assess his case. Mr E said that he provided this report to the MA on 30 November 2020.

8. Between 26 and 29 January 2021, there were further exchanges between the Company and the IFA regarding further medical evidence.
9. In February 2021, the Company and the trustees of the GEC 1972 Plan insured the members' benefits in the GEC 1972 Plan and completed a transfer to Rothesay. Rothesay took responsibility for paying affected members', including Mr E's, benefits. The administration of the Plan was transferred to Capita. During the transfer, Rothesay was informed of Mr E's pending IHRP application.
10. On 25 February 2021, the IFA chased Rothesay for an update regarding Mr E's application.
11. On 1 March 2021, Rothesay apologised to Mr E for the delay caused by the transfer to Rothesay and advised him that it was "keen to assist [him] in resolving this situation as quickly and smoothly as possible." It also told Mr E that it had not received the report from Mr E that he said he had provided on 30 November 2020. It asked him to complete another consent form for his doctors, because it did not seem to have a previous one on its systems.
12. Between 6 and 31 March 2021, Mr E and the IFA continued to contact Rothesay for an update. In addition, on 16 March 2021, the IFA requested new ill health pension and CETV quotations from Rothesay. Rothesay confirmed, on 17 March 2021, that it would calculate the requested quotations.
13. On 4 April 2021, Rothesay apologised for the delay in responding. It acknowledged Mr E had had to "escalate and chase this case multiple times." It told Mr E that it had now received his further evidence, which had been referred to the MA for review, and should take no longer than 48 hours.
14. On 13 April 2021, Mr E was told by Rothesay that his IHRP application had been approved. Subsequently, the Scheme Actuary reviewed Mr E's retirement factors as he was below his NRA.
15. On 26 April 2021, the IFA chased Rothesay for an update, to which he received no response.
16. Between 4 and 17 May 2021, Mr E chased Rothesay for an update. He told it that he would be escalating his complaint to the relevant regulatory bodies, including The Pensions Ombudsman (**TPO**).
17. On 4 May 2021, Mr E raised a formal complaint with Rothesay under its complaint procedure. He raised the following issues:
  - He was unhappy with the delay in providing him with IHRP benefit options.

- He expected the CETV quotation received in November 2020, to still be valid, as it was not his fault that Rothesay had taken so long. He indicated that he never wanted his benefits to transfer to Rothesay and he just wanted to transfer his benefits out of the Plan.
18. On 17 May 2021, Capita acknowledged his complaint and confirmed that the calculations would be processed as quickly as possible. It also told him that “an ill health pension would seriously be worth considering as it means he would get a pension immediately when it would normally be at age 55.”
19. In an email of the same date, Capita told Rothesay that the IFA’s initial request in September 2020 appeared to have been for an IHRP and CETV quotation. The CETV quotation was subsequently provided to the IFA on 15 October 2020 and the IFA was chasing the IHRP application thereafter.
20. On 21 May 2021, the Actuary confirmed to Capita and Rothesay the new factors that had been applied to the calculation of Mr E’s IHRP benefits. Capita wrote to Mr E on the same day setting out his IHRP benefits and the value of the new CETV. The value of the new CETV was £104,580.79. The IHRP benefit options are set out in the Appendix.
21. On 27 May 2021, Rothesay provided Mr E with a response to his complaint that said in summary:-
- Mr E provided his medical consent on 1 March 2021. He subsequently provided supporting evidence on 10 March and 15 March 2021.
  - The IFA was chasing the progress of the IHRP application. It did not appear to have received Mr E’s transfer request in November 2020. The November 2020 CETV quotation was no longer valid.
  - The ill health process could sometimes take longer than expected while medical evidence was gathered, reviewed and put to the MA for approval.
  - It apologised that it had taken longer than Mr E would have expected.
  - It acknowledged Mr E had chased it several times. However, the delay was due to the fact that Mr E was below NRA and additional factors needed to be provided by the Actuary.
  - Mr E’s IHRP was approved on 13 April 2021. It received information from its Actuary on 26 April 2021, but this was not actioned until 20 May 2021. It apologised for the delays Mr E had experienced.
  - On that basis, it upheld Mr E’s complaint. It confirmed that it would backdate Mr E’s IHRP benefits to 30 March 2021.

22. On 6 June 2021, Mr E raised further issues:-

- Rothesay had offered him an IHRP with an unrealistic life expectancy, of at least 20 years. It would now “effectively prohibit him in re-investing [his] accumulated pension pot to maximise its gain in the limited time [he] has left...”
- He wanted Rothesay to change his life expectancy to “normal”.
- He wanted a full or partial pension re-investment transfer.
- What he had been offered did not help him in any positive way. It had made his financial situation worse.

23. On 9 June 2021, Rothesay responded to Mr E and said in summary:-

- As part of the agreement with the trustees of the previous plan, Rothesay undertook to guarantee generous ill health terms, subject to medical underwriting. In Mr E’s case, it was not applying any early retirement factors, even though his pension was to commence 15 years prior to his NRA. This also allowed for immediate payment, although the earliest date was normally NRA.
- Regarding his CETV against the retirement lump sum quoted, although, the lump sum may have looked smaller than if he took 25% of his CETV, he should take into account that he would only be sacrificing 12.5% of his pension to get his lump sum rather than 25%.
- 12.5% was the maximum percentage given the commutation factor for his early retirement.
- His CETV had been calculated using its standard CETV basis which took into account the average lifetime expectancy across the GEC 1972 Plan membership and made no specific allowance for his health status. He had therefore not been disadvantaged in transfer terms.
- While CETV quotations were valid for three months, there was no cost for providing further CETVs after that date. This was contrary to what Mr E understood as he had indicated in one of the telephone calls that there would be a cost.
- He should be aware that values could go up and down based on market factors at the time of the quotation being issued and it did not provide re-investment transfers.
- It suggested that Mr E seek financial advice. Consequently, it did not uphold the complaint. It believed it had followed its standard process and the options provided to him had not been disadvantaged due to his health.

24. In submissions with his complaint to TPO, Mr E said in summary:-

- He was told by Rothesay on the telephone that the life expectancy used in the calculation of the CETV was 89. It failed to provide this figure in writing.
- He will not be able to request a transfer as his IFA will not proceed with it. This is due to fees payable for financial advice, which he cannot afford.
- He does not need the pension now. He realistically needs it to provide for the future. This is because he suffers from a degenerating condition and considers quality verses quantity of life as key.
- He also needs the flexibility that a transfer would offer him with regards to paying for care costs when these are required.
- Rothesay is doing everything it can to “retain this as an act of theft using every loophole in the current system which is not appropriate to [his] situation and [his] degenerating condition.”
- He wants to invest his pension in a Self-Invested Pension Plan (**SIPP**) of his choosing because of the forward flexibility.

25. In submissions to TPO, Rothesay said in summary:-

- It does not agree that it had delayed the process for Mr N. It inherited an incomplete IHRP application and had to start the process from the outset.
- It made a conscious decision to use the date of backdating IHRP benefits as 30 March 2021, as this was the date it had received the application from the previous trustees.
- If Mr E is minded to take the ill health pension, “it would not be averse to backdating payments to November 2020 on a goodwill basis.” It did not consider backdating the payments to 10 November 2020 at the time, as this was not raised by Mr E or his IFA.
- The only instance where things would change was if Mr E’s life expectancy was now less than 12 months. He would then qualify for a serious ill health pension where the benefits are different.

## **Adjudicator’s Opinion**

26. Mr E’s complaint was considered by one of our Adjudicators who concluded that further action was required by Rothesay. The Adjudicator’s findings are summarised below:-

### **Ill health pension application**

27. Rothesay had accepted and apologised that there was a delay when dealing with Mr E's application for an IHRP. As such it was necessary to establish whether Mr E had been disadvantaged by the delay.
28. The Adjudicator noted that Mr E's application took Rothesay around five months to process from 10 November 2020 to 13 April 2021. Ill health pension applications can be a lengthy process. So, in the Adjudicator's view, five months was not an unreasonable amount of time for Rothesay to have taken to process Mr E's application. However, during this time there were some delays.
29. The first delay was due to the transfer of the Plan to Rothesay which took place in February 2021. Also, the Plan's administration provider changed to Capita. The Adjudicator noted Rothesay informed Mr E of this and apologised for it. It was unfortunate that the transfer of the Plan took place at the same time as his application for an IHRP. However, in the Adjudicator's view, the timing of the transfer of the Plan was out of Rothesay's control, therefore it could not be held responsible for the delay.
30. The Adjudicator noted Rothesay was informed, during the transfer of the Plan, of Mr E's pending application for an IHRP. On 1 March and 4 April 2020, Rothesay apologised to Mr E for the delay in dealing with his application and acknowledged he had had to chase the progress of it several times. It also explained the delay was caused by the transfer of the GEC 1972 Plan to Rothesay and change of administrator. Consequently, when it received the application, the process had to start again from the outset. So, the fact that Mr E was asked to complete another consent form was not unreasonable.
31. Mr E's IHRP application was approved on 13 April 2021. Rothesay explained to Mr E that it needed to review additional retirement factors as he was claiming an IHRP under the NRA of 55. It explained that it was still waiting for the Plan Actuary to review the additional retirement factors needed to calculate his benefits. In the Adjudicator's view, the fact that Rothesay had to wait, just over a month, for its Actuary to review the factors was out of its control and it could not be held responsible for this delay. However, in its letter of 19 October 2021, Rothesay upheld Mr E's complaint on the basis that there was a delay in calculating the benefits between 26 April and 20 May 2021.
32. Furthermore, Rothesay explained to Mr E that, as part of the agreement with the trustees of the GEC 1972 Plan, it undertook to guarantee generous ill health terms. This meant that no early retirement factors were applied to his benefits. This allowed for immediate payment, when usually the NRA is age 55.
33. Rothesay backdated Mr E's IHRP benefits to 30 March 2021, instead of the date of the approval, 13 April 2021. It used that date because it said this was the date it had received Mr E's application from the previous trustees. In the Adjudicator's view, this approach was not unreasonable given the circumstances of the case.

34. In the Adjudicator's view, although the delays caused by the transfer of Mr E's Plan and the review of the factors were out of Rothesay's control, it could have handled the process better. Mr E and his IFA had to chase progress several times, Rothesay did not keep Mr E informed of every step of the process and did not reply to his and the IFA's emails in a timely manner. Specifically, Rothesay did not reply to Mr E's email of 26 April 2021, and there was no action taken between 26 April and 20 May 2021.
35. Consequently, it was the Adjudicator's view that Mr E had suffered non-financial injustice as a result of this situation. In the Adjudicator's view, Rothesay's apology was not sufficient. The fact that Mr E and the IFA had to chase the progress of his application several times and Mr E was already suffering from ill health would have caused him additional distress and inconvenience. So, in the Adjudicator's opinion, Rothesay should pay Mr E £500 in recognition of the significant distress and inconvenience caused to him for the small delay and not handling the process better.
36. Rothesay provided Mr E with ill health retirement options (see Appendix). The Adjudicator noted that it was still open to Mr E consider these options and claim his IHRP benefits.

#### **CETV quotation**

37. There were two CETVs requested by the IFA; one was provided in October 2020 and the other one in May 2021. Each CETV was valid for three months. The Adjudicator had not seen any evidence that Rothesay deliberately delayed providing these CETVs to the IFA. It appeared that Mr E and his IFA focused on the progress of his IHRP application rather than transferring his pension out to a different provider. There was no evidence of either Mr E or the IFA submitting a transfer request between October 2020 and May 2021. In the Adjudicator's view, Mr E was trying to get the best possible outcome by comparing his ill health pension options with the CETV quotations.
38. Mr E believed an unrealistic life expectancy of 89 years was used in the calculation of the second CETV. The Adjudicator understood he was given this figure during a telephone call and not in writing. The Adjudicator appreciated Mr E's position, but it is normal practice for schemes to apply a standard life expectancy for the whole scheme's membership, rather than applying an individual life expectancy to individual members. A different life expectancy to the standard one could not be applied to Mr E's CETV as this would have a negative impact on the other Plan members' benefits.
39. Mr E said that he wanted to transfer his pension away from Rothesay to a SIPP but cannot afford the IFA fees. While the Adjudicator appreciated Mr E's position, Rothesay cannot be held responsible for any fees the IFA may charge to assist him with the transfer of his benefits from the Plan.
40. Mr E did not accept the Adjudicator's Opinion and in response, provided his comments. He submitted:-

- The situation is extremely frustrating and distasteful to him now. He has no choice but to watch Rothesay steal his pension benefits from him. It is clearly trying to retain his pension under unrealistic circumstances.
- The conditions favour Rothesay and punish him.
- His degenerating health condition has not been taken into account.
- Rothesay has never been given his permission to become the custodians of his pension. Rothesay is therefore in breach of the legally binding Trustee Act 1974 by denying him fair and appropriate access to his pension funds in accordance with the law.

41. Rothesay did not accept the Adjudicator's opinion and in response, provided its comments. It submits:-

- It disagrees with the recommended award of £500 which seems unreasonable. £500 is a very significant award. While it appreciated it has been difficult for Mr E that has not been due to its fault.
- It disagrees that there was a period of inaction between 26 April to 20 May 2021. That was "the entire period between actions and not a delay." At most, there was a delay of a few days in that period.
- The entire process was concluded within six weeks from the date of approval. The process of calculation took just 37 working days when factoring in Easter Bank holidays.
- Mr E and the IFA chased a number of times but that does not mean those chasers were justified. They did not have to chase as the work was ongoing.
- It was disappointed to be held responsible for an overall experience that was created by factors beyond its control.
- It was Equiniti who did not process the application in good time between November 2020 and March 2021 and did not receive medical evidence.
- It upheld Mr E's complaint on the basis that there was delay of a few days which did not warrant an award.
- As a result of always delivering fair outcomes for its customers, it had scrutinised this case carefully and it was satisfied that an apology was sufficient in this instance.

42. As Mr E and Rothesay did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Both parties provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion.



## **Ombudsman's decision**

43. Mr E complained about the delay in Rothesay dealing with his IHRP application and CETV quotations. He said unrealistic life expectancy factors were used in the calculation of the CETV and contends that Rothesay is trying to retain his pension under unrealistic circumstances.
44. I have carefully considered all parties' representations. I appreciate the position Mr E finds himself in. He suffers from deteriorating ill health and making a decision regarding his pension options can be complex. However, Rothesay must follow the Plan Rules and actuarial advice when calculating pension benefits.
45. Mr E was provided with both IHRP and CETV quotations. I understand that he wanted to find the best option in relation to how to claim his benefits. Initially, Mr E considered taking an IHRP but later, when his GEC 1972 Plan was transferred to Rothesay, decided that he would prefer to transfer his benefits out of the Plan.
46. The key issue stopping Mr E from transferring his benefits is that he believes it is unfair that the standard lifetime expectancy factors have been applied to his CETV calculations.
47. Rothesay has correctly followed its Actuary's advice regarding the retirement factors and life expectancy that are applicable to Mr E's benefits. It is not uncommon practice for schemes to apply a standard life expectancy for the whole scheme's membership, rather than applying individual factors to individual members. To apply a non-standard factor to Mr E's CETV calculation could have a negative impact on other Plan members' benefits which would be unfair.
48. As Mr E was under the NRA age of 55 at the time he applied for a IHRP it was not unreasonable for the Plan's Actuary to review the retirement factors. Further, in accordance with the former trustees' agreement when transferring their liability to Rothesay, Mr E was offered more favourable IHRP terms in that the reduced retirement factors were not applied to his pension.
49. Mr E contended that Rothesay has never been given his permission to become the custodians of his pension benefits. Under Regulation 9 of the Occupational Pension Schemes (preservation of Benefit) Regulations 1991 (SI 1991/167), members' consent to a buy-out is not required if the scheme rules allow it. I find that the approach Rothesay has taken was correct.
50. I do not find that Rothesay is unlawfully withholding Mr E's pension. On the contrary, Rothesay approved him for an unreduced IHRP and provided him with a CETV quotation. Mr E will need to consider his options either with or without the advice of an IFA and make a decision whether he wishes to claim his IHRP or transfer out of the Plan to another arrangement.
51. I have considered Rothesay's comments regarding an award for distress and inconvenience. Although, the delay was relatively small, Mr E and his IFA had to

chase Rothesay several times. I do not agree with Rothesay's view that it did not have to reply to every email as the application was ongoing. Mr E's expectations might have been better managed had Rothesay provided responses to assure him it was taking action and when he might expect to hear further. Rothesay's failure to keep Mr E informed would have undoubtedly caused him significant distress and inconvenience which should be recognised.

52. I partly uphold Mr E's complaint.

### **Directions**

53. Within 28 days of the date of this Determination, Rothesay shall pay Mr E £500 in recognition of the significant distress and inconvenience he sustained.

**Anthony Arter**

Pensions Ombudsman  
22 November 2022

## Appendix

Retirement Options Form dated 21 May 2021, with Mr E's retirement date of 31 March 2021, showed the following options:

### A. Retirement options without PIE:

<p>Option 1 LTA%: 5.98%</p>	<ul style="list-style-type: none"> <li>• A pension of £3,213.04 per annum which will be subject to an inflation related increase. <i>See Note 8</i></li> <li>• There is also a Surviving Spouse's Pension* of £1,606.53 per annum which is payable in the event of your death.</li> </ul>
<p>Option 2 LTA%: 6.95%</p>	<ul style="list-style-type: none"> <li>• A maximum tax-free cash sum of £18,667.02 plus a reduced pension of £2,800.06 per annum which will be subject to an inflation related increase. <i>See Notes 2 &amp; 8</i></li> <li>• There is also a Surviving Spouse's Pension* of £1,606.53 per annum which is payable in the event of your death.</li> </ul>
<p>Option 3 LTA%: 9.97%</p>	<ul style="list-style-type: none"> <li>• A pension of £5,351.31 per annum payable until 31 October 2038, your current State Pension Date, reducing to £1,606.53 per annum thereafter. Pension payments will be subject to an inflation related increase. <i>See Notes 5 &amp; 8</i></li> <li>• There is also a Surviving Spouse's Pension* of £1,606.53 per annum which is payable in the event of your death.</li> </ul>
<p>Option 4 LTA%: 9.91%</p>	<ul style="list-style-type: none"> <li>• A maximum tax-free cash sum of £18,667.02 plus a reduced pension of £4,388.65 per annum payable until 31 October 2038, your current State Pension Date, then reducing to £1,606.53 per annum thereafter. Pension payments will be subject to an inflation related increase. <i>See Notes 2, 5 &amp; 8</i></li> <li>• There is also a Surviving Spouse's Pension* of £1,606.53 per annum which is payable in the event of your death.</li> </ul>

## B. Retirement options with PIE:

<p>Option 5</p> <p>LTA%: 6.42%</p>	<ul style="list-style-type: none"> <li>• A pension of £3,447.40 per annum of which £489.57 per annum will not receive any increases during payment. <i>See Notes 8 &amp; 28</i></li> <li>• There is also a Surviving Spouse's Pension* of £1,723.71 per annum payable in the event of your death of which £244.79 per annum will not receive any increases during payment.</li> </ul>
<p>Option 6</p> <p>LTA%: 7.33%</p>	<ul style="list-style-type: none"> <li>• A maximum tax-free cash sum of £18,667.02 plus a reduced pension of £3,004.30 per annum of which £426.65 per annum will not receive any increases during payment. <i>See Notes 2, 8 &amp; 28</i></li> <li>• There is also a Surviving Spouse's Pension* of £1,723.71 per annum payable in the event of your death of which £244.79 per annum will not receive any increases during payment.</li> </ul>
<p>Option 7</p> <p>LTA%: 10.19%</p>	<ul style="list-style-type: none"> <li>• A pension of £5,468.49 per annum, of which £542.23 per annum will not receive any increases during payment, payable until 31 October 2038, your current State Pension Date. At State Pension Date your pension will reduce to £1,723.71 per annum thereafter, of which £244.79 per annum will not receive any increases during payment. <i>See Notes 5, 8 &amp; 28</i></li> <li>• There is also a Surviving Spouse's Pension* of £1,723.71 per annum payable in the event of your death of which £244.79 per annum will not receive any increases during payment.</li> </ul>
<p>Option 8</p> <p>LTA%: 10.13%</p>	<ul style="list-style-type: none"> <li>• A maximum tax free cash sum of £18,667.02 and a reduced pension of £4,505.83 per annum, of which £465.77 per annum will not receive any increases during payment, payable until 31 October 2038, your current State Pension Date. At State Pension Date your pension will reduce to £1,723.71 per annum thereafter, of which £244.79 per annum will not receive any increases during payment. <i>See Notes 2, 5, 8 &amp; 28</i></li> <li>• There is also a Surviving Spouse's Pension* of £1,723.71 per annum payable in the event of your death of which £244.79 per annum will not receive any increases during payment.</li> </ul>
<p>Option 9</p>	<ul style="list-style-type: none"> <li>• You have the option of deferring payment of your retirement benefits until a later date. Retirement benefits must be taken no later than Age 75</li> </ul>

