

Ombudsman's Determination

Applicant	Mr K
Scheme	Lloyds Bank Pension Scheme No.2 (the Scheme)
Respondent	Equiniti Limited (Equiniti)

Outcome

1. Mr K's complaint against Equiniti is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) Equiniti should issue a payment to Mr K's IFA, to the value of £950, to account for the fees incurred from unnecessarily seeking financial advice.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr K has complained that Equiniti provided him with an incorrect Cash Equivalent Transfer Value (**CETV**) in January 2016. Because the quoted value of his benefits was in excess of £30,000, legislation required that Mr K sought independent financial advice in relation to his intended transfer. Mr K was later informed that there had been a calculation error, and the correct CETV was £25,071, meaning he was not obligated to obtain advice from an IFA.
4. Mr K has argued that Equiniti should be liable for the IFA fees incurred as a result of the provision of an incorrect CETV. He also believes Equiniti should honour the figures quoted in the January 2016 CETV.

Background information, including submissions from the parties

5. On 13 January 2016, following a request from Mr K, Equiniti issued him with a guaranteed CETV quote. The transfer value shown was approximately £30,485. Equiniti advised Mr K in its cover letter, of the following:

"Legislation requires you to take professional independent financial advice before making a decision to transfer your benefits... This is the case unless your Scheme benefits are worth £30,000 or less."

6. A "Transfer Out Authority Form", was provided with the CETV. This form confirmed that the value was guaranteed until 13 April 2016, and also advised that:

"Every care has been taken in the preparation of this information but it is not binding if any error or omission should subsequently be discovered... Equiniti Limited is not authorised to bind the Trustees or the employer to provide benefits in excess of your entitlement under the Scheme... If there is a discrepancy, your benefits will be limited to your entitlement as defined in the Scheme TD&R [Trust Deed & Rules]."
7. On 15 March 2016, after a great deal of forethought, Mr K appointed an IFA, and agreed to pay a fee of £950 for the initial advice and any work to be undertaken in relation to a transfer of benefits. Mr K had been reluctant to appoint an IFA, as he did not wish to pay a fee for what he considered would be 'unnecessary' IFA advice. However, he accepted that, due to the value of his benefits, he was required by legislation to appoint an IFA to transfer his benefits into a SIPP.
8. On 24 March 2016, following a suitability assessment and the IFA's recommendation to transfer into a SIPP, Mr K selected Parmenion Capital Partners LLP (**Parmenion**) as the SIPP provider, and subsequently made a transfer application on 4 April 2016.
9. On 13 April 2016, Equiniti wrote to Parmenion, to advise that the January 2016 CETV was incorrect, and the actual value of Mr K's benefits was c. £25,071. Equiniti required a new transfer authority form to be returned recognising the correct, lower figure.
10. On 9 May 2016, Mr K telephoned Equiniti, regarding the reduction in the CETV figure. He did not wish to accept the lower figure, stating that Equiniti should honour the January 2016 CETV.
11. On 12 May 2016, Equiniti wrote to Mr K regarding the reduction in his CETV. It explained that the January 2016 CETV had been calculated incorrectly, which had resulted in a higher figure than Mr K's entitlement in the Scheme. Equiniti apologised to Mr K and made an offer of £75 as compensation, but confirmed that it could not pay him the amount quoted in the January 2016 CETV, as it had been made clear that the figures were not binding, should a calculation error be discovered. Equiniti concluded that, even where a member's transfer value is below £30,000, it strongly recommends that financial advice is sought, so it was not responsible for the costs incurred by Mr K in appointing an IFA.
12. On 25 May 2016, Mr K replied to Equiniti, arguing that it had a duty of care to provide accurate information, and he considered it was relying on disclaimer clauses to 'avoid its responsibilities'. Mr K stated that he only sought financial advice because Equiniti had required him to do so, and concluded that he had no intention of accepting any figures other than those in the January 2016 CETV.
13. On 14 June 2016, Equiniti reiterated its position in a response to Mr K. It explained that such disclaimers in transfer quotes are common, to ensure administrators are not

liable, should any errors or omissions occur. Equiniti confirmed that, Mr K was not entitled to the amount quoted in the January 2016 CETV, but increased the compensation offer to £100.

14. On 3 June 2016, Mr K complained to this office. He argued that he had suffered considerable distress over his financial planning, and was disadvantaged by around £5,000. Mr K considered that Equiniti should honour the figures in the January 2016 CETV. On receipt of his application, Mr K was advised of the need to first complete the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
15. On 12 July 2016, Mr K complained under Stage 1 of the IDRP, stating that, due to the figures quoted in the January 2016 CETV being over £30,000, he had taken financial advice at significant expense, as required by legislation. Mr K argued that he had relied on the figures in the January 2016 CETV to make important financial decisions, only to later be told this information was incorrect, therefore he required the original, higher amount to be paid to him.
16. On 13 August 2016, the Scheme issued its Stage 1 IDRP decision. It agreed that there had been a calculation error in the January 2016 CETV, however this did not entitle Mr K to the (incorrect) higher benefits. It was explained that the Trustee has a fiduciary duty to only pay benefits that are due from the Scheme. Further, it argued that most SIPP providers would have required Mr K to appoint an IFA, regardless of whether the transfer amount was below £30,000. The Scheme increased the level of award to £250. Mr K did not accept the award, and appealed under Stage 2 of the IDRP.
17. On 25 October 2016, the Scheme issued its Stage 2 response, and confirmed the points raised in the IDRP Stage 1, as representative of its Stage 2 decision.
18. On 9 November 2016, Mr K applied to this office to pursue his complaint. He made reference to a retirement quotation from June 2016 where a Pension Commencement Lump Sum (**PCLS**) of £7,969 is quoted. He considered that the PCLS figure supported his position that the January 2016 CETV figure of £30,485 was correct.

Adjudicator's Opinion

19. Mr K's complaint was considered by one of our Adjudicators who concluded that some further action was required by Equiniti. The Adjudicator's findings are summarised briefly below:-
 - Mr K is only entitled to the correct (lower) CETV calculated by Equiniti. Therefore, whilst it was maladministration for Equiniti to provide incorrect information in January 2016, the error did not result in an actual financial loss to Mr K's Scheme benefits, but rather a loss of expectation.

- Mr K is not entitled to the figures shown in the January 2016 CETV, and Equiniti's offer of £250 as compensation is sufficient in recognition of its maladministration in this respect.
 - Regarding the IFA fees, Equiniti may strongly recommend that a member seeks the advice of an IFA when making a transfer, regardless of the amount, the key point is, that view is not supported by legislation, and it is not obligatory to seek advice from an IFA if the transfer value is less than £30,000.
 - The correct CETV was not provided until after Mr K had appointed an IFA and obtained advice. Mr K had not selected his SIPP provider until after he had sought financial advice. Whilst Parmenion may require an applicant to have an IFA in order to open a SIPP, this is not relevant as Mr K had already been informed he was obligated to appoint an IFA due to the value of his CETV prior to choosing Parmenion as the SIPP provider.
 - Had Mr K known the correct CETV value from the outset and there was no requirement on him to appoint an IFA, and he would have, in my opinion, conducted his own enquiries and found a suitable SIPP provider which did not necessitate applicants to have an IFA. The timeline is very clear in that his course of action was as a direct result of the incorrect information Equiniti provided following the receipt of the January 2016 CETV.
 - Whilst Mr K is not entitled to the incorrect higher CETV, Equiniti is responsible for the path Mr K chose in electing an IFA, and as a result, this error has caused him a direct financial loss. To put matters right Equiniti should pay the £950 fees due to Mr K's IFA.
20. Equiniti agreed to pay the IFA fees, only if this constituted a full and final settlement of the complaint. Equiniti did, however, allege that it should not be the liable party, as responsibility for such matters had been passed over to Willis Towers Watson (**WTW**) when it took over administration for the Scheme. WTW refuted this claim, and in the Adjudicator's view Equiniti is the liable party.
21. Mr K did not accept the Adjudicator's Opinion with regard to the CETV figure, and requested he be allowed to withdraw his complaint to pursue the matter through the courts. This request was considered, however, due to the time already spent in investigating this case, I considered it would not be appropriate to allow a withdrawal at this stage, and the complaint should be formally Determined. Mr K has been informed he has the right to appeal a Determination in the High Court. Mr K provided his comments which do not change the outcome. I agree with the Adjudicator's Opinion, and I will therefore only respond to the key points made by Mr K in relation to his complaint, for completeness.

Ombudsman's decision

22. Mr K has, in my view, produced no new evidence to support his case. Reference has been made to existing points and these are summarised below:-

- Mr K is of the opinion that he should receive the higher (incorrect) CETV, as this was provided as a guaranteed figure, upon which he relied to make his financial decisions, including appointing an IFA. Mr K believes a fundamental part of this case relates to the legal definition of the word "Guarantee", which he notes is defined as "... providing a formal assurance, especially that certain conditions will be fulfilled relating to a product, service, or transaction."
- Mr K also considers that the figures shown in the June 2016 retirement quotation evidence that the higher CETV figure is, in fact, correct.
- Mr K considers that he has, in fact, suffered an actual financial loss, as a result of the incorrect CETV. He has made reference to an intended purchase of a new car, which has not been possible whilst this issue has been ongoing. Mr K says he has therefore been forced to pay for the upkeep and repairs of an old vehicle.
- Mr K also believes he has suffered a financial loss in respect of his tax-free cash allowance. It is his position that he has been disadvantaged because the (correct) lower CETV does not give him access to as much money tax-free.
- Mr K has provided a copy of a letter of complaint he wrote to Equiniti in November 2014, regarding the provision of other incorrect quotations. He argues that this demonstrates clear failure of Equiniti in its responsibilities, and a 'total lack of interest in treating customers fairly'.

23. The CETV's terms state that Equiniti is not bound by the quoted figures should an error or omission be discovered, and that Equiniti is not authorised to bind the Trustees or the employer to pay benefits in excess of Mr K's entitlement in the Scheme. It is correct that the Scheme cannot pay Mr K higher benefits than his entitlement, and I am unable to direct Equiniti to do so. Whilst I understand Mr K's position, the fact is he is only entitled to receive the correct (lower) benefits quoted in the April 2016 CETV.

24. Mr K considers he is entitled to the higher amount, as this figure was a *Guaranteed* CETV. Whilst I do not dispute the fact that a guaranteed CETV suggests the amount quoted is the amount which will be received, the statement was clear in that the quote was not binding in the event of a calculation error being discovered.

25. I understand that Mr K believes the PCLS shown in the retirement quote received in June 2016, suggests the January 2016 CETV of around £30,000 was correct, however, the Adjudicator has already explained to Mr K that the calculation of a

PCLS is very different to that of a CETV, and different factors are taken into account. So I cannot agree with Mr K on this point.

26. The Adjudicator has already explained to Mr K that, as he was never entitled to the figures in the January 2016 CETV, it is not considered that he has suffered a financial loss in this respect. Mr K has subsequently argued that his intention was to purchase a new car following the transfer, and he has not been able to do this whilst the dispute is ongoing. He believes he has suffered a financial loss as he has had to pay for the maintenance and repairs of an old vehicle as a result. I disagree; Mr K could have accepted the new, lower CETV and completed his transfer, whilst bringing his complaint to us. Had he done so, he would have been able to purchase a new car, albeit perhaps a cheaper one.
27. I understand Mr K has stated he was not aware he was able to accept the CETV without prejudicing his complaint, however, it was not until after a formal Opinion had been issued, that Mr K advised of his intentions regarding the vehicle purchase. It is not for this organisation to make assumptions about what information an applicant has, or what actions they may wish to take. It was the responsibility of Mr K to ask the relevant questions, and there are a number of resources, such as The Pensions Advisory Service, which he could have utilised to ensure he had all the necessary information to make an informed decision.
28. Mr K also believes he has suffered a financial loss as he is unable to access as much tax-free cash from the lower CETV. As Mr K was not entitled to the higher amount, he was never in a position to receive a higher tax-free sum, therefore I do not consider this to be an actual financial loss, but a loss of expectation linked to the incorrect (higher) CETV.
29. Equiniti has acknowledged its error and has offered Mr K £250 as compensation for the distress and inconvenience caused as a result. I consider this to be a sufficient amount in respect of the incorrect CETV. If MR K wishes to accept this offer he should arrange to do so with Equiniti.
30. I have reviewed the timeline, and it is clear that a number of weeks lapsed between Mr K receiving the January 2016 CETV, and his appointment of an IFA. Mr K has stated that he did not wish to appoint an IFA, as he is financially astute, and he took a great deal of time considering whether to continue with his transfer on the basis that he would be required to seek independent financial advice. I am satisfied that, had Mr K been in receipt of the correct CETV figure of around £25,000, he would not have appointed an IFA, regardless of any recommendations made by Equiniti. Mr K would have been within his rights to select a SIPP provider that did not require the appointment of an IFA, and progress the transfer himself; I consider that this is what he would have done. I agree that Equiniti's error caused Mr K to incur unnecessary IFA fees, and these should be met by Equiniti.

31. Therefore, I do not uphold Mr K's complaint regarding the incorrect CETV figure, but I do uphold his complaint in respect of the unnecessary fees incurred in obtaining financial advice.

Directions

32. To put matters right, Equiniti must, within 21 days of the date of this Determination, pay Mr K's IFA the £950 due in fees.

Anthony Arter

Pensions Ombudsman
6 September 2017