

Ombudsman's Determination

Applicants	Mr S, Mrs T S, Mr T S (the Applicants)
Scheme	HBOS Final Salary Pension Scheme (the Scheme)
Respondent	HBOS Trustees (the Trustees)

Outcome

1. I do not uphold the Applicants' complaint and no further action is required by the Trustees.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. The Applicants have complained that the Trustees made a decision not to pay backdated interest on Cash Equivalent Transfer Values (**CETVs**) from the date that the Trustees refused to recognise the transfer of their benefits as a 'Buddy' Transfer.
4. The Applicants would like to be paid interest on their CETVs for the period 26 August 2015 to 28 October 2015.

Background information, including submissions from the parties

5. The Pension Schemes Act 1993 gives a member of an occupational scheme a right to receive a CETV. The Scheme rules under, sections 9 and 19, set out how the Scheme allows transfers of member's benefits.
6. Section 9.1, "Right to transfer or buy-out" states:

"A member who leaves Service with a preserved pension at least a year before Normal Retirement Date can require the Trustees to use the cash equivalent of his or her benefits to buy one or more annuities, or to acquire rights under another pension scheme or arrangement, in accordance with the Transfer Value Laws".
7. Section 19.2, "Transfers and buy-outs" states:

"Instead of providing benefits under the Scheme in respect of any person, the Trustees may transfer assets to another pension scheme or arrangement

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(including any person who is permitted by the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance), so that benefits will be provided under the other scheme or arrangement in respect of the person concerned...The transfer must comply with the Contracting-out and Preservation Laws...It must also be a "recognised transfer" under Section 169 of the Finance Act 2004 (recognised transfers)".

8. Under Chapter IV of Part IV of the Pension Schemes Act 1993 it states the following in relation to transfer values:

"(2) Subject to the following provisions of this section, if the trustees or managers of a scheme receive an application under section 95 they must do what is needed to carry out what the member requires -

(a) in the case of an application that relates to benefits other than money purchase benefits, within 6 months beginning with the guarantee date shown in the relevant statement of entitlement, and..."

9. In March 2015, the Applicants requested an initial transfer out of the Scheme benefits from the Scheme's Administrators (**Tower Watson**). At the time of the request, Mr T S was still an active member of the Scheme, and in order to facilitate the transfer, he was required to opt out of the Scheme. On 8 April 2015, Mr T S requested to opt out of the Scheme and this was subsequently completed on 31 May 2015.

10. On 23 March 2015, the Applicants received CETV quotations showing the following amounts:-

Mr M S:

- £534,855 including non-guaranteed AVC fund of £19,441;

Mrs T S:

- £224,857

Mr T S:

- £731,608 (not guaranteed as Mr T S was still an active member at this point).

11. On 15 June 2015, after Mr T S had opted out of the Scheme, he received a new CETV quotation showing the following amount:-

- £775,823 including an AVC fund of £3,381.64.

12. On 19 August 2015, the Applicants made a second transfer request. They asked for the transfers to be done via a 'Buddy' Transfer.

13. On 26 August 2015, Tower Watson sent an email to Mr M S saying:

“Block transfers are typically associated with corporate activity such as scheme mergers or transfers of employees upon sale of business...Due to the ability to transfer certain protections...as part of a block transfer...some individual of other schemes have been involved in ‘buddy’ transfers...The legislation was not written with ‘buddy’ transfers in mind, so there is a risk that HMRC could view this as a contrivance and that is not a genuine block transfer...This is something that the Trustees are not willing to do at this point in time and so block or buddy transfers for individuals (rather than Company led block transfers) are not being considered by the Trustees”.

14. On the same day, Mr M S and Mrs T S received new CETV quotations showing the following amounts:-

Mr S:

- £541,043 including non-guaranteed AVC fund of £17,644.

Mrs T S:

- £226,164.

15. On 27 August 2015, the Applicants invoked the Scheme’s internal dispute resolution procedure (**IDRP**).
16. On 8 September 2015, the Applicants received a response from the Trustees under IDRP stage 1 stating that the block transfer is usually permitted at the Trustees’ discretion. The letter confirmed that, on this occasion, the Trustees had decided not to allow the ‘Buddy’ transfer.
17. The Applicants invoked IDRP stage 2. On 8 October 2015, the Trustees sent a response to the Applicants saying they agreed to the ‘Buddy’ transfer request. They also said:

“I am pleased to confirm that the Trustee has agreed to honour your original guaranteed transfer value produced by the Scheme administrators in March 2015...The Trustee has agreed that if the new calculation of your transfer value is greater than that provided by the Scheme administrators in March 2015, the higher of the two calculations will be honoured”.

18. On 14 October 2015, Mr M S sent an email to the Trustees questioning why they have not paid the Applicants any additional interest and compensation.
19. On 20 October 2015, Tower Watson sent an email to Mr M S saying:
- “...as the ‘better of’ [sic] transfer quotes have been honoured, the Trustee has confirmed that no consideration is being made for interest or other claims made”.

20. The Applicants brought the complaint to this office on 8 December 2015.

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21. On 20 January 2016, this office received a formal response from the Trustees that said:

“Given that the Trustee has acted entirely properly throughout, exercised its discretion in the complainants’ favour, spent a considerable amount of time and resource to facilitate a Buddy Transfer and ensured that the complainants have received the highest CETV so as to ensure that they have suffered no loss, the Trustee would respectfully argue that it would not be appropriate to award interest or compensation for distress and inconvenience - particularly as it has always been within the Trustee’s rights to refuse to grant a Buddy Transfer at all”.

22. On 13 March 2017, the Trustees sent this office an email explaining:

“Our legal advisers have reviewed the Scheme rules, as well as the relevant legislation, and advised that although members have a right to require that their benefits are transferred out, whether or not the Trustee does this in the form of a block transfer is at the Trustee’s discretion...Rule 9.1 gives members a right to require a transfer in accordance with the Pension Schemes Act 1993. The Pension Schemes Act 1993 does not include an obligation for trustees to enter into a transfer agreement to facilitate transfer assets in other circumstances this is clearly a Trustee discretion”.

Adjudicator’s Opinion

23. The Applicants’ complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator’s findings are summarised briefly below.

- There is no question that the Applicants had a statutory right to transfer their Scheme benefits. The issue to be considered is whether the Trustees, on receipt of the ‘Buddy’ transfer request, were obliged to process it. The two relevant rules regarding this are rules 9.1 and 19.2.
- Rule 9.1 enables members to make a transfer to a different scheme. This gives the member the right to transfer as per the Pension Scheme Act 1993. It is this Act that provides the statutory right to transfer, however it makes no reference to ‘Buddy’ or block transfers. So the Adjudicator did not believe that rule 9.1 places an automatic right on the member to a block or ‘Buddy’ transfer, only an individual transfer.
- Rule 19.2 provides members with a broader range of options as to how transfers can be undertaken. In essence, it requires that it must be a “recognised transfer” and comply with the Contracting-out and Preservation Laws. This allows the Trustees to accept a transfer on a ‘Buddy’ or block basis. However, the wording also introduces the element of discretion. It says:

“...Trustees may transfer assets to another pension scheme or arrangement”.

- The Adjudicator was satisfied that where rule 9.1 places a requirement on the Trustees to accept a transfer in line with the Pension Scheme Act 1993, the broader requirements of rule 19.2 were discretionary. The Adjudicator was not persuaded that there is overriding legislation that requires the Trustees to accept a block transfer, nor were there any Scheme rules that required them to accept such a transfer request.
- The Adjudicator noted that the Trustees subsequently changed their position on the matter. The statutory time limit for a transfer is six months, and the transfers ultimately happened within eight weeks. The Adjudicator noted that the previous Ombudsman has said that a transfer should happen as soon as reasonably possible. In this instance, where the Trustees were considering a discretionary decision, the Adjudicator did not consider eight weeks to have been an unreasonable period of time.
- The Adjudicator thought the Trustees had a legitimate right to consider, and if they wished, decline the request to transfer on a ‘Buddy’ basis. The Adjudicator felt the Trustees should take into account relevant factors when considering a ‘Buddy’ transfer request, such as whether agreeing to the request would be detrimental to the Scheme, but whether or not it is detrimental does not necessarily impose an obligation on the Trustees to agree to the request.
- In the circumstances, the Adjudicator did not think the time taken to transfer was excessive and therefore the Adjudicator did not agree that interest should be paid in addition to the higher transfer amount. The Applicants had a right to the guaranteed figure in their most recent statement of entitlement, and the Adjudicator noted that the Trustees have honoured a higher figure than the guaranteed figure in two of the three transfers. The Adjudicator thought that was appropriate in the circumstances.
- It was therefore the Adjudicator’s opinion that this complaint should not be upheld.

24. The Applicants did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. The Applicants provided their further comments which do not change the outcome. I agree with the Adjudicator’s Opinion, summarised above, and I will therefore only respond to the key points made by the Applicants for completeness.

25. The Applicants contend that a delay caused by the Trustees due to the initial unlawful refusal to ‘Buddy’ transfer, resulted in a financial loss to them of approximately £1.5 million. They feel that they have been treated unfairly by the Trustees as they believe Buddy transfers are now being allowed to other Scheme members without refusal.

Ombudsman's decision

26. I do not believe that the Trustees have done anything wrong. There was no statutory requirement for the Trustees to honour the 'Buddy' transfer request, and also there was no requirement under the Scheme rules.
27. The decision of whether to allow such a transfer request is discretionary. I acknowledge that the Trustees ultimately changed their decision on whether to allow the 'Buddy' transfer. However, this does not mean they were wrong to initially decline it. I also find it significant that the Trustees then agreed to pay the higher of the CETVs generated in August and October 2015.
28. The Applicants have requested interest on their CETVs, for the period between when the Trustees first refused the 'Buddy' request, in August 2015, and when they agreed to it in October 2015. However, it is not clear why the Applicants believe interest is appropriate, or why they feel they have suffered a financial loss.
29. I would usually award interest where an Applicant has wrongly been denied access to funds which I do not find has occurred in this case. It is possible that the value of the funds may have increased if they were transferred earlier. For example, if the investment performance of the funds would have been better in the receiving scheme than the Scheme during the period in question. However, the Applicants have not provided any evidence that this is the case. I therefore cannot see that they have suffered any financial loss.
30. In any event, the Trustees were under no obligation to allow the 'Buddy' transfer. Instead, they have acted favourably towards the Applicants by exercising their discretion to process the 'Buddy' transfer when the Applicants requested it a second time. I do not find that there was any maladministration.
31. Lastly, I remain unconvinced that the Applicants were treated unfairly. There is no evidence that the Applicants have been treated differently to any other Scheme members.
32. Therefore, I do not uphold the Applicants' complaint.

Anthony Arter

Pensions Ombudsman
24 May 2017