

Ombudsman's Determination

Applicant	Mrs E
Scheme	Scottish Widows Retirement Benefit Scheme (the Scheme)
Respondent	Scottish Widows Pension Trustees Limited (the Trustees)

Outcome

1. I do not uphold Mrs E's complaint but one point of action is required by the Trustees.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs E claims that, as an active member of the Scheme, she was treated unfairly compared to a deferred member whose Cash Equivalent Transfer Value (**CETV**) would be guaranteed for a three month period. Her complaint is that during the period in which she was planning to opt out of the Scheme, her final CETV reduced by around £42,000 compared to the original CETV estimate issued two months earlier.

Background information, including submissions from the parties

4. Following Mrs E's request for a CETV on 4 June 2015, she was provided with a quotation dated 16 June 2015 which showed a transfer value figure of £686,687.
5. The June 2015 letter and CETV quotation stated the transfer value was for "illustration purposes only", and "therefore not guaranteed". It also said that as Mrs E had "not left the scheme" the transfer value was "not guaranteed". In all, there were three distinct warnings on the documents stating the June CETV was not guaranteed.
6. In early August 2015 Mrs E discovered a new actuary had been appointed earlier in the year and that the transfer value basis had been changed in July 2015. On the assumption that Mrs E still wanted to transfer out she was provided with an updated CETV on 11 August 2015; the revised transfer value figure was £644,226.

7. In an email to the Scheme administrator dated 11 August 2015, Mrs E said she was shocked to learn her transfer value had reduced, but said the text about the transfer value 'not being guaranteed' had been "missed by both me and my [Independent Financial Adviser (IFA)] so was not prominent enough."
8. Despite the reduction in the CETV, Mrs E elected to opt out from the Scheme. In an email to the Scheme administrator dated 26 August 2015, Mrs E said "Following discussions with my IFA, I have decided to go ahead with the transfer out of the SWRB Scheme, as planned." Mrs E officially opted out from the Scheme on 27 August 2015, and the £644,226 CETV payment was settled on 28 August 2015.
9. Mrs E remained dissatisfied with the Scheme and Trustees' formal responses and she could not agree with the actuarial logic used when adjusting the CETV basis. She said she had been treated unfairly compared to a deferred member who received a three month guarantee on the CETV, and she was forced under new legislation to seek financial advice from an IFA. Mrs E claimed the Trustees were not acting in the spirit of the new pensions freedom legislation, and that active members could only receive the three month guarantee if they first opted out of the Scheme, with no possibility of opting back in again, so an informed decision could not be made.
10. The Trustees said the complaint arose because Mrs E and her IFA failed to notice the non-guaranteed warnings on the CETV statement, and said she was under no obligation to opt out and transfer out simultaneously. The Trustees pointed out that Mrs E chose to proceed with the transfer knowing her CETV had reduced by £42,000. The Trustees had also explained to Mrs E that they had fiduciary duties to ensure correct benefits were paid, and if incorrect benefits were paid it would be a breach of their fiduciary duties and detrimental to the Scheme and other scheme members.
11. The Trustees concluded that there was no basis upon which Mrs E or her IFA could have assumed the transfer value was guaranteed, and they said that she had made an informed decision because she elected to transfer out two weeks after receiving the updated CETV figure. However, they recognised that the revised transfer basis could have been communicated to her sooner and offered Mrs E £500 compensation.

Adjudicator's Opinion

12. Mrs E's 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 were sufficient caveats in the June 2015 CETV letter and quotation stating the transfer value was not guaranteed. And, the Trustees were under no statutory obligation to place a three month guarantee on Mrs E's CETV as she was an active member in the Scheme.
 - On learning the CETV had reduced in August 2015, Mrs E could have cancelled the transfer process and stayed in the Scheme, thereby mitigating any loss.

- Mrs E could have opted out sooner than she did, from 6 April 2015 onwards on the assumption she was already aware of the new pensions freedom legislation.
 - It is a legislative requirement for all active and deferred members (with a CETV of £30,000 or more) to seek financial advice before transferring out. That decision was not forced upon Mrs E by the Trustees; they were complying with Government legislation.
 - It was not unreasonable for the Trustees to appoint a new actuary, nor was it unreasonable for the actuary to review and change the transfer basis in July 2015.
 - Opting out from a final salary scheme is an important decision and it was therefore correct for the Trustees to ensure Mrs E had sought financial advice. Mrs E's reasons for opting out were more complex than just monetary driven. Some reasons relate to former decisions made by the Trustees and there were also personal reasons relating to her husband, a deferred member of the Scheme.
 - If Mrs E wanted a three month guarantee on her CETV she needed to opt out at the first opportunity where she would have been treated as a deferred member in the Scheme. Her opt out was processed in accordance with her instructions, and there was no obligation on her to opt out and transfer out simultaneously.
 - During the formal complaints process the Trustees recognised they should have contacted Mrs E sooner to inform her that the transfer basis had changed. In recognition of that she was offered £500 which was reasonable to cover any non-financial injustice. And, it was possible that an Ombudsman would not consider that Mrs E had suffered significant distress and inconvenience and make no award.
13. Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs E provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, but I will, for completeness, add some of my own comments in response to Mrs E's recent letter.

Ombudsman's decision

14. Mrs E has, in my view, produced no new evidence to support her case. She has made reference to the Adjudicator's Opinion and an earlier recorded telephone discussion between herself and the Adjudicator. Her main points are summarised below:
- Mrs E said she could not opt out at the first opportunity, June 2015, because she had been informed by the Scheme administrator her actual opt out date would be the last day of the month following the month of her opt out request.
 - She disputes there was a delay in obtaining financial advice but says it took one month to find an IFA.

- Mrs E believes the Trustees have not acted in the best interest of “all” members because active members are not given a 3 month guarantee like deferred members; how could she make an informed decision on a CETV where the value had reduced before the financial advice process was completed; once an active member opts out there was no opportunity to opt back in; and a deferred member in her position would have received a transfer value £42,000 higher than herself.
- During the call with the Adjudicator, she disagreed that opting out and transferring from a defined benefit scheme to a defined contribution arrangement was a risk and a lottery. Mrs E said that based on some of the changes made by the Trustees, she saw staying in the Scheme as a lottery.
- Mrs E says she would have never known the correct lower transfer value had she not phoned the administration team. And, that the transfer paperwork she received only makes one mention of the transfer figures not being guaranteed, not three times as suggested in the Opinion.
- Mrs E disputes that by not transferring out and staying in the Scheme she would have mitigated her claimed loss because she was still exposed to Trustees’ decisions.
- The fact that Mrs E proceeded with the CETV did not mean she accepted it was a fair CETV. If she had remained in the Scheme she would have been subjected to decisions made by the Trustees, without consultation to members, without explainable rationale, and without any thought of the impact on existing members, especially those close to retirement age.
- Mrs E wanted to be “treated fairly” in line with Financial Conduct Authority (**FCA**) principles and wanted the Trustees to honour the original CETV. Despite what the Trustees said, she says “Treating Fairly Principles” should apply to all Scottish Widows staff as they are “customers”. She says the Trustees should have informed her in June 2015 that the transfer basis would be changing and allowed her to opt out immediately. She now asserts that some active members were made aware of these impending transfer basis changes and were allowed to opt out immediately.
- She disputes the comment that no guarantee can be placed on the CETV of an active member because the member is still accruing benefits in the Scheme. She says that implies a CETV should be higher because of the ongoing accrual.
- Mrs E disputes the Adjudicator’s view that she had not suffered significant distress and inconvenience. She feels she has been treated unfairly; to have worked for the same employer for 25 years and then be treated in this way so close to her retirement has impacted her wellbeing and motivation.
- Finally, she says the Trustees have continually refused sending her the underlying transfer calculations. Mrs E has an actuarial background and wanted to see how her benefits could reduce by 6% when she was two years from normal retirement.

15. At the heart of Mrs E's complaint is a fundamental dispute about the Trustees and how they have conducted themselves over the years. Mrs E feels the Trustees have not acted in her best interests in the past and at the point in time when she was opting out of the Scheme and transferring her benefits to another provider. She says this is directly linked to why her CETV reduced by £42,000. However, I have seen no evidence to back up Mrs E's claim.
16. I cannot comment on past decisions the Trustees might have made because that was not the complaint Mrs E brought to my organisation. But, it seems to be one of the main reasons why she decided to opt out of the Scheme. I have listened to the audio discussion between her and the Adjudicator, and personal reasons also play a part in her decision to opt out. (These involve her husband's deferred pension benefits in the Scheme and the Trustees past refusal to allow him a partial transfer value out).
17. Whatever the reasons Mrs E had for opting out that was for discussion between herself and her IFA. Following any discussions, Mrs E would then decide if she wanted to transfer out to another provider or remain in the Scheme (the latter being highly unlikely it seems). On that basis, it appears that Mrs E was going to transfer out regardless of the financial value of her accrued benefits in the Scheme.
18. The facts are straightforward in this case. Mrs E's CETV was never guaranteed and there were sufficient warnings in place. Mrs E admits the non-guaranteed text was there, but says it was not prominent enough and was missed by herself and the IFA.
19. The wording could not be clearer in my view. Mrs E recently submitted a copy of the June 2015 CETV statement which clearly states that as she was still a member of the Scheme her transfer value was not guaranteed. She says there was only one mention of the "not guaranteed" wording but that is incorrect. Paragraph two on the CETV covering letter states the transfer value was for "illustration purposes" only, and that was again repeated further down the same page where it says; the "Transfer Value quoted is for illustration only and is therefore not guaranteed". For the avoidance of doubt, if something is a 'quote' or is for 'illustration purposes only', then it is not guaranteed.
20. In specific response to Mrs E's recent letter as detailed in paragraph 14 above), I make the following comments:
 - Mrs E *could* have opted out any time after 6 April 2015 if she had wanted to take advantage of the new pensions freedom legislation. It is irrelevant that the opt out date was the last day of the month following the month of the last opt out request. If Mrs E had made her request in April or May 2015, her transfer value could have been processed before 1 July 2015 which is when the CETV factors officially changed.
 - It was not unreasonable for the Adjudicator to conclude that there appeared to be a delay in Mrs E obtaining advice. Taking one month to find an IFA does seem to be excessive. And, had she sought advice in April or May it seems reasonable to

conclude that her CETV could have been paid before the July transfer changes were made.

- There was no statutory requirement for the Trustees to place a three month guarantee on Mrs E's CETV because she was not a deferred member, so this has nothing to do with acting fairly or not. The Trustees have complied with legislation, and Mrs E was treated fairly and no differently to any other active member. Mrs E's argument that a deferred member would receive a higher transfer value is irrelevant because she chose to remain an active member before transferring out.
- Furthermore, if the opt out rules state that once an active member has opted out they cannot opt back in, then I cannot see how that can be interpreted as unfair. If the rules are being applied correctly there can be no maladministration. It would, in my view, be deemed as more unfair if the Trustees had allowed active members to pick and choose, opting out and then back into the Scheme again at a later date.
- The initial discussion with the Adjudicator was on an informal basis. It was his personal view that opting out and transferring from a defined benefit scheme to a defined contribution arrangement was a risk to be taken into account, hence the need to obtain IFA advice; that view is not unreasonable.
- Mrs E says she would not have known about the lower CETV had she not phoned the administration team. Whilst I can understand that logic, Mrs E was only entitled to one CETV quote in any 12 month period. The administrators were therefore only obliged to provide a further CETV once Mrs E, as an active member, had finalised her opt out/transfer value instructions. It is incorrect to state she would not have found out about the revised CETV. If she had submitted her final opt out/transfer paperwork, the administrators would have produced a final CETV because the original figures were never guaranteed. Mrs E would then have had exactly the same opportunity to either proceed with the transfer or cancel it.
- Mrs E says that she would not have mitigated any potential loss by choosing to remain in the Scheme because she would still be exposed to Trustee decisions. Mrs E was made aware of the revised CETV in August 2015 yet decided to transfer regardless. Had she cancelled the transfer process and remained in the Scheme as an active or deferred member, she would have mitigated her claimed loss. Although, the Trustees might make future decisions that affect the Scheme, there is absolutely no evidence those decisions would impact on Mrs E's benefits.
- It was not maladministration for the Trustees to appoint a new Actuary who was then asked to review the existing transfer basis. Mrs E says the changes made were unfair because her CETV reduced as a result. Whilst the CETV may have reduced I cannot say the new basis was unfair, because the revised (albeit lower) CETV still represented a fair market value of the pension benefits she was giving up. Or put another way, had Mrs E been quoted £644,226 in June 2015 I do not believe she would have acted any differently and transferred her benefits out.

- Even if FCA treating customers fairly principles did apply to Mrs E (strictly speaking they do not apply for the reasons the Trustees gave), I am not convinced Mrs E has been treated unfairly. She has stated a number of personal views on this point, and although I can understand she is unhappy with former Trustees decisions, those decisions (including any decision made to refuse her husband's partial transfer value request) were for the Trustees to make and not her. There is no evidence that the Trustees have acted imprudently in their role and Mrs E has been treated no differently to any other active scheme member.
- Mrs E claimed that she had learnt of some active members who were permitted to opt out immediately; another example of her being treated unfairly. The Trustees confirmed a one off exercise had taken place in February 2016 to identify Executives/high earners with pension benefits that would exceed the Lifetime Allowance which had reduced from £1,250,000 to £1,000,000 from 6 April 2016. The Trustees therefore applied their discretion to allow those affected individuals to opt out immediately to ensure a Lifetime Allowance charge was not levied by HMRC. Even if Mrs E had chosen to opt out in 2016 there was no evidence her pension benefits had reached Lifetime Allowance levels, and therefore, she had to follow the standard opt out procedure which required one month's notice to enable HR and Payroll departments to process her change in scheme membership status.
- There was no statutory obligation on the Trustees to place a three month guarantee on the CETV of an active member. The Adjudicator has, in my view, explained the reasons why and so there is no need to repeat them here.
- Mrs E disputes the Adjudicator's view that she had not suffered "significant" distress and inconvenience as a result of the complaint. Her length of service is irrelevant because Mrs E could have remained in the Scheme until her normal retirement age. I do not doubt Mrs E has suffered distress and inconvenience but the £500 offer made by the Trustees is sufficient to cover the non-financial injustice in my view, and I am making no further direction. If Mrs E wishes to accept the offer that was made then she should contact the Trustees accordingly.
- Finally, I see no reason for the Trustees to refuse sending Mrs E the underlying CETV calculations, particularly if she has an actuarial background. I would ask the Trustees to arrange for this to happen following receipt of my final determination. However, I would point out that if Mrs E has further enquiries or questions on the CETV basis after receiving these, the Trustees would be under no obligation to enter into a dialogue with Mrs E as the complaint has been determined.

21. Therefore, I do not uphold Mrs E's complaint.

Anthony Arter
Pensions Ombudsman
20 October 2016