

## Ombudsman's Determination

Applicant	Ms E
Scheme	Norbord UK (Sterling) Pension Scheme ( <b>the Scheme</b> )
Respondents	The Trustee of the Norbord UK (Sterling) Pension Scheme ( <b>the Trustee</b> ) Mercer ( <b>the Administrator</b> )

## Outcome

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

## Complaint summary

2. Ms E complained that:-
  - The Administrator and Trustee failed to act on Mr E's instruction to transfer the Cash Equivalent Transfer Value (**CETV**) of the retirement benefits accrued in his name under the Scheme.
  - The Administrator's delays in providing information to Mr E's financial adviser resulted in the failure to arrange the transfer before Mr E died. As a result, Ms E and the late Mr E's family suffered severe financial difficulty.
  - The Administrator ignored complaints from financial advisers.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. The late Mr E was a deferred member of the Scheme, a defined benefits scheme connected to his previous employment with Norbord UK (**the Employer**). Ms E was Mr E's partner and, following his death on 19 November 2020, was the sole Executrix of his estate.
5. Ms E appointed two representatives to act on her behalf in her complaint - an independent Financial Adviser (**the IFA**) and Mr B E, the late Mr E's brother.

6. On 20 May 2020, the IFA sent the Administrator a letter of authority from Mr E and requested information about the benefits accrued for him under the Scheme.
7. When the IFA received the Administrator's reply on 5 June 2020 it did not include all of the information requested, so it contacted the Administrator again on 8 June 2020.
8. The IFA received the Administrator's further reply on 12 June 2020 and then posed further questions to the Administrator on 15 June 2020. In the same communication on 15 June 2020, the IFA asked the Administrator how it could obtain a new Cash Equivalent Transfer Value (**the new CETV**) illustration of the benefits accrued for Mr E under the Scheme (on the basis, I understand, that a request for a CETV had already been made in the previous 12 months, and so Mr E did not have a right to receive a CETV in accordance with legislation<sup>1</sup>).
9. On 14 July 2020, the IFA informed the Administrator that Mr E was anxious to progress the new CETV. The Trustee met on 16 July 2020 and decided that the fee payable (**the CETV fee**) for the new CETV illustration should be £300. The Administrator informed the IFA of the CETV fee on 24 July 2020 and sought the IFA's confirmation that it should proceed with the new CETV illustration.
10. On 27 July 2020, the IFA asked the Administrator how the CETV fee could be paid and indicated that Mr E was becoming frustrated with the delay in progressing the new CETV.
11. On 10 August 2020, the IFA complained that the Administrator had not yet, despite multiple requests, explained what it needed to do to obtain the new CETV illustration.
12. The Administrator asked for an invoice to be raised for the CETV fee on 17 August 2020 and chased for it on 20 August 2020. The CETV invoice was produced and the CETV fee was paid around the end of August 2020.
13. On 1 September 2020, the Administrator informed the IFA that it was waiting for receipt of the CETV fee payment to be confirmed, after which it could be 20 working days before the new CETV illustration would be received.
14. Following reminders from the IFA on 8 September 2020 and 15 September 2020, the Administrator said on 17 September 2020 that the new CETV illustration had been prepared and referred to the Scheme's Actuary for review. It expected the new CETV illustration to be issued within 10 working days, although it could not guarantee this.
15. On 5 October 2020, the IFA complained to the Administrator that the new CETV illustration was overdue and the process had been ongoing since May 2020.

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<sup>1</sup> Regulation 6(3) of The Occupational Pension Schemes (Transfer Values) Regulations 1996: "A member who has made an application for a statement of entitlement may not within a period of twelve months beginning on the date of that application make any further such application unless the rules of the scheme provide otherwise or the trustees allow the member to do so."

16. On 7 October 2020, the Administrator informed the IFA that it expected the new CETV illustration to be issued on 9 October 2020. The Administrator accepted that it had failed to keep the IFA informed when the delay occurred.
17. The Administrator issued the new CETV illustration to the IFA on 9 October 2020, together with the information and forms required for Mr E to make his transfer request to the Trustee. This included an “Application to Proceed” (**the Transfer Application**).
18. On 3 November 2020, the IFA requested an illustration of the ill-health early retirement benefits payable to Mr E from the Scheme. On 5 November 2020, the Administrator informed the IFA that more information about Mr E’s ill-health would be required from his doctor before the request for ill-health early retirement benefits could be passed to the Trustee. On 16 November 2020, the Administrator informed the IFA that Mr E had already attained the minimum retirement age (**MRA**) of 55 and could draw his retirement benefits regardless of health. The Administrator asked for the IFA’s confirmation of the date to be used for the early retirement benefits illustration.
19. Mr E died on 19 November 2020 and the IFA notified the Administrator of his death on 30 November 2020.
20. The Scheme’s Rules (**the Rules**) provided for a lump sum of £16,094.41 - representing a return of Mr E’s contributions to the scheme, to be paid to Mr E’s estate. A dependant’s pension could be paid where the Scheme’s definition of a dependant was met. The Trustee made contact directly with Ms E to determine if she qualified under the Rules as a dependant.
21. Ms E, through Mr B E, complained to the Trustee in two parts. First by email on 15 June 2021, then on 22 July 2021 when she enclosed the Scheme’s Internal Dispute Resolution Procedure (**IDRP**) form. Ms E indicated that she intended to commence legal action against the Trustee. The details of Ms E’s complaint are listed under “Ms E’s position”, in paragraphs 23 to 26, below.
22. On 24 August 2021, the Trustee responded to Ms E under the Scheme’s IDRP, on behalf of itself and the Administrator. On 28 February 2023, the Administrator provided a formal response to Ms E’s complaint to The Pension Ombudsman (**TPO**). The responses are summarised under “the Trustee’s and the Administrator’s position” in paragraphs 27 to 31 below.

## **Ms E’s position**

23. The Trustee did not comply with Mr E’s wish for his accrued pension benefits to be paid out on his death as a lump sum. Mr E’s efforts to give effect to his wish were frustrated by the Administrator’s failures.
24. Mr E intended to transfer the new CETV, which she estimated to be in the region of £160,000, to another pension plan (**the new Plan**). The administrator of the new Plan requested the transfer, but the Trustee ignored its request.

25. The Trustee and Administrator delayed Mr E's attempts to finalise a transfer to the new Plan. As a result, following Mr E's death the family home had to be sold to settle his estate.
26. The Trustee should agree to pay the new CETV to the new Plan.

### **The Trustee's and the Administrator's position**

27. On 9 October 2020, the Administrator had provided Mr E, via the IFA, with the Transfer Application he needed to complete if he wished to proceed with the payment of the CETV. The IFA confirmed to the Trustee that Mr E did not sign the Transfer Application and, to the best of the Trustee's knowledge, the Administrator did not receive the Transfer Application from Mr E.
28. As Mr E did not sign the Transfer Application, the transfer did not proceed.
29. The Rules and pensions legislation did not permit a CETV to be paid after Mr E's death.
30. The Administrator made contact directly with Ms E to determine if she qualified under the Rules to receive a dependant's pension.
31. Neither the Trustee nor the Administrator accepted that it had been responsible for any unreasonable delays or that it had prevented the IFA from providing advice to Mr E.

### **Adjudicator's Opinion**

32. Ms E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or the Administrator.
33. The Adjudicator was of the view that:-
  - Under pension legislation that applied from April 2015, Mr E was required to obtain advice from a suitably qualified adviser before a transfer could proceed, as the CETV which was in the region of £160,000, which exceeded the £30,000 threshold at which such advice became mandatory. Any advice regarding a transfer would have taken into account whether the CETV offered was a fair representation of the benefits that would be given up, and Mr E's specific personal circumstances, including his marital status, health and personal objectives. This mandatory advice had not been concluded when Mr E died. Consequently, Mr E was not in a position prior to his death to declare that advice had been received and could not have submitted a valid application to transfer.
  - As no instruction to transfer was, or could have been, given, neither the Trustee nor the Administrator could be found to have ignored an instruction to transfer.

- While there was a delay in producing the new CETV illustration requested by the IFA, the overall time taken to produce the new CETV illustration did not exceed the statutory requirement (to the extent it would have applied) of three months from 14 July 2020.
- There were valid reasons for most of the delay. The IFA's initial enquiry about the new CETV illustration was not a clear request to produce it. Furthermore, Mr E had already received a statutory CETV illustration in the previous 12 months, so the request for the new CETV illustration had to be referred to the Trustee to exercise its discretion whether to agree to provide the new CETV illustration and the fee it would charge for providing it.
- An avoidable and unexplained delay did occur from 16 July 2020 - when the Administrator knew the Trustee had agreed to provide the new CETV illustration - to 11 August 2020 when the Administrator asked for an invoice to be raised to facilitate payment of the CETV fee. However, this delay was not so severe as to amount to maladministration.
- The new CETV illustration was issued five weeks before Mr E died. Although this could have allowed sufficient time for the transfer advice to Mr E to be concluded, on 3 November 2020 the IFA then requested an illustration of ill-health early retirement benefits for Mr E. If this illustration was essential to the advice for Mr E, neither the Trustee nor the Administrator could be held responsible for it being requested less than three weeks before Mr E died.
- The Administrator responded promptly and literally on 5 November 2020 to the IFA's request for an ill-health early retirement benefits illustration for Mr E. There was a period of apparent inactivity until 16 November 2020, when the Administrator contacted the IFA to point out that Mr E had already attained age 55 and could draw early retirement benefits without reliance on ill-health provisions. While it was possible that early retirement penalties could have applied to a standard early retirement benefits illustration that might not have applied on ill-health early retirement, this was not discussed. So it was not possible to say if the request for medical information caused an avoidable delay. In any event, it would not have been a delay that could be attributable solely to the Administrator or Trustee.
- Mr E's accrued pension benefits remained in the Scheme until his death, so the benefits payable on his death remained subject to the Rules. The Trustee applied the Rules correctly in determining the lump sum and dependant's pension benefits payable. It was not possible for the new CETV to be paid after Mr E's death.
- There was no evidence that the Administrator or Trustee ignored complaints from Financial Advisers.

34. Both of Ms E's representatives responded to the Adjudicator's Opinion. The IFA indicated that while Ms E disagreed with an element of the Adjudicator's Opinion she had decided to accept it.
35. A second response was then received from Mr B E, who said that Ms E did not accept the Adjudicator's Opinion.
36. Given the conflicting responses, the complaint was passed to me to consider.
37. Ms E provided further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Ms E.

### **Ms E's additional comments**

38. Ms E considered that others have also lost out when claiming their pension benefits from the Scheme.
39. There had been a number of complaints about the Administrator for exactly the same reason as hers.
40. Delays in providing information caused by the Administrator and the Trustee meant the Transfer Application could not be returned in time.
41. A proper analysis could not be completed without a new CETV illustration, retirement illustrations and general information. Because of the delays in providing these, specialist advice could not be provided in time.
42. In additional comments submitted by Ms E through Mr B E, she said the Adjudicator's investigation dismissed most of her complaint in favour of the Trustee.

### **Ombudsman's decision**

43. While Ms E said that she wished to accept the Adjudicator's Opinion to bring the complaint investigation to a close, her additional comments through Mr B E expressed a view that TPO had exercised bias in favour of the Trustee. For that reason, it is right, in my view, that the complaint should be referred to me for review. My review is independent, and my decision is impartial and final.
44. Mr B E's submissions included statements representing Ms E's position in the complaint, his own personal position and statements that could reasonably be taken to represent both Ms E and Mr B E. As Mr B E has no standing in the complaint other than as a representative of Ms E, statements that are not representative of Ms E's position are not relevant.
45. Ms E complained that the Trustee did not comply with Mr E's wish for his accrued pension benefits to be paid out on his death as a lump sum and that the Administrator's delays prevented Mr E from obtaining the financial advice he needed to arrange the transfer to the new Plan before he died. As a result, following Mr E's

death, the family home had to be sold to settle his estate. Ms E also said that the Administrator ignored complaints from financial advisers. Ms E is of the view that the Trustee should agree to pay the new CETV to the new Plan.

### **A transfer instruction that was ignored**

46. As the CETV of Mr E's benefits in the Scheme exceeded £30,000, Section 48 of the Pension Schemes Act 2015 required the Trustee to establish that Mr E had received financial advice before it could action a transfer request from him. It is clear from the evidence provided, particularly from the initial complaint application to TPO, that the IFA had not concluded its advice before Mr E died. So, I find that it was not possible for Mr E to have given an actionable transfer instruction, that the Trustee could have then ignored.

### **Delays**

47. The IFA requested information from the Scheme on 20 May 2020. The IFA received an incomplete reply on 5 June 2020 and the missing information was received on 12 June 2020. The IFA then requested further information on 15 June 2020, including an enquiry about obtaining the new CETV illustration.
48. There is no dispute that a CETV illustration had already been issued to Mr E in the 12 months prior to the request for the new CETV illustration. It is unclear why the IFA felt it could not provide advice based on the earlier CETV illustration, but the provision of the new CETV illustration was at the Trustee's discretion and chargeable. The Trustee met to decide if it was prepared to provide the new CETV illustration and the fee payable for it. When the new CETV illustration had been produced, the Trustee referred it to the Scheme's actuary for review. These were reasonable actions which I find did not amount to maladministration by the Trustee.
49. There was an avoidable and unexplained delay from 16 July 2020 to 11 August 2020, when the Administrator's communication with the IFA could have been better. Nevertheless, I agree with the Adjudicator that it was not so severe as to amount to maladministration by the Administrator.
50. While there were some delays in the Administrator's responses to the IFA's requests, cumulatively the time taken to provide the new CETV illustration did not exceed the statutory requirement of three months, to the extent that it would apply to a "non-statutory transfer" of this type, and, importantly, there is no evidence that the Administrator had been informed at this point that Mr E was in such poor health that the IFA's requests for information should be given high priority (which I would expect to happen, if such a request was made in those circumstances).
51. The rules for the provision of regulated transfer advice are contained in the Financial Conduct Authority's (**FCA**) Conduct of Business Sourcebook (**COBS**) at section 19.1. At paragraph 19.1.2, COBS says:

“A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits.”

52. The comparison of retirement benefits payable under the ceding scheme and the scheme that is proposed to receive the transfer is an essential element of the transfer advice. However, there is no evidence that the Trustee or the Administrator was asked to provide an illustration of ill-health early retirement benefits payable to Mr E under the Scheme until 3 November 2020, just under three weeks prior to Mr E's death.
53. When the illustration of ill-health early retirement benefits payable to Mr E by the Scheme was requested by the IFA on 3 November 2020, the Administrator responded to the IFA's request within two days, requesting information about Mr E's medical condition. That represents good practice by the Administrator. The Administrator had fulfilled its obligation to Mr E by responding to the question posed by the IFA. Nevertheless, the Administrator then, on 16 November 2020, also asked the IFA to consider if the ill-health early retirement option was required, as Mr E had attained the MRA of 55 and could draw his retirement benefits regardless of health. Ultimately, the IFA did not reply to the Administrator's email of 16 November 2020 and the illustration was not produced before Mr E died on 19 November 2020. I find that this did not amount to maladministration by the Administrator.

### **Death benefits paid**

54. As Mr E did not submit the Transfer Application to the Administrator or the Trustee, his pension benefits remained in the Scheme when he died and the death benefits payable were prescribed by the Rules. The death benefits under the Rules were a lump sum return of contributions of £16,094.41 payable to Mr E's estate and a dependant's pension payable to an eligible dependant. The Trustee made contact directly with Ms E to establish if she was eligible under the Scheme's definition of an eligible dependant to receive a dependant's pension. I find that the Trustee has interpreted and applied the Rules correctly in deciding the benefits payable on Mr E's death.

### **Payment of the new CETV after Mr E's death**

55. The Trustee has confirmed that the Rules do not provide for the new CETV to be paid after Mr E's death. Additionally, the Pensions Tax Manual (**the PTM**) provides guidance on the benefits payable following a member's death under a defined benefits arrangement such as the Scheme. The PTM states at PTM071100:

“A defined benefits arrangement can provide:

a defined benefits lump sum death benefit – see PTM073100, and  
a dependants’ scheme pension – see PTM072100.”

I find that the Trustee has correctly applied the Rules and pension legislation regarding the options available after Mr E’s death.

### **The Administrator ignored complaints**

56. Two complaints were made to the Administrator, on 1 August 2020 and 5 October 2020. The Administrator responded to the complaints on 20 August 2020 and 7 October 2020, respectively. I find there is no evidence that the Administrator ignored complaints from Financial Advisers.

### **General difficulties impacting other members of the Scheme**

57. Ms E said that other members of the Scheme may have been impacted by difficulties in accessing their pension benefits. However, I can only consider the actions of the Trustee and the Administrator that were relevant to Ms E’s specific complaint, with a view to putting right any injustice she might have suffered as a result of those actions.

### **Summary**

58. While I acknowledge Ms E’s frustration that Mr E’s intentions, as she understood them, in relation to his retirement and death benefits under the Scheme were not realised, I find the outcome was not the result of maladministration by the Trustee or the Administrator. The steps Mr E needed to take to arrange the transfer of the new CETV were not completed and the benefits that could be authorised by the Trustee on Mr E’s death were consequently limited by the Rules.
59. Therefore, I do not uphold Ms E’s complaint.

### **Dominic Harris**

Pensions Ombudsman  
1 March 2024