

Ombudsman's Determination

Applicant	Mr N
Scheme	Portigon UK Pension Plan (the Plan)
Respondents	Mercer Limited (Mercer), Pension Insurance Corporation (PIC)

Outcome

1. Mr N's complaint against Mercer 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), Mercer should pay Mr N £1,000 for the distress and inconvenience he has suffered.
2. I do not uphold Mr N complaint against PIC and no further action is required by it.
3. My reasons for reaching this decision are explained in more detail below.

Complaint summary

4. Mr N has complained that Mercer delayed his transfer out of the Plan to Fidelity, and that PIC re-calculated his transfer value prior to payment due to the completion of the buy in by PIC which reduced his transfer value by over £20,000. Mr N says he was not informed that completion of the buy in would nullify his guaranteed transfer quotation, and that his paperwork was returned within the guarantee date.
5. Mr N would like the guaranteed transfer value to be honoured with the difference between it and what was actually transferred, plus investment growth, paid to his receiving scheme. He would also like an award for the significant distress and inconvenience he has suffered.

Background information, including submissions from the parties

6. Mr N was a member of the Plan which was administered by Mercer.
7. On 28 January 2015, Mr N requested a transfer out quotation from Mercer. The Plan Trustee had recently changed the Scheme's investment strategy and sought advice from the Scheme Actuary regarding the appropriate factors to be used in the cash equivalent transfer value (**CETV**) calculations to make them consistent with this investment strategy and funding levels. There was a freeze on transfer out quotations between December 2014 and March 2015 while this took place.

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8. On 16 April 2015, Mr N was issued with a transfer quotation of £778,303, guaranteed until 30 June 2015. Mercer did not receive the instruction to proceed with the transfer out, however it did receive two letters of authority for different independent financial advisors (**IFA's**) prior to the expiry of the guarantee period.
9. On 30 April 2015, the fully funded bulk annuity policy with PIC was purchased and the buy in process commenced. Following this, a further freeze was introduced for new transfer out quotations between 31 May 2015 and 17 June 2015 while the Plan Actuary was amending the CETV calculations to bring them in line with PIC's policy as instructed by the Trustee. However, this freeze did not prevent those who had already been provided with a CETV, such as Mr N, from completing the transfer.
10. On 11 September 2015, Mercer received a new transfer out request from Mr N. On 8 October 2015, Mr N informed Mercer he had appointed a new IFA.
11. The transfer out request was raised with the Trustee and was initially refused as Mr N had received a quotation within the previous 12 months, in April 2015. Mr N raised a complaint, and the Trustee agreed for Mercer to provide a further quotation at no cost. Following further correspondence, the transfer quotation was provided on 4 November 2015, however as Mr N was now within one year of his normal retirement date (**NRD**), and there was no legislative requirement to provide a guaranteed CETV so the quotation was not guaranteed.
12. Mr N raised another complaint and the Trustee granted consent to re-issue the 4 November 2015 quotation as a guaranteed quotation.
13. On 18 November 2017, the quotation was re-issued by Mercer to Mr N's IFA, guaranteed until 26 January 2016, with a transfer value of £785,910.
14. PIC then took over responsibility for the administration of the plan. Mercer also administer PIC's schemes, so continued to administer Mr N's pension benefits.
15. The buy in of the Plan to PIC was completed on 31 December 2015, this had the effect of nullifying all open transfers, although Mercer has now confirmed that neither Mr N nor his IFA were informed that this would be the case.
16. On 18 January 2016, Mr N called Mercer and during the call, after he had been informed the guaranteed transfer quotation was nullified, Mr N confirmed that he wanted to proceed with the transfer.
17. On 25 January 2016, Mercer received partially completed transfer paperwork from the Fidelity Retirement Services (**FRS**), Mr N's IFA. Enclosed was confirmation of financial advice, and a 'Confirmation of verification of identity form' including Mr N's driving license and a utility bill, these are both dated 21 January 2016 and were completed by FRS. Also enclosed were the following forms completed by Mr N dated 18 January 2016; the 'application to proceed with transfer of benefits form' and the 'member information form'. The 'personal pension scheme transfer declaration form' and the 'personal pension plan - additional information form' were both enclosed but

were blank. The covering letter dated 21 January 2016 stated, “Your transfer paperwork – a copy of your forms have been sent to the relevant department within Fidelity for completion, which will be sent to you in due course.”

18. On 27 January 2016, Mercer informed FRS that the PIC buy in had nullified the transfer quotation and that the guarantee did not apply. Correspondence regarding the paperwork between FRS and Mercer was ongoing as the section of the paperwork relating to the receiving scheme’s details had not been completed by the receiving scheme, which was to be Fidelity. Mercer also requested confirmation that FRS was independent of Fidelity.
19. On 3 February 2016, Mercer contacted Mr N to inform him of the transfer value of £765,249 and he gave his approval to transfer.
20. On 3 February 2016, Mercer received a faxed copy of the fully completed transfer paperwork from Fidelity. The covering letter was dated 28 January 2016, and enclosed were the completed ‘personal pension scheme transfer declaration form’ and the ‘personal pension plan - additional information form’, including attachments such as HMRC registration details, both forms were signed and dated 2 February 2016. PIC has provided a copy of this letter which appears to have been faxed by Fidelity with a date stamp along the top showing receipt on 3 February 2016, while the hard copy sent by post was received on 4 February 2016.
21. On 8 February 2016, the transfer was completed. The final value transferred was recalculated to be £765,249.
22. Mr N raised a complaint regarding the delays and the drop in his transfer value, which was later brought to our service. In its formal response to us Mercer offered Mr N £1,000 as a goodwill gesture in full and final settlement of his complaint, without any admission of liability on the part of Mercer. Mr N did not accept this offer.

Adjudicator’s Opinion

23. Mr N’s complaint was considered by one of our Adjudicators who concluded that further action was required by Mercer. The Adjudicator’s findings are summarised briefly below: -
 - There is no dispute that a significant amount of time passed between Mr N making his initial request for a transfer out quotation on 28 January 2015, and the transfer being completed on 8 February 2016. However, the Adjudicator did not agree that this delay can be attributed solely to Mercer or PIC.
 - Mr N’s first transfer quotation was issued on 16 April 2015, this delay was caused by the freeze on quotations due to the Trustee amending the investment strategy. The Adjudicator did not consider this delay unreasonable, or that it can be attributed to Mercer as the administrator. In any case Mr N was issued his quotation within the three-month statutory deadline.

- There appears to have been some confusion over the further freeze in transfer quotations between 31 May 2015 and 17 June 2015 following issue of the April 2015 quotation. Mr N has said that his IFA informed him there was a freeze on transfers out, and that his could not be processed. The Adjudicator noted that there was a freeze on quotations, but this did not affect members who had already been provided with a quotation such as Mr N. There was no evidence to suggest that Mercer informed Mr N, or his IFA, that his transfer could not proceed at this stage. Therefore, the Adjudicator was unable to conclude that the fault lies with Mercer for Mr N not proceeding with the transfer before the guarantee date of 30 June 2015.
- Mr N says he was then informed by his IFA that the freeze had finished in early September which prompted him to request a new transfer quotation on 11 September 2015. This request was initially refused by the Trustee as Mr N had received a transfer quotation within the previous 12 months and he was informed that another could be provided at a cost. Mr N complained, and the Trustee agreed to issue another quotation free of charge. This was issued on 4 November 2015 and reissued as a guaranteed quotation on 18 November 2015. It is noted that there was correspondence between 11 September 2015 and 18 November 2015, however the Adjudicator did not consider that the time taken overall to provide the quotation was unreasonable. The Trustee agreed to provide a quotation that Mr N had no statutory right to, free of charge. This was the Trustee's decision and any delay due to this is not attributable to Mercer.
- Looking at the correspondence from this period, Mercer did not manage Mr N's expectations well. It gave Mr N a series of timescales for providing the quotation that were not met, and Mr N chased for an update on several occasions.
- It has been accepted by Mercer that neither Mr N, nor his IFA, were informed that the completion of the buy in with PIC would nullify the November 2015 quotation. Mr N suffered significant distress and inconvenience as a result of this when he was informed that his transfer value would be recalculated upon receipt of the completed paperwork.
- As Mr N was not informed, and he had no reasonable way of knowing this prior to the buy in being completed, the Adjudicator considered it reasonable, if its requirements to process the transfer were completed by that date, for Mercer to honour the guaranteed quotation until its guarantee date of 26 January 2016. There is some dispute over whether the paperwork was returned prior to this deadline, which the Adjudicator considered further.
- Mr N has provided a letter from FRS which states that Mercer had received all of its required documentation prior to 26 January 2016. However, Mercer disagree. After reviewing the documentation provided to us, the Adjudicator was of the view that all of the completed paperwork was not returned prior to 26 January 2016.

- FRS sent paperwork to Mercer under a letter dated 21 January 2016. FRS said in its letter to Mr N that Mercer received the paperwork on 22 January 2016 as it was sent recorded delivery, while Mercer has said it received this on 25 January 2016. In either event both are prior to the deadline. Yet this paperwork was incomplete. The sections to be completed by the receiving scheme were left blank, and the covering letter stated that Mercer's forms would be completed by another department of Fidelity and sent in due course.
- The incomplete sections were then provided by Fidelity, the receiving scheme, under a letter dated 28 January 2016, but the forms themselves were dated 2 February 2016. PIC has confirmed it received this in hard copy on 4 February 2016, but all of these dates are after the guarantee date. Consequently, not all of the completed paperwork was received prior to 26 January 2016. Therefore, it was the Adjudicator's opinion that Mercer, acting on behalf of PIC at this time, was correct to recalculate the transfer value as the guarantee date was not met.
- It was noted that FRS has said that Mercer queried whether the advice Mr N had received was independent from Fidelity unnecessarily. While the query may not have been necessary, the Adjudicator did not agree that it held up the transfer. This query took place alongside the request for completion of the receiving scheme's section of the paperwork, therefore the transfer could not have been processed earlier even if Mercer had not queried the independence of the advice.
- The series of events; Mercer providing timescales that were not met; and failing to inform Mr N, or his IFA, that the buy in would nullify transfer quotations, have led Mr N to suffer significant distress and inconvenience. For which the Adjudicator was of the opinion that the £1,000 offered by Mercer is reasonable.

24. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N's representative provided his further 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 N's representative for completeness.

Ombudsman's decision

25. Mr N's representative has said that he believes that either Mercer or Fidelity are at fault and that one or both parties need to compensate Mr N for the loss in transfer value and any investment loss that has arisen since. However, the complaint at hand is against Mercer and PIC and Mercer has taken responsibility for responding to this complaint on behalf of itself and PIC. The complaint is not against Fidelity and as such I cannot make a finding against it. Mr N has been given the opportunity to include Fidelity in our investigation but has not completed Fidelity's complaint procedure so a complaint against it is not within my jurisdiction. However, the complaint raised against Mercer and PIC has been fully investigated.

26. The evidence provided by both parties shows that the reason the guaranteed transfer value was not honoured was because the paperwork that Mercer required was not returned before the end of the guarantee period. It is for the ceding scheme to satisfy itself that the transfer complies with legislation by any reasonable means. If it requires certain forms to be completed to obtain the relevant information I will not find maladministration unless the requests are excessive. In this case I do not find that they were. Chapter 1, Part 4ZA of the Pension Schemes Act 1993 sets out legislation for Pension Scheme Transfers. Section 95 details the way in which a cash equivalent transfer value can be taken. 95(1) states that a member "...may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent in one of the ways specified below." While 95(1A)(a) requires that any application is made "within the period of 3 months beginning with the guarantee date shown in the relevant statement of entitlement". 95(1A)(b) only requires the Trustee to action a transfer where the application is received prior to one year before normal retirement date.
27. In Mr N's case, the Trustee of the Scheme agreed to provide a guaranteed transfer value and process the corresponding transfer request if received within one year of Mr N's NRD, even though there was no statutory requirement for them to do so. Having made that concession, they were entitled to require him to comply with their usual transfer application process.
28. In order to ensure that the application to transfer complies with the ways section 95 specifies transfers to be taken, the receiving scheme needs to provide its details and confirmation that it is willing to accept the transfer. As such, I do not find that Mercer's requirement for the 'personal pension scheme transfer declaration form' and the 'personal pension plan - additional information form' which provide this information is unreasonable. The information Mercer had requested in these forms was not provided, either on Mercer's forms or in any other format, prior to the guarantee end date. Therefore, I do not find that Mercer, or PIC has made an error in recalculating Mr N's transfer value given that the required information was provided after 26 January 2016.
29. I agree that Mercer did make errors and poorly managed Mr N's expectations earlier on in the transfer process following his request for a quotation in September 2015. Especially where it did not inform him of the impact that the buy out with PIC would have on his transfer. As a result, I find that Mr N would have suffered distress and inconvenience for which an award for non-financial injustice is appropriate. However, the £1,000 Mercer has offered is reasonable and in line with the guidance that I have issued.
30. However, overall, I do not find that either Mercer or PIC were at fault for the delay in transferring Mr N's benefits, or the reduction of his CETV.
31. Therefore, I partly uphold Mr N's complaint.

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Directions

32. Within 21 days of the date of this Determination, Mercer shall pay £1,000 in recognition of the distress and inconvenience that Mr N has suffered.

Karen Johnston

Deputy Pensions Ombudsman
8 May 2019