

Ombudsman's Determination

Applicant	Mr L
Scheme	McGraw-Hill (UK) Retirement Benefits Plan (1973) (the Plan)
Respondent	The Trustees of the McGraw-Hill (UK) Retirement Benefits Plan (1973) (the Trustees)

Outcome

1. I do not uphold Mr L's 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. Mr L's complaint against the Trustees is twofold: -
 - He is unhappy that he is not entitled to the Cash Equivalent Transfer Value (**CETV**) that was offered to his late wife, Mrs Y, in September 2013.
 - He says that the length of time taken to process the CETV was unreasonable considering the circumstances at the time.

Background information, including submissions from the parties

4. Mrs Y joined the Plan in 1998. In November 2012, Mrs Y was diagnosed with a brain tumour and subsequently underwent treatment. She continued to accrue benefits in the Plan, until her employer closed future accrual of benefits, in the defined benefit Plan (the **DB Plan**). The employer's decision was effective from 30 April 2013. At that point, Mrs Y became a "frozen active" member of the Plan and any future salary and earning increases would have no impact on her final pensionable salary. Therefore, Rule 18 of the Plan applied in her case. Rule 18 and relevant sections of clauses of the Deed of Amendments 2009 and 2013 respectively, can be found in the Appendix.
5. On 8 July 2013, Mrs Y wrote to the Trustees and informed them of her health condition and the possibility of transferring her benefits out of the Plan. She also asked the Trustees to consider boosting her CETV, so she could receive the highest possible value.

6. On 10 July 2013, the Plan's actuaries (**LCP**) asked the Plan's administrator, Buck Consultants (**BC**) to provide details of Mrs Y's final pensionable salary as at 26 June 2013.
7. On 11 July 2013, BC provided LCP with Mrs Y's estimated pensionable salary as at 26 June 2013 however, it was still awaiting details of her commissions earned before 1 May 2013 but not yet paid.
8. On 30 July 2013, LCP emailed BC confirming that it was currently advising the Trustees on the benefit options available to Mrs Y due to her ill health. On the same day, BC responded to LCP saying that to date it had had no direct contact with Mrs Y. It also informed LCP of her final pensionable salary, which had changed on 26 June 2013.
9. On 6 August 2013, the Trustees emailed Mrs Y setting out her benefit options in relation to the calculation of a possible serious ill health lump sum payment.
10. On 21 August 2013, the Trustees sent Mrs Y a letter providing a schedule of the options with regard to her Plan benefits, which included taking a CETV. They also advised Mrs Y that should she wish to request a statement of entitlement to a CETV, she would need to write to BC.
11. On 30 August 2013, Mrs Y emailed BC requesting a statement of entitlement. She asked it to treat the request as a matter of urgency. The next day, BC replied to Mrs Y saying that the Plan actuaries were in the process of calculating her CETV and it would be in touch as soon as this had been done.
12. On 6 September 2013, LCP provided a CETV quotation to BC.
13. On 10 September 2013, BC sent Mrs Y a letter showing a CETV as at 5 September 2013 for the amount of £430,894.00. It informed her that this was an illustrative figure only and not guaranteed and if she wished to proceed with the transfer then she would need to opt out of the Plan and become a deferred member first.
14. On 24 September 2013, Mrs Y's financial advisers, Helm Godfrey (**HM**), emailed the Trustees asking them to provide information in order to assess the growth required under a personal pension to match the benefits given up under her defined benefit plan. This request was passed by the Trustees to BC on the same day.
15. On 25 September 2013, BC acknowledged receipt of the request.
16. On 17 October 2013, the Trustees chased BC for a response on behalf of HM. BC subsequently contacted LCP chasing up for the required information. On the same day, HM emailed Mrs Y saying:

"I think that it is wise for you to notify [BC] that you are declaring that you do wish to transfer with effect from 01 December. This will formally log your intent and it allows me time for the l's and cross the t's [sic] for compliance and the

regulator. This way, no matter what happens in the 6 weeks, you have stated intent.”

17. On 18 October 2013, BC sent HM all the required information including the 5 September’s CETV figures. On the same day, Mrs Y emailed BC with her request to opt out of the Plan with effect from 1 November 2013.
18. On 21 October 2013, BC emailed Mrs Y acknowledging her request and confirming it would notify the Trustees and request a notification of leaving form from them.
19. On 22 October 2013, BC sent Mrs Y an email requesting completion of the leaving form. Mrs Y subsequently completed, signed and returned it on 28 October 2013. Mrs Y became a deferred member of the Plan with effect from 1 November 2013, as per her instruction.
20. On Friday 8 November 2013, in the afternoon, LCP issued a guaranteed CETV to BC (for the amount of £442,016.00) for it to provide a statement of entitlement to Mrs Y.
21. Sadly, on 11 November 2013, Mrs Y passed away, before BC managed to produce a statement of entitlement. As a result, the transfer could not have been completed.
22. On 13 January 2014, HM wrote to Mr L saying:

“Hopefully, you should have heard from [the Trustees] by now regarding the lump sum payment from the old Final Salary Scheme and the payment from the Life Insurance should be sorted in the coming weeks.”
23. On 16 January 2014, Mr L wrote to HM saying that he had not heard from the Trustees as yet with regard to the payment.
24. On 23 January 2014, the Trustees sent Mr L a letter notifying him that it was dealing with arranging a payment to him in relation to Mrs Y’s three different policies.
25. On 31 January 2014, BC sent Mr L a letter setting out the benefits payable to him in respect of Mrs Y’s plan. It said that:

“...unfortunately, the transfer value had not been completed by 11 November 2013. Under the Plan’s Trust Deed & Rules, a transfer value cannot be paid after a member’s date of death. The employer and Trustees have therefore decided to pay an additional lump sum of £297,960.18 so that the overall value of the benefits payable is equivalent to the transfer value, and this is explained below.

...the benefits payable are as follows:

- a spouse’s pension of £3,114.96 pa [per annum]; and
- a lump sum of £52,238.82 (equal to Mrs Y’s contributions to the Plan).

The above benefits are clearly worth less than the £442,016 transfer value which would have been paid had the various formalities been completed. The

Employer and Trustees have therefore decided to pay an extra lump sum so that the overall value of the benefits is equivalent to the transfer value. The extra lump sum will be paid as a Defined Benefit Lump Sum Death Benefit.

...the extra lump sum is equal to £297,960.18, which means the total benefits payable from the Plan are as follows:

- a spouse's pension of £3,114.96 pa; and
- a lump sum of £350,199."

26. Unhappy with the Trustees' decision, Mr L had a meeting with the Chair of the Trustees on 14 February 2014, during which he expressed his dissatisfaction with regard to the benefits. He said that "the issue of £3,114 annual pension in exchange for almost £92,000 cash" was not acceptable. He also raised points with regard to the changes to the level of life assurance cover implemented by the employer on 1 April 2013.

27. On 27 February 2014, the Trustees sent Mr L a letter confirming that the lump sum life assurance benefit of £570,768 has been paid in to his bank account. In addition, a payment of £49,996 was also paid accounting for the value of the defined contribution benefits including an additional discretionary payment of £36,000 paid by the employer. The letter also added:

"As a result of the separation of the McGraw Hill business in to two companies (Education and Financial) the McGraw Hill Financial business undertook a review of the benefits it provided employees to ensure that they were consistent for all employees and appropriate for the new organisation. The review established a number of changes it wished to introduce one of which was to ensure that all employees had access to the same level of life cover. Previously a small group of employees, including Mrs Y, received four times base salary life cover, whereas the majority received cover of two times base salary...In addition, as part of the closure of the defined benefits plan, the Company put in place additional life cover of 6 times base salary (bringing the total cover to 8 times base salary) to help offset the reduction of the death in service pension that would have been payable."

28. In January 2017 Mr L brought his complaint to The Pensions Ombudsman.

29. In March 2017, Mr L raised a formal complaint by invoking the Plan's two-stage internal dispute resolution procedure (**IDRP**). In his submission, Mr L made the following points: -

- Knowing that Mrs Y was suffering from serious ill health, the Trustees should have expedited and completed the transfer before her death.
- He would like the Trustees to pay him the full amount of £430,894.00 as quoted in September 2013 rather than a proportion of it being paid to him as spouse's pension of £3,114.96 per annum.

- He disagrees with the employer's decision to close the DB Plan and remove Mrs Y from it, whilst being on sickness absence. The employer should have kept Mrs Y on the DB Plan at the time.

30. On 3 August 2017, the Trustees sent Mr L a response under stage one of the IDRPs that said:

"Mrs Y opted out of the Plan and became a deferred member on 1 November 2013 (the date she expressly stated) at which point a statement of entitlement was provided promptly (under UK pensions law trustees ordinarily have three months from the date of the application in which to provide a statement of entitlement although the Plan's Trustees aim to provide statements of entitlement quicker, as was the case here...A number of steps are required to complete the transfer out...typically taking several weeks (and often extends to several months)...it would not have been the case...the entire value of the CETV would have been payable to Mrs Y (or to you) directly as tax-free cash...Even if Mrs Y had transferred her benefit to a provider which offered arrangements to maximise the amount of cash available, only a relatively small proportion of it would...have been payable as tax-free cash...The Trustees are obliged to administer the Plan in accordance with the Plan's Rules and were only legally required to pay the active benefits. It would not be legally possible to cancel the spouse's pension and to make a lump sum payment in lieu, as you requested..."

31. Mr L appealed against the Trustees' stage one response in February 2018. He made the following further points: -

- He appreciates that the CETV transfer can be a lengthy process however it should not take months. The time BC took between July and September 2013, was a waste of time.
- Had Mrs Y known that a statement of entitlement could be requested by a member anytime, she would have requested it earlier.
- He would like to be paid a full lump sum instead of annual pension in order to better support their children financially.

32. On 27 March 2018, the Trustees sent Mr L a response under stage two of the IDRPs that upheld its previous decision and added:

"...the Trustees...with the consent of the Plan's principal employer, agreed to augment the benefits payable under the Plan's Rules and pay an additional lump sum of £297,960.18. This was a discretionary award- there was no obligation on the Trustees to do this. This resulted in a total lump sum payment of £350,199, in addition to the above spouse's pension. The additional lump sum payment was calculated as the quoted transfer value of £442,016, less the lump sum payment required under the Plan's Rules of £52,238.82, less the capital value of the expected future spouse's pension

payments which was calculated as £91,817. As a result, the total benefits paid from the Plan (a lump sum of £350,199 and a spouse's pension of £3,114.96 pa) have a capital value of £442,016 and so there has been no loss of value as a result of the transfer value not having been paid (and in any event the Trustees' only obligation was to pay a lump sum of £52,238.82 and a spouse's pension of £3,114.96 pa)."

Adjudicator's Opinion

33. Mr L'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 below: -

- The Trustees' role is to administer the Plan in accordance with the rules that govern it. The Adjudicator noted that Mrs Y became a "frozen active" member of the Plan with effect from 30 April 2013. Under clause 14 of the Deed of Amendment dated 29 April 2013, "The benefits payable...shall not be less than the benefits which would have been payable had such Member become a Deferred Member with effect from 30 April 2013." Essentially, being a "frozen active" member, meant that Mrs Y was treated in the same way as a deferred member of the Plan. Therefore, Rule 18 applied in her case. Rule 18 says, "if a Deferred Member dies before his Normal Retirement Date benefits shall be payable...to such Spouse of an annual amount equal to one-hundred-and-sixtieth" of Mrs Y's contracted-out salary.
- Mr L believes he should be entitled to the September 2013 CETV of £430,894.00 which was only illustrative and not guaranteed. The Adjudicator noted that, after considering the circumstances of this case, the Trustees and the employer used their discretion to pay an additional lump sum to Mr L, so that the overall value of the benefits he was paid, was equivalent to the transfer value of £442,016 which would have been paid had the process been completed. The Adjudicator noted that the augmentation was solely discretionary and not an entitlement. The Adjudicator appreciated that Mr L would like to be paid the full CETV quoted in September 2013 as a lump sum. However, there is no provision under Rule 18 or the pensions legislation that allows the Trustees to pay Mr L a full lump sum instead of a spouse's pension.
- In relation to the second element of Mr L's complaint, the Adjudicator thoroughly reviewed the events leading up to Mrs Y's death. In order for the Trustees to process the transfer, a statement of entitlement must be completed. Prior to completing a statement of entitlement, Mrs Y had to become a deferred member of the Plan. Once the statement of entitlement had been signed, only then could the transfer be completed. The Adjudicator noted that it was not until 30 August 2013 that Mrs Y requested a statement of entitlement, which was subsequently issued only 6 days later, on 6 September 2013. It is unclear why Mrs Y decided to wait

until 18 October 2013, to notify the Trustee of her decision to opt out of the Plan, with effect from 1 November 2013.

- The Adjudicator could see that Mrs Y may have been influenced by her financial advisers, even though the advice was to opt-out on 1 December 2013. The Adjudicator noted that it was Mrs Y's own decision to opt out of the Plan with effect from 1 November 2013. As stated by the Trustees it was not possible to complete the transfer within 10 days, from 1 November 2013 until 11 November 2013, when Mrs Y passed away. The Adjudicator had not identified any unreasonable delays in issuing the CETV, and she recognised that the Trustees and BC kept Mrs Y informed at all times.
- Even if the CETV transfer had been completed, it would not have been the case that the full amount of CETV would have been payable to Mrs Y or Mr L directly as tax-free cash. This is because the Trustees are required to pay the CETV to another registered pension scheme to meet the relevant statutory conditions. Once that payment was made to the new pension scheme, there was no guarantee that Mr L would have received the full amount that was transferred as tax free cash.
- The Adjudicator appreciated that Mr L believes the onus was on the Trustees to have expedited Mrs Y's request due to her serious ill health. However, the Ombudsman cannot hold the Trustees responsible for knowing how serious her condition would have been as they are not medical advisers. The Trustees can only act on the members' formal notifications which in the Adjudicator's view, they did.
- In the Adjudicator's view, the Trustees' and employer's decision to augment the Plan benefits was very generous and purely discretionary. They also administered the Plan correctly, in accordance with the Rules. In the Adjudicator's view, the Trustees took into consideration all relevant matters and no irrelevant ones. Therefore, the Adjudicator was of the view that this complaint should not be upheld.

34. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion that the complaint should not be upheld and will therefore only respond to the key points made by Mr L for completeness.

35. Mr L made the following points: -

- Mrs Y's colleagues and managers were aware of her illness and were being kept updated by her regularly. Colleagues also visited Mrs Y at hospital, so they would have been aware of the seriousness of her health condition at the time. On that basis, they should have told her to complete a statement of entitlement sooner than she did, so her CETV would have been completed before 11 November 2013, when she passed away.

- The Trustees did not have adequate policies in place to deal with Mrs Y's simple request for a CETV and they wasted a great deal of time "pursuing unproductive avenues."
- Even though it may be difficult to identify individual incidences at the time, he believes that the whole process was mismanaged by the Trustees.
- Mrs Y was not informed that she needed to complete a statement of entitlement.

Ombudsman's decision

36. I have great sympathy for Mr L's situation that Mrs Y passed away before her CETV request was completed by the Trustees. However, I have considered the events leading up to Mrs Y's death on 11 November 2013. Having done so, I find that the Trustees followed the right procedure and did not deliberately delay the process for Mrs Y.
37. In order to complete a statement of entitlement, Mrs Y needed to become a deferred member first. I note that in their letter dated 21 August 2013, the Trustees advised Mrs Y that she must request a statement of entitlement. Mrs Y was later informed, on 10 September 2013, that she needed to opt out of frozen active membership before she could proceed with the transfer and it was her decision to submit that request on 25 October 2013, with an opt-out date of 1 November 2013. I cannot hold the Trustees responsible, for the decisions members make, in relation to when they should opt out of the Plan. Mrs Y had a financial adviser, so it is not unreasonable for the Trustees to be of the view that, her financial adviser would have advised her on her options concerning opting out of the Plan.
38. I agree that a member notifying a Trustee of a life threatening illness ought to cause it to act with expedition in telling members about their options under the Scheme rules and how to exercise them. In this case I am satisfied that the Trustee did so. It is very unfortunate that Mrs Y passed away 10 days after the date from which her opt-out from the Plan was effective, and that this resulted in there being insufficient time for the Trustees to have completed the transfer. However, I do not consider that this shortage of time flowed from avoidable delay by the Trustee. The Trustee provided an illustrative value and told Mrs Y on 10 September that she would need to opt out if she wanted to obtain a guaranteed transfer value. Although the request may look simple in hindsight, there was a process of comparison and evaluation going on at the time and Mrs Y did not make her opt out effective until 1 November.
39. In any event I have seen no evidence from which I can conclude that the payment which has been made by the Trustee has caused financial loss to Mr L.
40. Mr L believes that had the transfer been completed on time he would have been able to receive the full amount of CETV directly as tax-free cash. The Trustees would have been required to pay the CETV to another registered scheme to meet the relevant statutory conditions. In the event the Trustees paid Mr L spouse's pension in

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accordance with Rule 18. There is no provision under the Plan Rules and pension legislation that allow the Trustees to pay Mr L the full amount of CETV as tax free cash.

41. I find that the Trustees' offer to augment the Plan benefits was generous and reasonable under the unfortunate circumstances. In doing so, Mr L has received a total lump sum payment of £350,199.00 in addition to a spouse's pension of £3,114.96 per annum.
42. Therefore, I do not uphold Mr L's complaint.

Karen Johnston

Deputy Pensions Ombudsman
10 July 2019

Appendix

Rule 18

“Death of deferred member before normal retirement date

Subject to the provisions of the Supplement and the Overriding Appendix if a Deferred Member dies before his Normal Retirement Date benefits shall be payable as follows: -

...

18.2 if such Deferred Member is survived by a Spouse a pension to such Spouse of an annual amount equal to one one-hundred-and-sixtieth of the Member’s Contracted-out Salary calculated at the date of leaving Pensionable Service for each complete year of his Contracted-out Membership reduced by such amount (if any) as the Trustees may determine to be appropriate if the Spouse is more than ten years younger than the Member...”

Clause 14 of a Deed of Amendment dated 29 April 2013:

“A new Rule 6A is added:

6A Frozen members

The benefits payable to or in respect of a Frozen Member or former Frozen member shall not be less than the benefits which would have been payable had such Member become a Deferred Member with effect from 30 April 2013.”