

## Ombudsman's Determination

Applicant	Mr D
Scheme	The British Tourist Boards' Staff Pension and Life Assurance Scheme (the <b>Scheme</b> )
Respondent	Capita Employee Benefits Limited ( <b>Capita</b> )

## Outcome

1. Mr D's complaint against Capita 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) Capita should pay interest on the missed annuity payment, and compensate him for the significant distress and inconvenience it has caused him to suffer.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr D says Capita unreasonably delayed the transfer out process in his case. As a result, he missed out on securing a fixed term annuity with a guaranteed maturity value (**GMV**) of £91,387, and payment of his annuity was delayed.
4. Mr D says he had unused personal allowance in the 2014/15 tax year. But for Capita's unnecessary delays, his first pension instalment would have been paid before 5 April 2015, and he would not have incurred around £300 in income tax.

## Background information, including submissions from the parties

5. Mr D had defined benefits deferred in the Scheme.
6. Under the Pension Schemes Act 1993, a deferred member, who is at least one year from normal pension age (**NPA**), has a statutory right to take a cash equivalent transfer value (**CETV**).
7. On 2 September 2014, some five months before he reached his NPA in February 2015, Capita sent Mr D a retirement pack.
8. On 12 September 2014, after receiving the retirement pack, Mr D wrote to Capita saying:

“You make a recommendation in your letter to consult an Independent Financial adviser, which is something I am seriously considering doing. To do this ... I need more information ... Could you please tell me the likely total capital sum...” (the **Initial Letter**).

9. In the Initial Letter, he asked whether it was possible to ‘add capital’ to top up his pension, and the process should he wish to defer (or take his pension early).
10. Mr D says his reason for writing to Capita was to request some ‘missing’ information from Capita - including a transfer value.
11. On 3 October 2014, Capita replied that at retirement he may be able to take up to 25% of the capital value of his benefits as a pension commencement lump sum (**PCLS**). Capita provided the formula used for calculating the maximum PCLS and quoted the lump sum he could expect to receive based on an estimate of his pension.
12. On 12 October 2014, Mr D wrote that several of his questions remained unanswered - he had not been advised of ‘the total capital’, which he specifically requested. He asked for details of the annual pension payable if he took a PCLS of £5,000 (or £10,000), and for a full response - particularly concerning ‘the total capital sum’.
13. Capita replied the same month that the ‘capital value’ of his benefits is calculated by multiplying his full pension by a factor of 20. Capita advised the estimated capital value of his benefits (for the purpose of measuring against the lifetime allowance), and said that this was not a CETV.
14. On 10 November 2014, Mr D chased Capita. Capita’s note of the call records that, after ‘questioning’ Mr D, he requested a CETV, and that he was informed the CETV would need to be calculated by the Actuary.
15. On 20 November 2014, Mr D chased the CETV. Capita’s note of the call records that he was informed the Actuary would calculate the figures and that Capita was unable to provide any timescales. The call note says if he will be charged for the CETV he probably will not proceed with the request.
16. On 25 November 2014 - 11 working days after Capita clarified Mr D’s request, Capita raised the matter internally. The administrator asked for confirmation that the trustees of the Scheme (the **Trustee**) would be happy for the actuaries to calculate a CETV and highlighted that there may be a charge for the calculation. The following day, the administrator was advised that the Scheme rules would need to be adhered to - if Mr D did not have a right to a CETV, then the Trustee would take that view.
17. On 18 December 2014, following a further internal exchange of emails, in which the administrator advised that Mr D had chased the CETV, the request was referred to the Trustee. The Trustee replied the same day that Capita should first establish the cost.

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18. On 7 January 2015, Capita asked the Scheme actuaries to confirm the cost for calculating the CETV.
19. On 20 January 2015, Capita advised the Trustee that it had now received a response from the Actuary in regard to costs. Capita asked whether the Trustee was happy for Capita to request a CETV calculation and whether Mr D should be asked to meet the cost. The Trustee replied saying that the Actuary should calculate the CETV; the Trustee would absorb the cost. On 21 January 2015, Capita sent the reply to its administration department to enable it to proceed with Mr D's request.
20. On 2 February 2015, 9 working days after Capita received Trustee approval, the administrator requested that the Scheme actuaries calculate the CETV. Two days later, they advised Capita a CETV of £130,079.
21. On 10 February 2015 - 4 working days after receiving confirmation of the CETV - and three months after Capita says it clarified his request, Capita provided Mr D with the CETV (guaranteed until 4 May 2015).
22. The member discharge form (the **Discharge Form**) stated that 'Capita requires evidence of his date of birth; the transfer will not be processed until he has provided evidence of this. He may send his original birth certificate. Alternatively, another form of evidence - for example, a certified copy of his passport'.
23. Mr D says he made enquiries to a number of pension providers before choosing a scheme which allows income drawdown, as this was very suitable for his particular circumstances.
24. In February 2015, LV= provided a quotation for capped drawdown (the **Quotation**). LV= quoted a yearly income of £8,975 per annum (gross) payable for six years - and a GMV of £91,387 as at a maturity date of February 2021 - on the basis that LV= received funds of £130,079 by 22 March 2015 (the **Deadline**)
25. On 26 February 2015, Mr D's adviser (the **Adviser**) wrote to Capita enclosing a letter of authority from his client instructing Capita to provide the Adviser with a CETV.
26. Capita replied on 4 March 2015, enclosing details of the CETV. In the covering letter Capita stated that:

“..[Capita] will also require sight of the member's original birth and marriage certificate (if the member's name has changed from that on their birth certificate) before the transfer can proceed... [Capita is]... unable to accept copies of certificates...”
27. On 5 March 2015, Capita received a copy of the Quotation.
28. On 13 March 2015, the Adviser wrote to Capita enclosing completed transfer forms - and a certified copy of Mr D's birth certificate.
29. On 19 March 2015, Mr D chased payment of the CETV. Capita's note of the call records that he was told Capita needed either his original birth certificate or a 'birth

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certificate verification form'. Alternatively, Capita would accept a certified copy of his passport.

30. On 24 March (2 days past the Deadline) Capita received a certified copy of Mr D's passport. On 23 April 2015, a month or so later- and outside the five days service levels set by the Trustee, Capita arranged payment to LV=. A screen print from Capita's records indicates that £130,079 was paid by BACS on 27 April 2015.
31. Mr D secured the annuity of £8,975 in the Quotation. His actual GMV was £85,543 i.e. £5,844 lower than the GMV that would have been available to him, had the Deadline been met. His first income payment was credited to him around 11 May 2015, with subsequent instalments on the 27th of each month with effect from 27 May 2015.
32. Had the transfer payment been made to LV= on 30 March 2015 (i.e. within the 5 working days service level set by the Trustee) , then it likely would have been received by LV= on 2 April 2015 - allowing for the three working days it takes for a BACs payment to process.
33. During the course of the investigation, LV= confirmed that, had it received the payment on 2 April 2015, the GMV would have been £85,543 – the same amount Mr D actually secured. LV= has advised that his monthly income (of £747 gross) would have been paid on or around 10 April 2015 and then on the 2nd of each month thereafter.
34. Mr D's further comments are set out below.
  - Much of the delay was within Capita's control. The Deadline could have been met had he been able to start the process much earlier. Consequently, there would not have been such a drop in the final GMV.
  - He fails to see how Capita could have been confused by his request for 'a final capital sum'. Capita is set up (and run by) people experienced in financial matters, and therefore would hardly be unaware of what was required.
  - He understands that the Trustee held monthly meetings. Capita agreed to request permission at that time. Had his initial request been processed properly, it could have been raised with the Trustee a month earlier.
  - During his telephone conversations with Capita he was given conflicting information: his request was about to be sent to the Trustee, had been sent, or would be sent shortly.
  - He finds it difficult to believe that the pensions industry is not aware of the importance of provider deadlines, and that the industry cannot work within those timescales.

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- If the transfer application process had started earlier, been delayed in the same way, and the Deadline missed, the Quotation would have been replaced by the next quote - with possibly a higher GMV than he eventually secured.

35. Capita's further comments are set out below.

- Once approval was received from the Trustee, the file and figures needed to be collated and provided to the Actuary. A review and an internal check was completed to ensure that the information being provided was accurate and the request then referred to the Actuary on 2 February 2015.
- The request was forwarded to the Actuary within a reasonable timescale as Capita could not reasonably have started collating the information until the Trustee had consented to Capita issuing the CETV.
- By the time Capita received the final documentation on 24 March 2015, the Deadline had already expired.
- There was an issue with Capita's computer systems due to Mr D having passed NPA. This meant that it was a 'non-standard TV' payment and required a system fix before payment could be raised. Consequently, the payment was delayed beyond the 5 days service levels set by the Trustee.

36. In the course of investigation, Capita acknowledged that it ought to have resolved Mr D's queries much sooner. It also accepted that the time taken to process his transfer payment was excessive. It calculated his financial loss to be £747 (gross) to compensate him for the annuity payment that would otherwise have been due to him on 10 April 2015, but for the delay, and late payment interest.

37. Mr D considered that his financial loss is in the region of £6,000 allowing for the reduction in GMV and unused tax allowance from 2014/15.

### **Adjudicator's Opinion**

38. Mr D's complaint was considered by one of our Adjudicators who concluded that further action was required by Capita. The Adjudicator's findings are summarised briefly below:

- At the time of the request, Mr D did not have a statutory right to a CETV.
- While, as a lay person, he could not be expected to be familiar with pension terminology, his request in his Initial Letter was not sufficiently clear.
- Once Capita clarified that he required a CETV, the request was not referred to the Trustee until 18 December 2014.

- Capita cannot reasonably be held responsible for the Deadline being missed. Capita's letter to the Adviser, stated that Capita required sight of his original birth certificate. The Discharge Form stated that he could provide another form of evidence such as a certified copy of his passport. Either he or his Adviser ought to have checked the position with Capita if they were unclear whether a certified copy of his birth certificate would be acceptable.

The actual financial loss he has suffered, as a direct result of Capita's maladministration, is in relation to the missed annuity payment that would otherwise have been due to him on 10 April 2015.

- As a result of the delays Mr D had suffered non-financial loss which merited compensation for distress and inconvenience.
39. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D has provided his further comments but these do not change the outcome. I agree with the points summarised above. I consider the further points made by Mr D and explain my reasoning further below.

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40. Mr D says he was not made aware that it was not possible for him to obtain a transfer quotation in the year leading up to his NPA.
41. Mr D says he specifically stated to Capita why he wanted to know 'the likely total capital sum', and that it was following Capita's recommendation. If Capita was confused by his request it could have queried it when writing to him on 3 October 2014.
42. Mr D says it should not have taken until 10 November 2014, for Capita to have clarified that he required a CETV. Contrary to Capita's assertions, the realisation that he required a CETV was not after questioning him, but as a result of having to chase Capita and forcing Capita to accept his request.
43. Mr D says had Capita clarified his request on or around 10 October 2014, the whole transfer process could have been brought forward by a month.
44. Mr D says despite the Trustee replying promptly to Capita on 18 December 2014, it took two months for Capita to ascertain the cost for the CETV calculation, resulting in a further delay of over a month in processing his application.
45. Mr D says the delays during the three months it took to issue a CETV were caused by Capita. According to the Adjudicator's findings, the CETV could have been provided within a month. In which case, he could have obtained a fixed term annuity quote before the end of 2014 on a rising market. This would have allowed two months for the processing of his application by LV=, sufficient time for his first two annuity payments to be made before the end of 2014/15 tax year.

46. Mr D says the confusion concerning his birth certificate and passport is an excuse on the part of Capita to apportion blame elsewhere. If he had been informed of the CETV, before the end of 2014, it is likely that a slightly lower quote from LV= would have been accepted in early January. Allowing for Capita's delays, that quote would likely have expired, but he would have still received the slightly higher quote that he accepted in February 2015.
47. Turning first to Mr D's assertion that he was not made aware that it was not possible to obtain a CETV in the year before his NPA. There was no requirement to notify him of the end of the statutory right. In any event he asked for and obtained a CETV so I cannot see how that lack of awareness made him worse off.
48. In regard to his request for a CETV, Mr D initially wrote to Capita on 12 September 2014. I acknowledge that it took around 8 weeks before Capita ascertained that he required a CETV. However, I am unable to find that the delay amounts to maladministration on the part of Capita, given the terminology Mr D used and the exchange of communication between the parties during that period.
49. I note that once Mr D had clarified his request on 10 November 2014, the matter was not raised with the Trustee until 18 December 2014, and that happened only after Mr D again chased Capita.
50. I find that the 29 working days it took Capita to refer Mr D's request to the Trustee was unreasonable delay amounting to maladministration. That said, had he been statutorily entitled to request a statement of entitlement to a CETV, it would have needed to be calculated within three months of his request and issued to him within ten working days. A CETV was in fact issued to him within three months of the date Capita clarified his request. Consequently, I do not find that the length of the transfer quotation process, taken as a whole, was unreasonable. I therefore do not accept that any losses were caused by delay in issuing the CETV.
51. I turn now to the allegation that delay by Capita after the quotation was received resulted in the Deadline being missed and the GMV being lower. I conclude that the reason for the deadline being missed was the omission of the required proofs of identity with the discharge forms. When Capita was provided with a certified copy of his birth certificate it would have been helpful if they had contacted the Adviser to say that they needed something different. However, it ought to have been sufficiently clear to Mr D from the Discharge Form that his original birth certificate, as opposed to a certified copy, was what was needed. Capita's letter to the Adviser on 4 March 2015, also stated that his original birth certificate was required and stressed that copies would not be accepted. Nevertheless the adviser sent a copy birth certificate. On balance, and given the clarity of the original explanation about what was and was not acceptable, I do not think Capita can be held liable for failing to draw the incomplete application to the Adviser's attention and they are certainly not responsible for the lapse of time which occurred after they had responded to the Adviser's progress chaser.

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52. I find that once the correct forms of proof were received, the transfer payment was unduly delayed by Capita and that delay also amounted to maladministration.
53. Turning to the financial loss which was caused by the maladministration identified, I agree with the Adjudicator's findings that, but for the delay and applying Capita's 5 day service level standard, the capital transfer date would probably have been 2 April 2015 and Mr D would probably have received his first income payment on 10 April 2015. From the evidence provided by LV, I conclude that the GMV and monthly payments would have been the same as those which he in fact obtained at the later date. Consequently I do not find Capita responsible for loss of GMV. I find that Mr D is entitled to compensation for late receipt of his first payment, but not to an additional monthly payment because he will receive the same number of monthly payments overall. I do not consider that Capita are responsible for any loss of unused tax allowance because the first payment would have fallen within the later tax year in any event.
54. I turn now to compensation for non-financial injustice. I accept that the delay and the need to chase Capita for progress have caused Mr D significant distress and inconvenience. However awards for significant distress and inconvenience are modest starting at £500. On these facts, I consider the minimum award is sufficient.

## **Directions**

55. To put matters right, Capita shall, within 21 working days of the date of this Determination:
- I. pay Mr D simple interest at the rate for the time being declared by the reference banks on the missed income payment from the due date to the date of payment and;
  - II. pay £500 to him for the significant distress and inconvenience he has suffered in relation to this matter.

**Karen Johnston**  
Deputy Pensions Ombudsman  
2 August 2017