

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Clerical Medical Section 32 Buy Out
Respondent	Clerical Medical ( <b>CM</b> )

### Outcome

1. I do not uphold Mr Y's complaint and no further action is required by CM.
2. My reasons for reaching this decision are explained in more detail below.

### Complaint summary

3. Mr Y's complaint against CM is about the way in which it handled the transfer of his policies to the Momentum Gibraltar Pension Plan.

### Background information, including submissions from the parties

4. Mr Y's pension benefits, up until 2017, were held in five separate section 32 pension policies, which were administered by CM. These policies were under the following five policy numbers; 4849482A, 4941018K, 4887154K, 4725249F and 4905131B.
5. On 31 October 2016, CM issued the transfer papers to Mr Y's financial advisor at Abbey Financial Solutions. This included a transfer quote and forms which needed to be completed for each of the five policies. Included in this paperwork was a declaration for making a transfer to a Qualifying Recognised Overseas Pension Scheme (QROPS). This declaration asked Mr Y to confirm:

"I have been advised by Clerical Medical to seek and obtain independent financial advice from a financial adviser authorised by the Financial Conduct Authority (FCA).

In certain circumstances, if the transfer value exceeds £30,000, I understand that Clerical Medical has a legal duty to check that I have taken appropriate independent advice and acknowledge that I have been informed of this requirement."

6. The transfer papers also included a letter dated 24 October 2016, which stated the following:

“The policyholder must take independent financial advice before they transfer their policy. Please read the enclosed leaflet carefully.”

7. In addition to this letter a ‘Important Information About Your Transfer Request’ leaflet was provided to Mr Y’s financial advisor. This leaflet included a section called What You Need To Do, which stated:

“You must take appropriate independent financial advice before you transfer your policy.

We need written confirmation from your financial adviser that you have received appropriate independent financial advice before we can process your request. This confirmation must be contained within **ONE** single written statement and signed by the financial adviser.

The statement **MUST** include the following detail:

- Your name, your address and policy number (or scheme name).
- Confirmation that the adviser has the relevant permissions to give you advice along with their firm reference number. We use this to check that the adviser is authorised by the Financial Conduct Authority (FCA) to advise on this transaction.
- Confirmation that the advice you have received is specific to the transfer request and the decision you are about to make.

You must provide us with your instructions and a copy of the written statement from your financial adviser within 3 months of a transfer quotation being issued to you. After 3 months the advice will no longer be considered valid.”

8. On 8 November 2016, CM sent a further letter to Abbey Financial Solutions which repeated the same warning regarding financial advice as was given in the letter of 24 October 2016. A copy of this letter was sent directly to Mr Y on the same date.
9. On 13 January 2017, Mr Y returned his completed transfer forms to CM for the five policies.
10. On 27 January 2017 and 31 January 2017, CM confirmed it was able to transfer policies 4887154K, 4725249F and 4905131B as requested. However, CM explained that it was unable to transfer policies 4849482A and 4941018K because they had guaranteed minimum pensions attached to them and as a result financial advice was needed before a transfer could complete.
11. On 10 March 2017, Omega Financial Solutions Limited Mr Y’s new financial advisor wrote to CM confirming that in relation to policy numbers 4849482A and 4941018K,

that Mr Y had now carried out the necessary recommendations in accordance with the Pensions Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice Regulations 2015), and has now received independent financial advice from it.

12. On 13 March 2017, Mr Y returned the confirmation of financial advice for the two policies to CM.
13. On 22 March 2017, CM informed Mr Y that following changes contained in the recent budget, all new requests received after 9 March 2017, attract a 25% overseas transfer charge. CM further explained that it considered Mr Y's request to be a new request and as a result it needed Mr Y to complete a revised APSS263 HMRC Qualifying Recognised Overseas Pension Scheme Member information form.
14. Mr Y was unhappy that the transfer requests for his remaining two policies were being treated as a new request, and raised a formal complaint with CM.
15. On 19 May 2017, CM, in response to Mr Y's complaint, explained that the transfer of his two remaining policies needed to be treated as a new request because it received his confirmation of financial advice more than 3 months after the initial transfer paperwork, which included a transfer quote, was issued to him on 31 October 2016.

### **Adjudicator's Opinion**

16. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by CM. The Adjudicator's findings are summarised below:-
  - The Adjudicator did not agree with Mr Y that CM was able to treat the correspondence it received in March 2017 as a completion of the transfer request made in January 2017, due to statutory requirements and deadlines. There is a statutory requirement for a guaranteed cash equivalent transfer value (**CETV**) to be calculated within three months of a request and supplied to the member within 10 days of the calculation date. The date upon which the CETV is calculated is the guarantee date, from which a three month guarantee period runs. The guarantee date of Mr Y's CETV was 31 October 2016. The member must request payment of the guaranteed CETV by returning the transfer paperwork, and any other requirements listed in the transfer documents, within the three month guarantee period. The three month guarantee period for Mr Y's CETV expired on 31 January 2017 and he returned the completed documents within this period. However, Mr Y did not provide confirmation that he had taken appropriate independent financial advice.
  - Confirmation that Mr Y should had taken appropriate independent financial advice on the transfer must be provided within three months and 10 days of the guarantee date, so in Mr Y's case within the 10 days following 31 January 2017, by 10 February 2017, if not before. Page 17 of The Pensions Regulators guidance

booklet “DB to DC transfers and conversations” clearly sets out the statutory timeline for events during a transfer.

- Mr Y did not provide confirmation of appropriate financial advice until 13 March 2017, which was outside of the three month and 10 day statutory deadline. Therefore, it was the Adjudicator's opinion that CM was correct, that as his transfer could not be processed as the 31 October 2016 guaranteed CETV was no longer valid.
  - The Adjudicator was of the opinion that Mr Y should have reasonably been aware of the three month deadline as CM had provided this office with a copy of the paperwork issued to him and his financial advisor enclosing his CETV and discharge form, which states that the guarantee date is 31 October 2016 and that the CETV is valid for the three months following the guarantee date. It also stated that as a GMP was part of the benefits included in the policies in question that confirmation of financial advice was required. This is a legislative requirement well known in the pensions industry and, as Mr Y's financial adviser was facilitating the transfer, it is reasonable to expect that the adviser would have been aware of the three months and 10 day deadline within which confirmation of appropriate independent advice must be provided.
  - The Overseas Transfer Charge was introduced by the Government in the 2017 Budget and applied from 9 March 2017. It is therefore applicable as a result of a change in legislation for which CM has no discretion to waive. There is no requirement for CM to have made Mr Y aware of this change prior to its letter dated 22 March 2017. In any event, the Adjudicator was of the opinion that this was something which she would have expected Mr Y's financial adviser to have made him aware. Especially, as the letter providing confirmation of advice is dated 11 March 2017, two days following the imposition of the charge.
17. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y 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 Y for completeness.

### **Ombudsman's decision**

18. Mr Y contends that his two remaining policies, 4849482A and 4941018K should be treated as part of his original transfer request and not subject to the Overseas Transfer Charge. However, I find that CM were correct in stating that Mr Y's transfer of the two policies in question could not be processed as the 31 October 2016 guaranteed CETV was no longer valid and Mr Y's request to transfer would need to be treated as a new request.
19. I have considered the paperwork issued to Mr Y and his financial advisor. I am satisfied that both the CETV and discharge form explained the options available to Mr

**PO-18681**

Y and set out the relevant three month deadline. As has been explained by the Adjudicator, I find that it would have been reasonable for Mr Y to have been aware of the three month deadline and confirmation of financial advice was required. As Mr Y did not meet the required deadline it is only reasonable for Mr Y to be required to commence the process again, if he still wished to transfer.

20. While I sympathise with Mr Y's position, I am bound to uphold the legal and statutory requirements and in this case, I do not find that there is any maladministration on the part of CM.

21. I do not uphold Mr Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
15 October 2018